

STATE OF TASMANIA v DYLAN JOHN CRUSE
COMMENTS ON PASSING SENTENCE

5 MARCH 2025
WOOD J

The defendant, Dylan John Cruse, has pleaded guilty to attempted murder.

At the time he committed the crime, the defendant was serving sentences imposed for two armed robberies and was housed at Risdon Prison.

The complainant was remanded in custody on numerous sexual charges and was also housed at Risdon Prison. He was 34 years of age at the time.

The complainant met the defendant and disclosed he was feeling very down and anxious, and also that he was homosexual. The defendant suggested to the prison authorities that they share a cell and that was arranged in early September.

There was an occasion when they performed oral sex on each other in the cell.

The complainant had spoken to the defendant about his sexual offending and on 15 September the complainant again spoke about it, specifically that he was HIV positive, and that he had filmed having sex with a 14-year-old boy. That evening, the defendant asked the complainant what sexual interests he had and if he was "into" getting tied up. The complainant said he was willing to try.

The defendant waited for the guards to do their rounds. Afterwards, he ripped up bedsheets then guided the complainant to lie face down on the bed. The defendant bound his wrists behind his back and bound his ankles with the ripped-up pieces of bedsheet. He then connected the ties between the complainant's wrists and ankles, known as a hogtie, so he could not move. By this time, he intended to kill the complainant. The complainant turned his head to the side and performed oral sex on the defendant.

The defendant placed a sock and a tie in the complainant's mouth. The defendant asked him to try and scream and the complainant made very little sound. The defendant then placed a plaited tie around the complainant's neck. The complainant had not agreed to that. The defendant asked him if it was too tight and the complainant tried to nod to indicate it was, but the defendant did not loosen the tie at all. The complainant felt uneasy about what the defendant was doing but did not imagine there was anything sinister in it.

The defendant grabbed a pillow from underneath the complainant's face and placed it on the back of his head. The defendant partially removed the complainant's pants, exposing his buttocks and started rubbing that part of his body. The complainant was confused as they had not spoken about this.

The defendant then quickly tightened the neck tie, causing the complainant to lose consciousness.

The defendant snapped the head off a toothbrush to make a weapon and attempted to stab the complainant in the leg several times. Because the toothbrush was blunt, it did not penetrate the skin.

The complainant stirred so the defendant tightened the neck tie, causing the complainant to lose consciousness again.

After a period, the complainant started to gasp. The defendant used the intercom and communicated to prison staff, "I've just choked out my cell mate." Before the prison staff attended, the defendant removed the tie and took the sock from the complainant's mouth.

Prison staff attended and saw the complainant with his wrists and ankles bound together and a loose plaited tie around his neck. The complainant was breathing but was unresponsive and shaking uncontrollably.

The defendant said, "I tried to kill him, the voices in my head told me to". He then called the complainant a paedophile and said he should have killed him for what he had done.

The complainant's recall of sensations before he lost consciousness included feeling dizzy and a sharp burning pain in his neck. He was taken to the Royal Hobart Hospital for treatment. A CT scan was carried out in relation to the complainant's brain and a CT angiogram of the blood vessels in the neck and brain was also done. There was no suggestion of damage detected.

He was found to have the following injuries. He had two circumferential red marks prominent at the front of his neck, one of which was approximately 30 mm wide, and the other 100 mm, as well as a skin tear to his neck.

He had petechiae around his head, face, neck, and mouth, above the ligature mark on his neck, in his ear canals and around his eyes, haemorrhages in the whites of his eyes, bruising of the upper eyelid, and a small bruise on his left ear.

He also sustained 20 mm circumferential contusions (bruises) to his left and right wrists and ankles. A CT scan showed changes consistent with excess fluid in the lungs (neurocardiogenic pulmonary oedema) as a result of impaired blood supply to the brain being the likely cause.

The complainant was treated with steroids to decrease the swelling in his throat and was given an antibiotic and eye ointment. The opinion of the Acting Director of Emergency Medicine was that the various injuries would decrease over days to weeks but that the clinical signs were concerning in severity and suggestive of a near fatal event.

Fortunately, the complainant has no lasting physical injuries.

A victim impact statement provided by the complainant, however, reveals he has suffered significant emotional and psychological harm, which is understandable and would be expected given the trauma he experienced. He thought he was going to die. His anxiety was initially acute and while his symptoms have improved and he has developed strategies to manage, he continues to experience anxiety and distress.

The defendant's diary was seized from his cell and was an account of his thoughts. Entries from 10 September record pervasive thoughts about killing people.

He was interviewed by police on 16 September and made full and frank admissions. He told police that the complainant had told him about his crimes, and he described it as "a bit fucked up" and made him feel sick. He told police there were further disclosures on the day of the incident, as well as conversations about the complainant's fantasies and being tied up, which he said "triggered him and he was thinking about it all afternoon".

He said he wasn't going to hurt him at the start but as soon as he tied him up, he thought, "I might as well kill him, something to do". He told police that he put the noose he made around

the complainant's neck and started strangling the complainant, and that the complainant was struggling but he could not move. He put a pillow over his face so people could not hear his screams. He described pulling the noose tighter and tighter and said, "I felt amazing like all my fantasies were coming true". He said he stabbed him in the leg with a broken toothbrush to see if he was dead. A couple of seconds later, he started gagging. The defendant said he got back on top of him and "tried to strangle him to finish him off". He lifted the pillow up and turned on the light and the complainant's face was red so he pressed the button to try and save his life. He thought he would die anyway. He told police about thoughts he had had of killing the complainant and of killing people for years, and that he has a rage inside him and "I have to kill someone before I die".

It can be seen that he was motivated to inflict violence on the complainant because of what the complainant had told him about his crimes. This is not mitigatory. Acts of vengeance must be discouraged by the courts and cannot be given any weight in the sentencing process.

The defendant is now aged 30 years; he was 28 at the time of his crime. He has relevant prior convictions for violence. In 2016, he was convicted of attempted murder and sentenced to five and a half years' imprisonment. The attempted murder involved an act of stabbing a relative to her neck while she was asleep when he was under the influence of alcohol, cannabis, and methylamphetamine.

He was released on parole on 4 February 2019, but less than two months after being released, he committed an armed robbery in March, and then in August of the same year, an armed robbery and stealing. The armed robbery committed in March 2019 involved a robbery of a pizza store when the defendant was armed with a knife and wearing a face covering during which he directed the victim and his pregnant wife to lie on the floor. The armed robbery and stealing committed in August 2019 involved a robbery of a bottle shop when he was armed with a knife and wearing a face covering. He also committed a common assault in December 2020.

For the armed robbery committed in March 2019, he was sentenced to 3 years' imprisonment cumulative to any current term of imprisonment he was serving, and with respect to the second armed robbery, he was sentenced to two years and three months' imprisonment cumulative to any sentence he was currently serving. A supervision order was also made under the Criminal Justice (Mental Impairment) Act 1999. In relation to the common assault, he was sentenced to three months' imprisonment commencing 2 December 2020. He has been in custody since 30 August 2019 and his release date with respect to those cumulative sentences is 15 April 2027.

The defendant has spent most of his adult life in prison. Since 23 December 2015, he has been in the community for one period of approximately six months.

The defendant has a good relationship with his family and his parents visit him regularly. He had a very difficult time at school; he has cognitive limitations which were not properly identified by the school and he was not given the educational support he needed. He was subjected to severe and consistent bullying which included verbal taunts and physical assaults, and school was a traumatic experience which affected him beyond his high school years. He was socially isolated in his late teens and early twenties and experienced low self-esteem and confidence, and difficulty trusting people. He was not able to secure any employment.

During these years, he turned to cannabis and alcohol to alleviate his inability to cope.

He has been admitted to the Department of Psychiatric Medicine eight times since 2013 with psychotic symptoms considered to stem from substance use rather than from a psychotic disorder. Substance abuse and psychosis were features of some of his past offending. There are records of him being affected by abnormal thought patterns including harming himself or others.

I have a report from forensic psychiatrist, Dr Michael Jordan, who has interviewed the defendant on a number of occasions.

Dr Jordan reports that the defendant has been diagnosed with a borderline intellectual disability with a full-scale intelligence quotient recorded at various times in the sixties. The defendant is considered to have a personality disorder with features of both antisocial and borderline personality disorders. He has not been diagnosed with a major mental disorder although he has previously been treated for depression and currently receives treatment for anxiety. He has previously experienced transient periods of psychosis in the community related to substance misuse.

There is no suggestion that his mental impairment is causally linked to his crime such as to enliven the *Verdins* principles. His moral culpability is not reduced by reason of his mental impairment. There is no suggestion that the defendant's limitations affected his ability to understand the likely consequences of his actions or appreciate the wrongfulness of the conduct, or impaired his judgment. Rather, it is a situation where his personality dysfunction and his propensity for violence are part of the context and explanation for his crime.

The focus of Dr Jordan's report is upon the treatment he has been receiving while in custody and expectations of treatment in the future. This report was provided because there were questions about what treatment and intervention the defendant would receive to address the risk of future violence. On the matter of risk, I note too the defendant has himself expressed genuine concern during the sentencing hearing for the safety of others in the prison setting.

Dr Jordan reports that the defendant is receiving appropriate treatment and therapy within the custodial setting. He is engaged with Therapeutic Services and regularly has appointments with a high-needs support counsellor. In November last year, he completed a 20-week dialectical behaviour therapy intervention targeted for those with intellectual impairment. This has assisted the defendant better understand his personality structure and how that can affect his actions.

As well as his engagement with Therapeutic Services, the defendant is engaged with Prison Mental Health Services and receives regular psychiatric reviews, and he is compliant with those reviews and prescribed medication aimed at managing his anxiety. He has engaged well during regular and frequent reviews with his case manager, and she reports a developing therapeutic rapport.

Dr Jordan describes the defendant's interactions with Therapeutic and Prison Mental Health Services as reasonable and positive over the last six months. While this is encouraging, Dr Jordan notes this progress would need to be sustained over a much longer period in order to be confident that the defendant is developing insight into his fallibilities, and that factors related to his risk of violence have been positively modified.

There is a currently a limit to other rehabilitative programs he can complete because he is categorised as a maximum-security prisoner. He would be a candidate for rehabilitation programs such as alcohol and substance misuse rehabilitation, which were factors in previous offending. His risk to others, however, is considered high and that would need to be modified before he could be reclassified.

Dr Jordan notes that the dominant concern in terms of his future treatment is the defendant's ability to understand and curb his proclivity towards serious violence. This area is considered closely aligned to his personality structure and will require further therapy. The defendant's ongoing therapy, intervention needs, and rehabilitative requirements will be provided for within the custodial environment.

This is a severe case of attempted murder by strangulation and the force applied was life-threatening.

There are serious features of this crime. This is not a case involving pre-meditation, however, in the previous hours and days, given his thoughts and ruminating about killing, and his disgust and anger towards the complainant about his crimes, he knew he represented a danger of violence to his cellmate, and he did not forewarn him or the authorities.

It was once he bound and gagged the complainant that he developed a strong desire to kill the complainant. By then, the complainant was completely helpless and incapable of calling for help. He acted upon that desire and inflicted fatal force by strangling the complainant, and his persistent efforts in applying force very nearly killed him. This was a determined attempt by Mr Cruse to kill the complainant.

In the last few critical moments when the complainant was close to death, the defendant desisted and was no longer motivated by an impulse to kill the complainant. In fact, he alerted prison staff with the purpose of trying to save the complainant's life. He removed the tie and sock from the complainant's mouth and confessed what he had done to prison staff. His desisting and providing assistance are factors in mitigation and a distinguishing feature compared to some other cases where the reason the murder is not carried out is due to the intervention of others or the victim's resistance.

General deterrence is an important sentencing goal. This crime was carried out in a prison environment; the complainant was housed in a State institution, where he was entitled to be safe from harm. The sentence must make it clear to other prisoners and remandees that violence in that environment will not be tolerated by the courts.

Having regard to the nature of this crime and the defendant's prior convictions, personal deterrence, and protection of the public within the prison and the community are important considerations.

The defendant's rehabilitation is also an important factor and indeed his rehabilitation is not only in his interests but also in the interests of the community and will promote public safety.

There are early encouraging signs in terms of his progress and rehabilitation. The defendant has been conscientious in co-operating with treatment to address the risk he poses. It remains to be seen whether he continues to be co-operative, and whether the appropriate treatment results in a minimisation of risk.

In my view, the goal of rehabilitation is best reflected in allowing eligibility for parole. The Parole Board will be in the best position to assess whether early release is appropriate and to assess your progress in terms of rehabilitation, matters of risk, community protection, and availability of necessary supports.

There are other sentencing considerations. Of course, the sentence must reflect the nature of and gravity of the crime, and the sanctity of human life.

It must reflect the defendant's personal circumstances, including his immediate and continued co-operation with authorities and his plea of guilty, and it must also reflect totality considerations.

The sentence for this crime will not commence until the expiration of his current sentences. I must ensure that the cumulative effect of the term of imprisonment that I impose is not disproportionate to the totality of his offending. The sentence has been moderated to take into account the total period of imprisonment, and in particular, the parole ineligibility period has been reduced.

I must give weight to and balance these considerations. Ultimately, the sentence I impose will be heavy, but there will be the incentive of parole to promote his rehabilitation.

Dylan John Cruse, I record a conviction. I impose 12 years' imprisonment cumulative to the sentences you are currently serving. You are not to be eligible for parole until you have served 7 years of that sentence.

I make a forfeiture order pursuant to ss 11(1)(a) and 16(1) of the *Crime (Confiscation of Profits) Act 1993* in respect of the items listed on page 12 of the Crown Papers.