

Nathan Turnbull, the defendant, pleaded not guilty to committing an unlawful act intended to cause bodily harm, but guilty of assault. A jury was empanelled but the plea was accepted in satisfaction of the indictment on the following day when the complainant again failed to attend court, and the jury was discharged. There remained a dispute about the facts. Evidence was taken and I made findings of fact on 13 March 2025. I then heard submissions as to sentence and adjourned the matter to obtain a pre-sentence report. The facts on which I proceed are as follows. The complainant in the assault is Michael Latham. He was 46 years old at the time. He and the defendant had known each other for about ten years or so. Up to 2019 the defendant was in a relationship with a Ms Hickey, with whom he has three children. Mr Latham was then in a relationship with Ms Hickey from early 2022, until just before the relevant events. On 30 June 2023, Mr Latham asked his daughter to go to Ms Hickey's house to retrieve personal items and some money said to be owed. His daughter went there with a male person, and while they were there, there was a confrontation of some description, and some damage was done to Ms Hickey's vehicle. Later that day, at about 9.15pm, Mr Latham was in his unit, which is one in a complex, when he heard a noise outside. When he went outside, he saw a man on the ground who appeared to have been assaulted. The defendant is not said to have been involved in this. Mr Latham detected the presence of two men and then saw the defendant coming from the direction of some bushes opposite his unit. The two men, together with the defendant, attacked Mr Latham. One of the men was carrying a baseball bat. There was a dispute about whether the defendant had a baseball bat or a different wooden object. I am not able to say with the required degree of certainty that it was a baseball bat, but it was a wooden object of not dissimilar shape and dimensions, and it really makes little difference.

During the combined assault, Mr Latham was struck to the head and body with the baseball bat a number of times and kicked. There was an attempt to force him back into his unit. Several times he tried to get away but each time he fell to the ground. Towards the end of the attack and while on the ground, he was kicked or struck to the ribs. Mr Latham could feel his head bleeding and put himself in a foetal position to protect himself. He was kicked and struck to the back of the head with the baseball bat at which point the attackers desisted. Mr Latham went to a neighbour's house to get assistance and to call for police. He was taken to hospital and found to have the following injuries. Three wounds to his head, which were approximately seven centimetres in length, one on the right side of the head above the ear, one to the left side of the head above the ear, with a third to the back of the head. He suffered a fracture to the left ulnar with breaks in at least two places, minimally displaced fractures to five ribs on the right side with associated tenderness and bruising, other multiple contusions and abrasions to both knees. The head wounds were stapled in the Emergency Department, and the fracture to the arm was straightened and placed in a cast.

I am satisfied that the defendant was directly responsible for the acts that he admitted to police; that is, using the object he had, hitting Mr Latham in the face, a few times on the legs and two or three times in the ribs. He denied hitting him to the back of the head and any kicking or punching. I cannot be satisfied beyond reasonable doubt otherwise. A question that had to be resolved was the defendant's criminal responsibility for the entirety of the attack. The argued position was that the defendant did not know who the two other men were, suggesting, as he said to police, that they "had their own beef". CCTV footage shows the three men including the defendant, arriving at a point outside the unit complex at the same time. The defendant is seen pointing to the unit and appears to be talking to the others. He then walked up the pathway

in the direction of Mr Latham's unit and returned, during which time the other two had not moved. There are some other movements, backwards and forwards in the street. The defendant then goes out of view for about two minutes after which the other two go towards the unit, one holding what seems to be the baseball bat. As they go towards the unit, the defendant turns and waits on the footpath. That seems to be the time at which the other man was assaulted. The defendant is then seen to be pointing, and very shortly afterwards he goes up the pathway towards the unit, carrying the pole-like object. The defendant is to be sentenced on the basis of a common purpose in that there was an understanding reached between all three that Mr Latham was to be assaulted. I am satisfied there was a common intention to do that, and the crimes committed was of such a nature, that it was a probable consequence of the prosecution of that purpose. The defendant knew one of the others had a baseball bat. I am satisfied the defendant intended that the group attack Mr Latham. The defendant's criminal responsibility therefore extends to the whole of the attack and its consequences. In any event, if I am wrong about all of that and if the attack started before the defendant got there, he was present during most of it and, having knowledge of what the other two intended to do and being present and participating, he was an abettor.

When interviewed, the defendant said that his son had called him from Ms Hickey's home and said people had damaged the vehicle. The defendant said he was shown threatening messages that Mr Latham had sent, and he decided to go to his unit and confront him. To police he identified himself in the footage and said he was holding "a wooden stick thing" that came from the gutter further down the road. He said the reason he went there was because of the threats to his children, admitting that he was "literally a pissed fucking dickhead that just snapped and went too far".

I have a victim impact statement made by Mr Latham, dated 12 March 2025. He says that since the assault he feels scared more often, especially if people are walking behind him. He has lost a lot of confidence and has increased anxiety and depression. He said that he thought he was going to die during the assault. He had to move out of home for three to four days afterwards. He used drugs to self-medicate and the relationship with his family became estranged. He ended up homeless and was a resident at Bethlehem House for a time, working hard to rebuild his life. He has been drug free for a few months. As a result of the injuries sustained, he suffers from chronic pain and tinnitus. He has a metal plate in his right forearm where it was broken. The legal proceedings caused him distress as talking about it distresses him. He said the crime will have significant and lasting impacts on his physical and mental health.

The defendant is now 36 years old. He has a recorded history of offending which, although short, primarily involves crimes of violence. In 2006 while a youth, he was convicted of assault and assaulting and resisting a police officer. In 2011 as an adult, he was convicted and fined for common assault and injury to property, and in July 2012, for assault, he was made the subject of a community service order for 49 hours. Of course, there is a significant gap from that recorded history to the time of this offence. The defendant grew up in the care of his grandparents, his mother being unable to care for him due to health concerns. He completed Grade 10, after which he obtained an apprenticeship. Ultimately, the business closed, and he was not able to continue. At this time he was in a relationship with Ms Hickey. They had their first child, and he did not seek to re-enter the work force. His three children with Ms Hickey are now aged 18, 16 and 12. As noted, the relationship broke down in about 2019 and he left the family home. After about a year of living with his mother, he became his grandmother's carer in about 2020. He lived with her for about three years until obtaining his own

accommodation in late 2023, but he retains the care of his grandmother and spends several hours a day with her, as required. After the relationship between Mr Latham and Ms Hickey ended, the defendant's children lived with Ms Hickey. As I have said, Mr Latham sent his daughter and a man to retrieve property and money allegedly owed. I am told this turned into a rather aggressive and frightening encounter, during which damage was done to the family's motor vehicle and the children became terrified. The defendant's then 10 year old son called the defendant. His distress and fear were evident. The defendant also learnt that his older son had been receiving the threatening text messages. The defendant arranged for the children to be collected from Ms Hickey's address, and then made the decision to confront Mr Latham. He had been drinking heavily. That is not offered as an excuse, but as an explanation as to why there was a decision to confront Mr Latham rather than go about things in a calmer manner.

As a result of what occurred, all three children moved in with the defendant to live and he retains care of them. After the incident, the defendant sought the help of Holyoake in relation to his substance abuse. He recognised the role of alcohol and other substance use in his decision making on the night and sought help. I have a letter from Holyoake confirming the defendant's engagement with the programme and noting demonstrated progress, with his consistently stated aim to be a good father to his children and serve as a positive role model.

This must be regarded as a serious case of assault. It was a combined and concerted attack on a defenceless man in the precincts of his home within the unit complex, by three men two of whom were armed with cudgels. Serious injuries were caused with, no doubt, long lasting physical and emotional effects on the victim. The attack carried with it a high level of risk, and it is fortunate that much more serious injury was not caused. As to a determination as to precisely when the common intention to assault Mr Latham was formed, the evidence does not permit that, beyond a finding that it was by or at least at the time the three men arrived at the entrance to the unit complex. To attempt to deter others in engaging in similar retributive violent attacks is very important. At the same time, I take into account the defendant's personal circumstances. He has the care of his children and still cares for his grandmother although exceptional circumstances were not argued in that context. The defendant took some voluntary steps towards addressing his substance abuse issues. He has been assessed as suitable for home detention, but unsuitable for community service. The plea of guilty has some, but limited, weight. The defendant maintained the version of events given to police and the State was notified at an early stage that the plea to assault was available by way of resolution. However, after the plea there remained the significant question of whether, as the defendant maintained, he was acting completely independently of the other two men.

Mr Turnbull, I have set out the facts of your personal circumstances and the considerations to be taken into account. I repeat, this was a serious episode of violence and must be condemned. You were intent on doing injury in company with two others. A form of imprisonment is necessary to mark the seriousness of the crime, but given your personal circumstances, I am satisfied that that imprisonment can take the form of home detention as recommended. You are convicted of the offence. Subject to your consent, I propose to make a home detention order in the following terms. The period I direct to be the operational period of the home detention order is 12 months to commence on 7 May 2025. The statutory core conditions of that order are contained in s 42AD(1) of the *Sentencing Act*. They will include electronic monitoring under paragraph (g), and accordingly subss (1)(h) and (5) apply. All these conditions will be set out in writing for you so that you fully understand them. I specify the home detention premises as [address]. As a condition of the order, you must attend Community Corrections at

75 Liverpool St, Hobart by 10am tomorrow 7 May for induction. I make further special conditions that apply to the operational period of the order. They are:

- 1 You must remain at the home detention premises at all times except between 1.00 pm to 4.00 daily unless otherwise approved by a probation officer.
- 2 You must submit to the supervision of a probation officer as required by that officer.
- 3 You must not consume alcohol and must, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol;
- 4 You must not:
  - (a) take any controlled drugs or substances within the meaning of the *Misuse of Drugs Act 2001*;
  - (b) take any medication containing an opiate, benzodiazepine, bupropion or pseudoephedrine without such medication having been prescribed, or recommended by a pharmacist, and you must on request provide written evidence of such prescription or recommendation;
- 5 You must maintain in operating condition an active mobile phone service, provide the details of that to a probation officer or prescribed officer, and be always accessible for phone contact.

[The defendant consented to the order]. I make the order in those terms.