

STATE OF TASMANIA v GILBERT WILLIAM GEORGE LEARY 7 FEBRUARY 2025
COMMENTS ON PASSING SENTENCE **PEARCE J**

Gilbert Leary, you plead guilty to two counts of assault and one count of possessing a prohibited firearm. I am also sentencing you on your plea of guilty to the summary charges of failing to take all precautions to ensure the safekeeping of a firearm, threatening a police officer and resisting police.

The events which gave rise to these charges occurred in the early hours of the morning on 20 May 2023. You were then aged 22. You were in a relationship with Lyeshia Madden with whom you then had a nine month old daughter. You and Ms Madden had been to a party in Invermay. You both had a lot to drink and just after midnight you decided it was time to walk home to her unit, which was not far away. As you walked you began to argue. She questioned whether you were cheating on her, whereupon you grabbed her neck with both hands and applied pressure. She struggled to breathe and felt she was going to lose consciousness. She could not say precisely how long you held on to her in this way but she thought it was about 30 seconds. You then dragged her to the ground. While she was on her knees you punched her to the side and back of the head. She pleaded with you to stop and mentioned your child's name in the hope that it may calm you down. She agreed with whatever you said to make you release her and just went limp. You then did stop and you continued walking together.

When you arrived home you assembled a homemade pistol with a sound suppressor which had been in your backpack. As you did so you said that you would either kill her or kill yourself because you were going to prison if she told anyone that you had assaulted her. She feared for her life and began to run. She unlocked the door and ran off. You pursued her and caught up with her. When she screamed for help you put your hand over her mouth and tried to pull her back into the unit. She broke free and fled to a neighbour's house for help. The police were called. Until they arrived you tried to get into the neighbour's house to get Ms Madden to return home.

When the police arrived you were highly agitated and aggressive. You threatened to fight them and then resisted them by tensing your arms and refusing to put them behind your back to be handcuffed.

The firearm was subsequently examined and found to be, when the three sections were screwed together, in working order and capable of firing .22 cartridges. Ms Madden was examined at the hospital on the following day. She was tender from the top rear of her head down to her neck. She had some small bruises under her chin and two small ulcers inside her bottom lip suffered during the assault. There was bruising at the base of her right neck and shoulder, her right collar bone and left shoulder blade and had scratches across her mid to lower back. There were various bruises, grazes and abrasions across her arms, legs and feet.

I was given details of your personal circumstances by your counsel and in a pre-sentence report. You are now aged 24. You grew up in Launceston but you had a difficult childhood characterised by poverty and neglect. You spent time in and out of foster homes in Tasmania and Victoria. Regrettably even there you were subjected to neglect and abuse. You managed to complete year 10. You returned to Tasmania when you were 18 and worked in odd jobs until you found stable employment in 2023. You lost that job as a result of these offences. There has been a history of alcohol and drug abuse which you have used to help you cope with other stressors in your life. You were affected by alcohol and drugs at the time of these crimes. That does not, however, lessen the seriousness of them. Following your arrest on 20 May 2023 you spent nine days in

custody until you were granted bail. You were subject to strict family violence order conditions including electronic monitoring which made holding employment difficult. You had no prior convictions at the time but since then you have been sentenced on three occasions for breaches of the family violence order to which I have referred. None of the breaches are particularly serious and did not involve threats or violence but as a result you spent some further time in custody in 2024 between 6 and 26 February, 24 April and 3 May and 1 and 9 July. You had not previously been to prison. In all, the period spent in custody so far amounts to 48 days. Twenty days are attributable to a sentence served between 6 and 26 February so 28 days remain to be taken into account. It is now almost 20 months since these events. Your relationship with Ms Madden is at an end but you have two daughters, one of whom was born since these crimes. You presently have little or no contact with them. The family violence order currently in force is dated 9 July 2024 which replaced earlier orders. With specified exceptions it prohibits contact with Ms Madden but does not prohibit contact with your children in accordance with a court order. It is expressed to expire on 22 May 2025. You are presently unemployed and in receipt of Centrelink benefits.

You were a relatively young man at the time without prior convictions. Your pleas of guilty are in your favour. They facilitate justice, indicate an acceptance of responsibility and avoid the need for the victim to give evidence. There was, from an early stage, attempts to resolve the charges and Ms Madden was never likely to be required to give evidence. However some of the things you said to the author of the pre-sentence report indicate that you still do not fully understand the seriousness of the charges, including that you believe that you have already been punished enough. You are assessed by the author of the pre-sentence report as requiring a high level of intervention to address a number of risk factors for future offending. As has been frequently pointed out, the prevalence and devastating impact of violence perpetrated against women within relationships is well recognised across Australia by criminal courts and the community. Family violence is an insidious, prevalent and serious social problem. The crimes you committed all occurred during the course of one series of events and do not, as far as I have been made aware, form a part of a pattern of violence. They are very serious nonetheless. You are not to be sentenced for strangulation but grabbing Ms Madden around the neck as you did was an act which was dangerous and put her at very serious risk. You should never have had a firearm as you did. There is no innocent explanation for the possession of a firearm of that nature. I am not sentencing you for an assault by threat with a firearm but the threats you made must have added to the terror that Ms Madden experienced as a result of the further assault which put her in fear for her life. I have no victim impact statement from her but that may be so for many reasons, and does not mean that she has not been traumatised by the assaults. I do not overlook the offences committed against the police but they are of lesser seriousness.

The combined result is such that in my view the only appropriate sentence is a term of imprisonment, some of which is to be actually served. However I will suspend part of the sentence on conditions aimed at addressing your rehabilitation and reduction of the risk of future offending.

Gilbert Leary, on 22 November 2024 you were convicted on each count on the indictment. I now also convict you on counts 7, 8 and 9 on complaint 32352/23. For those counts on the complaint, in light of the other sentence I am about to impose, I make no further order. In accordance with the *Family Violence Act*, s 13A, I direct that the offences on the indictment each be recorded on your criminal record as family violence offences. I have previously made a family violence order with a term of two years from 22 November 2024 in amended terms in substitution for the order previously in place excluding conditions 11 to 19 inclusive which relate to electronic monitoring.

On the indictment I impose one sentence. You are sentenced to imprisonment for 15 months from 10 January 2025. I suspend 10 months of that term for 18 months from your release on the following conditions:

- (a) you are not to commit another offence punishable by imprisonment during that period. If you breach that condition you will be required to serve the suspended part of the term unless that is unjust.
- (b) during the 18 month operational period of the order, commencing on your release, you will subject to the supervision of a probation officer. The conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition and will be set out in the order you will be given. These include that you must report to a probation officer at the office of Community Corrections in Launceston within three clear working days of your release, you must submit to supervision and comply with the directions given by your probation officer, you must not leave Tasmania without permission and you must notify of any change of address.
- (c) 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:
 - i. submit to the supervision of a Community Corrections officer as required by that officer;
 - ii. 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;
 - iii. attend, participate in and complete the Family Violence Offender Intervention Program as directed by a probation officer.