

Robert Riley, you plead guilty to assault. The crime was committed on 5 June 2023 against Brandon Gallagher, who was then aged 25. I also agreed to deal with your plea of guilty to a less serious charge of common assault committed against Mr Gallagher on the same day.

At about 3.40 pm on 5 June 2023 Mr Gallagher was standing outside the City Mission building on Frederick Street in Launceston. You were nearby and had formed the impression, from what someone else had told you, that Mr Gallagher had done something you did not approve of. You did not know him but you walked up to him, put your arm around his shoulder and suggested he walk up the street with you. When he refused you slapped him once to the face. When you did that he ran away. That slap constituted the common assault.

About 10 minutes later Mr Gallagher was sitting on the ground a little further along Frederick Street in the forecourt of a building, holding his Samsung tablet. You walked along the footpath towards him but as you approached you were hidden from his view by the wall of a building. You rounded the corner and, without warning and without giving him a chance to defend himself, you kicked his head. The kick was delivered like a football kick with such force that Mr Gallagher was rendered immediately unconscious. You were with another man. After you kicked Mr Gallagher that other man struck him twice to the face and stole his tablet. The State does not allege that you are criminally responsible for those additional blows or for the theft.

The violence was captured on CCTV. It shows that Mr Gallagher remained unconscious, lying on the ground, for about a minute. He can then be seen to get to his feet and stagger off unsteadily down the footpath. He was spoken to by the police a few minutes later and reported the assault. They saw some blood around his mouth and bruising to his cheek and jaw. They suggested that he go to the hospital but he did not. According to the prosecution facts Mr Gallagher did not require medical treatment, but if the police had been aware, as this court is, of the nature of the blow it is likely that they would have been more insistent. Photographs taken on a mobile phone show that Mr Gallagher's face is very swollen. His brain must have been subject to trauma. Nevertheless, because I have not been told otherwise, I will proceed on the basis that he did not in fact suffer any serious or long lasting physical injury. His victim impact statement says that he does not remember the assault but woke with pain in his jaw, cheeks and nose. Some of that damage may have resulted from the blows inflicted by your associate for which you are not responsible, but the kick you inflicted carried by far the most force. Despite the absence of physical injury, Mr Gallagher suffers from ongoing psychological effects: fear, anxiety and a lessened sense of safety when in public and interrupted sleep. There may well be other factors at work in Mr Gallagher's life but the things he describes are the type of effects which are just what may be expected from assaults of this nature.

At the time you were 28. You are now 29. You are an aboriginal man. You had a difficult upbringing. Your counsel described your father as an extremely violent career criminal. Your mother was your primary carer although she had her own problems and you sometimes lived with other family members to give her some respite. You left school in grade 10. You were diagnosed, you say, with ADHD but you are not medicated for it. Your record is not a bad one and is generally not for violence. You were cautioned for one common assault as a youth. In 2015 you were given community service and probation for a considerable number of offences including some driving, dishonesty and bail offences and one common assault. In 2023 you were charged with a number of family violence offences including common assaults. You were in a

relationship from which there are two children aged two and four. You also helped with the care of your partner's older child. You spent 16 days in custody but the charges were not ultimately proceeded with. I do not consider it appropriate to take those days into account for this sentence.

It is in your favour that you entered a relatively early plea of guilty. You admitted to the police that you had kicked him. Although you did not seem particularly remorseful then, I accept that you now understand the seriousness of what you did. You still have ambitions of returning to education and obtaining a qualification. You were heavily affected by alcohol at the time of this assault, but you claim to not have a chronic alcohol problem. The effects of the alcohol do not lessen your responsibility for this crime which is plainly very serious.

This was a serious assault carried out on a public street. You inflicted a single blow, but it was not spontaneous and was of considerable force. It was very fortunate for Mr Gallagher, and you, that the blow did not do more damage than it did because it was the type of blow which could very easily have caused much greater physical injury. Your housing situation is not sufficiently stable to warrant an assessment of your suitability for home detention. In my view, the only appropriate sentence is a term of imprisonment. However, in view of the absence of a serious record for violence, your early plea and to allow for your rehabilitation I will allow you the opportunity to avoid having to serve any part of the sentence but on conditions requiring supervision and the performance of community service.

Robert Riley, you are convicted on the indictment and on complaint 33972/23, count 1. I impose one sentence. You are sentenced to a term of imprisonment of 10 months, wholly suspended for 18 months from today. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve that term unless it is unjust.

I impose the following further conditions that during the 18 month operational period of the order, commencing today:

- (a) you will perform 105 hours of community service;
- (b) you will be subject to the supervision of a probation officer;
- (c) you will report to a probation officer by 5.00pm on Friday 13 December 2024 at 111 Cameron Street in Launceston and thereafter as required by the probation officer and comply with the reasonable and lawful directions of a probation officer or a supervisor;
- (d) you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer and you must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within two working days after, the change.

In addition to the core conditions, the order will also include the following special conditions that you must, during the operational period of the order:

- (a) submit to the supervision of a Community Corrections officer as required by that officer;
- (b) attend educational and other programs, undergo assessment and treatment for alcohol or drug dependency, submit to testing for alcohol or drug use and submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer; and
- (c) you must attend, participate in and complete the EQUIPS Aggression Program.

If you breach any of those conditions you may be brought back to court and re-sentenced.