

STATE OF TASMANIA v DANIEL TASMAN MARK
COMMENTS ON PASSING SENTENCE

11 NOVEMBER 2024
JAGO J

Mr Mark, you have pleaded guilty to one count of Criminal Code assault. I am also dealing with a related summary matter, being one count of injure property.

On 3 February 2023, you went to the home of a Ms Campbell. You went there to locate a young person, whom I shall refer to as "LK". LK was the daughter of a good friend of yours. Circumstances were such that LK could not reside at her family home and you, and your sister were caring for her. I am told that you had put considerable effort into encouraging LK to attend school and complete her education. On this day, you discovered that LK had not attended school, but rather had spent the day at Ms Campbell's home. You went there to collect her.

Upon entering the residence, you observed LK to be packing her bags. You became angry. You noticed the complainant, Mr Baldock, at the top of the stairs. For reasons which are not particularly clear, you perceived that Mr Baldock had been an inappropriate influence upon LK. You approached him and began yelling at him. You then punched him twice to the left side of the face. Mr Baldock's vision immediately became blurry and blood ran down his face and from his mouth. You walked away and began yelling at LK. You and LK argued for a short period before you returned to the area where Mr Baldock was, picked up a hammer and struck the staircase railing, damaging it. This constitutes the charge of injure property. As you did so, you then made some abusive comments to Mr Baldock. You and LK then left the residence.

Paramedics were called. The complainant suffered bruising and swelling to his left eye and tenderness to his cheek. The injury resolved without medical intervention. The complainant, nevertheless, suffered from headaches and pain in his face for a number of days after the assault. He was unable to eat properly because of that pain and lost a considerable amount of weight. He describes in his victim impact statement how his sleep was disturbed and says that he now constantly worries you may return. He is no longer confident around groups of people and feels depressed and anxious much of the time.

Significantly, you have a relevant prior conviction. In February 2018, you were sentenced by the Hobart Supreme Court for the crimes of assault and cause grievous bodily harm. You were sentenced to three years' imprisonment. The last 12 months of that sentence was suspended on conditions. It seems you did not breach those conditions. Those crimes were committed on 1 January 2016, so some time ago now. They involved you reacting in an extreme way to discovering some people who had attended at a social gathering at your residence, uninvited. When you were sentenced for that matter, the sentencing judge accepted that your moral culpability should be regarded as reduced as it was evident that you were experiencing some mental health difficulties and your psychological state was causally linked to your violent responses. At the time, the sentencing judge had a report from a clinical psychologist, which indicated, amongst other things, that you suffered from: *"long standing condition of severe anxiety with a tendency to catastrophise, and episodes of panic disorder. ...He has been treated for severe anxiety symptoms and panic disorder. ...He has prominent depressive personality traits and experiences prominent anxiety. He has a tendency to focus on negative life events and be highly mistrustful of people. ...His tendency to catastrophise leads him to be more vulnerable to the negative effects of stress. His chronic stress response is marked. ...The*

psychological impact of stress resulted in undeveloped capacity to regulate strong emotions such as anger and fear."

I am told that following your release from goal for those crimes, your mental health was quite stable, but after enduring some difficult life events, including your mother being diagnosed with cancer and being with your aunt when she suffered a heart attack, requiring you to perform CPR unsuccessfully upon her, your mental health deteriorated, and your anxiety and depression once again became problematic.

I have been provided with a report from Michael O'Donnell, Psychologist, and a report from Dr Anand, a consultant psychiatrist. The psychiatric report is dated 15 December 2023 and described that in the preceding two years, your long history of anxiety and depression had worsened particularly following the traumatic death of your aunt, and that in the preceding 12 months, in particular, you had reported a tendency to "ruminate and catastrophise to the point of hyper-ventilating and going into fight or flight mode".

The psychological report confirms a long-standing history of various traumatic experiences. It concludes that you meet the criteria for diagnosis of Post Traumatic Stress Disorder and also confirms that you suffer from major depressive disorder. The author opines that consequently, you have difficulty in managing your anger at times and your previous traumatic experiences have a significant impact on your reactions when you perceive other people are in danger. You have a tendency to respond with a fight response, rather than flight or freeze which other people are more prone to experience.

I accept, therefore, that these crimes occurred when your mental health was in a poor state. I will sentence on the basis that there is a direct nexus between your psychological state and your violent response, and therefore your moral culpability is lessened and the significance of general deterrence in the sentencing exercise is also lessened. That does not mean it has no role to play. And, of course, this is the second time that your mental health condition has given rise to you behaving violently towards others. Public protection is therefore a most important sentencing consideration.

It does seem that at the time this incident occurred, your engagement with mental health professionals was somewhat spasmodic, but since the incident occurred, you have recognised the need for ongoing assistance. You have sought that assistance from your general practitioner who is helping to manage your medication, you have re-engaged with a psychologist and have been committed to attending appointments with him, and you have also been referred to a psychiatrist who has developed a management plan for you. Your mental health, nevertheless, continues to be challenging. I am told in June of this year, you attempted to take your own life whilst under the influence of illicit substances. You now say, through your counsel, that this was a life changing event. You say that since this incident, you have ceased all use of illicit substances and alcohol and have a renewed focus on caring for your mental health. The most recent report from Mr O'Donnell indicates that you have, in recent times, shown stabilisation in terms of your mental health functioning.

I had you assessed as to your suitability for home detention. You are assessed as suitable. You have also been deemed suitable to undertake court ordered community service. I have determined that this is a case where it is appropriate to utilise a home detention order. If not for the availability of home detention, I would have imposed a term of imprisonment, even bearing in mind your reduced moral culpability as a consequence of your mental health. In

my view, a home detention order strikes an appropriate balance between the need to give weight to your mental health condition and moderate the sentence somewhat because of it; your prospects of rehabilitation provided, of course, you continue to engage with appropriate mental health services, whilst still imposing a sentence which will be effective as a general and personal deterrent, and reflect the seriousness of the crime, and the harm you caused to the complainant.

Home detention is a heavy sentence. It is a punitive order involving detention in a person's home, depriving them of ordinary freedoms, restraining their movements and subjecting them to the prospect of scrutiny by authorities at any time. Whilst I intend to structure the order in a way that enables you to maintain appointments with mental health professionals, and continue to provide for your children, as it is considered that this is a positive in terms of stabilising your mental health, there is no doubt that your liberty will still be significantly impacted. You need to very clearly understand, Mr Mark, that there will be strict conditions and if you breach them, you will be brought back to Court and an actual term of imprisonment may be substituted. It is therefore most important that you continue to engage with mental health professionals and do the work you need to do to ensure there is not a repeat of this type of behaviour.

I make the following orders. You are convicted of the crime of assault and the offence of injure property. I impose one sentence. I impose a Home Detention Order of 9 months from today. I make an order that you must, during the operational period of the order, remain at [address stated], between the hours of 5pm and 8am, Monday to Friday, and at all times on Saturday and Sunday, unless your absence during those hours is approved by a probation officer. I impose all of the core conditions set out in s 42AD(1) of the *Sentencing Act*. These include an obligation that you do not commit an offence punishable by imprisonment for the period of the order. I impose the following additional conditions:

- 1 You must permit a probation officer, a police officer, or other prescribed officer to enter those premises.
- 2 You must permit a police officer to conduct a search of the premises, conduct a frisk search of you and take a sample of any substance found on the premises or on your person.
- 3 You must submit to electronic monitoring, including the wearing or carrying of an electronic monitoring device.
- 4 You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 5 You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 6 You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring device, including directions relating to the installation, attachment or operation of the device.
- 7 You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through that device at all times.
- 8 You must not take any illicit or prohibited substances.
- 9 You must not take any medication containing an opiate, benzodiazepine, buprenorphine, hydrochloride or pseudoephedrine unless you provide written evidence from your medical practitioner that you have been prescribed that medication.

- 10 You must not during the operational period of the order consume alcohol and you must, if directed to do so by a police officer, or community corrections officer, submit to a breath test, urine test or other test for the presence of alcohol.
- 11 You must submit to the supervision of a Community Corrections Officer as and when required by that Officer.

I also impose a Community Correction Order for a period of two years, which has a special condition that you must complete 98 hours of community service in that time. You are subject to the statutory core conditions of a Community Correction Order. Additionally, you must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment, as directed by your probation officer.

I direct you must report to Community Corrections, Devonport by close of business tomorrow for induction into this order.

I make a compensation order in favour of Katie Anne Marie Campbell in an amount to be assessed.