

STATE OF TASMANIA v LEVI JAMES ROCK
COMMENTS ON PASSING SENTENCE

19 MARCH 2025
BRETT J

Mr Rock, you have pleaded guilty to two counts of assaulting a police officer. You have also pleaded guilty to the related summary offences of resisting a police officer and using abusive language to a police officer.

The offending conduct was committed on 17 January 2023, in the early hours of the morning at the Riverbend Car Park in Launceston. You had stopped there with some companions in order to use the public toilets. You became involved in an argument with a group of people, some of whom you knew. You had been drinking alcohol and the argument, undoubtedly combined with the effects of the alcohol you had consumed, caused you to become emotionally upset and angry.

I have watched body worn camera footage of the scene, and it clear that it was chaotic. The police had been tasked to investigate the gathering and I infer attempt to bring some order to the scene. The attending police included two constables, a male and a female. The male constable approached you while you were yelling at someone involved in the argument, asked your name and then touched you on the arm, clearly in an attempt to draw your attention away from the argument. You responded by angrily verbally abusing him. He asked you to cut out the foul and abusive language and then gave you a lawful direction to leave the area. Despite the sense involved in doing this, the direction caused you to become even angrier, and you refused to comply. You responded to his direction by making a rude gesture and continuing your abusive language both of which occurred towards him. The police officer then placed your under arrest and he and the female officer attempted to take hold of you from behind. You resisted them and during the course of this resistance, you committed the first indictable assault, which was on the male officer. While he was attempting to restrain you from behind, you leaned forward and then threw your head back deliberately, slamming the back of your head into his face. He and other officers then took you to the ground and placed you in handcuffs. You continued to struggle and it became necessary for police to deploy OC spray. After this you became relatively subdued for a short time, but then again commenced to be argumentative, aggressive and verbally abusive. During the course of this, you committed the second assault, this time on the female officer. You raised your head from the ground and spat saliva at her, making contact with her face and other parts of her body.

The impact on the police officers of these assaults has been significant. The female officer was tested against the possibility of infectious disease. Fortunately, the tests were negative. I am told that she found this experience worrying and distressing, as would be expected. The male officer suffered bleeding from his nose immediately and was taken to hospital where examination revealed that his nose was broken. He underwent surgery to deal with the fracture. I have been told that he suffered black eyes and could not work for some time. When he came back to work, he was on light duties for a number of weeks. His nose is still crooked and his left nostril partially blocked. He may require further surgery. He continues to suffer numerous episodes of bleeding from his nose. He has also suffered psychological consequences and has required psychological therapy.

You are now 21 years of age, and were 19 at the time of this offending. You had no prior convictions at all and you have not committed any other offences since this incident. Your childhood was marred by some horrific experiences, including the murder of your father when

you were seven years of age, outside a house in which were present at the time. Your mother was sent to prison around the same time for her commission of a related offence and you were taken in by your grandparents. You commenced to live alone at the age of 14. When you were 11, your mother collapsed and passed away as a result of an asthma attack. This occurred in your presence. Despite all of this, you have managed until now to live a relatively quiet and industrious life, and have established yourself in a home with your partner. You do not use illicit drugs and you have reduced your use of alcohol. Apart from your commission of these crimes, you do not have a criminal record.

I have been provided with two psychological reports from Dr Georgina O'Donnell. Dr O'Donnell examined you for the first time in February of 2025. Dr O'Donnell concludes that you present with post-traumatic stress disorder resulting from the trauma experienced in your childhood, and notes that you have also been diagnosed with attention deficit hyperactivity disorder. I am not sure that she is qualified to formally diagnose PTSD but I am prepared to accept her opinion that you present with the symptoms of this disorder. The psychologist has concluded that the first limb of *Verdins* is relevant to your offending, on the basis that your impaired mental functioning due to the PTSD would have contributed to your conduct in the sense that it contributed to you being in an activated emotional state and impaired your capacity to make appropriate judgments. This contributed causally to you reacting to police aggressively. Dr O'Donnell explains that this is because the circumstances in which you found yourself that night activated a "fight" response, which is "one of the key defensive mechanism's activated in individuals with PTSD when faced with perceived threats". She notes that this may reduce your moral culpability. She also considers that limbs 2, 5 and 6 of *Verdins* are relevant. Dr O'Donnell expresses an opinion as to what I think must be fairly obvious, that is that a term of imprisonment "presents a high risk of mental health destabilisation due to the cause and nature" of your PTSD and "the experience of prison would weigh more heavily on you" than others who have not had your life experiences. Dr O'Donnell notes that your conduct was out of character given your lack of criminal history.

On any view of it, your conduct on this occasion and in particular your physical attacks on these police officers constitutes criminal conduct of grave objective seriousness. The assaults by you amounted to serious violence. Police officers regularly put themselves at considerable personal risk in order to perform their duty on behalf of the community. The officers on this occasion were simply carrying out that duty and your response to them was appalling. You claim that you did not intend to cause injury to the male officer although you concede that your actions were reckless. When your counsel told me this, I indicated that I found it difficult to accept given what seemed to be the very deliberate act of throwing your head back against the officer whom you must have known was there. I was told that you accepted that you intended to hit him but did not specifically intend to strike him in the face. I will accept this but the distinction in my view between recklessness and intention in this case does little to reduce your moral culpability. You must have known that he was standing behind you and that it was highly likely that your dangerous act would result in your head striking him either in the face or, at least, his head. You did not have to do this, you had plenty of time to calm down and accept the inevitability of your arrest. You must accept full responsibility for what you did.

Similar comments can be made about your attack on the female officer. This was a deliberate, disgusting and dangerous thing to do. It occurred after you had calmed down to some extent and was clearly designed to demean the officer and cause her all of the psychological harm which could be expected to result from the potential danger involved in spitting saliva in to a stranger's face. I regard your moral culpability for both crimes as extremely high.

Notwithstanding the mitigating factors of youth, prior good record and the underlying psychological condition, in my view, both crimes warrant the imposition of a period of imprisonment. I consider this necessary to achieve the sentencing aim of general deterrence, in particular for the purpose of protection of police officers in the performance of their duty, and to provide vindication of them and general denunciation of your conduct on behalf the community. I would be of this opinion in any event but I note also that the provisions of s 16A of the *Sentencing Act*, which prescribe a minimum term of imprisonment of not less than six months for an offence which causes serious bodily harm to a police officer who is on duty at the time of the offence. This mandatory minimum applies "unless there are exceptional circumstances".

In this case, I am satisfied that the injuries to the male police officer constitute serious bodily harm within the meaning of the provision. In arriving at this conclusion, I direct myself in accordance with the law which I explained in *Tasmania v Gladwin* [2016] TASSC 64. I am satisfied that the harm falls within the category of serious bodily harm having regard to the nature of the injury itself, the need for surgery and the ongoing consequences and secondary effects on the police officer. There was no real submission to the contrary from your counsel. Notwithstanding the serious nature and impact of your assault of the female police officer, I do not consider that the harm caused to her amounts to serious bodily harm.

Your counsel submits, that I should regard your antecedents, including your youth and prior good record, the trauma which you suffered in your childhood together with the psychological evidence concerning the link between the PTSD and your criminal conduct on this occasion, when taken together, as exceptional circumstances. I accept that exceptional circumstances can include such matters, and that it is appropriate to take an overall approach to this question, but I am not satisfied that they amount to such in this case. It is extremely unfortunate that you have placed yourself in this position particularly given the hard work you have done to overcome the trauma of your childhood but I simply cannot overlook the serious nature of your offending and its impact on the police officers. While I accept the general proposition of Dr O'Donnell's evidence concerning a causal link between PTSD and your reactions on the night in question, she has not in my view quantified the extent to which your psychological condition contributed causally to your conduct on this occasion, nor its relative contribution compared to, for example, the alcohol which you had consumed. While the psychological evidence explains why your reactions were aggressive and oppositional, it does not explain the link between the psychological condition and your decision to perpetrate actual violence against the police officers, and the extent of any impairment of your decision making capacity on these decisions. While the "fight" response she describes may have impaired your capacity to exercise appropriate judgment and think rationally, it is not suggested by Dr O'Donnell, I think that your ability to understand the nature of this violence, or to control yourself at least to the extent of refraining from serious violence, was compromised to any great extent. There is a distinction in my view between struggling and resisting arrest, and going further and perpetrating violence which had the capacity to hurt and injure the police officers. My own opinion of your conduct after having viewed the footage is that while I am sure your underlying psychological condition had a role to play in the development of your general anger, aggression and oppositional conduct, it does not justify or fully explain your decision to take the critical step of inflicting significant violence on the officer concerned. Your attack on the second officer, the female was not reactive at all, but a deliberate act of violence and aggression. Dr O'Donnell explains how you had earlier restrained yourself from retaliating against females who had assaulted you during the argument in the carpark, on the basis that "you don't hit women" but my perception of your attitude to the

police from the time of their arrival was that they warranted a different approach in your mind. Importantly, you did not restrain yourself from resorting to violence when the recipients were police officers. Ultimately, after considering all of the relevant factors, including your antecedents and Dr O'Donnell's opinion, I am not satisfied that there are exceptional circumstances with respect to the relevant offending. You must bear responsibility for the consequences of your conduct. The imposition of a sentence of imprisonment is the only appropriate sentencing option.

Having said all this, it is appropriate to place some emphasis on rehabilitation, in particular in relation to your age, background and good record. I will also take into account the delay in this matter and your entry of pleas of guilty at a relatively early stage. Finally, I take into account the impact of prison on your mental and psychological health as explained by Dr O'Donnell. I do not think however it is inevitable that your life will be derailed by the experience of going to prison. You have shown considerable character already in your life by dealing with what you have suffered in your childhood, and that character should stand you in good stead when dealing with this difficult experience.

I make the following orders:

- a You are convicted of the crimes and the offences to which you have pleaded guilty;
- b You are sentenced to a global term of 12 months imprisonment, which will commence from yesterday, 18 March 2025. The last six months of the sentence will be suspended for a period of two years commencing on the day of your release from prison on the condition that you are not to commit another offence punishable by imprisonment during that period. You are not eligible for parole in respect of the operational part of the sentence, which is a period of six months.