

Mr Clarke, a jury found you guilty of the crime of aggravated burglary. They found you not guilty of the crime of demand property with menaces with intent to steal. You were jointly charged and proceeded to trial with your co-accused, Todd Walker. He was found guilty of both crimes.

It is my responsibility to make findings of fact for sentencing purposes, consistent with the jury verdict. The crime of aggravated burglary was particularised as entering as a trespasser a place being used for human habitation, with intent to commit the crime of stealing and/or assault therein. I am not satisfied you entered intending to assault the complainant because you did not assault her, you made no threat to assault her, and you discouraged your co-accused from assaulting her. I will therefore sentence on the basis that you entered intending to steal.

This crime was committed on 14 June 2020. On that date, you travelled with Todd Walker to a residence at Lillico. I am satisfied, at that point in time, you shared a close relationship with Mr Walker. You were both members of the Bandidos Outlaw Motorcycle Club. I am also satisfied, based on some text messages that were evidenced on the trial, and some things you said in your record of interview, that you had a rather skewed sense of allegiance towards Mr Walker. I suspect you accompanied him because of that because the reason behind this crime had nothing to do with you at all. The motivation for the crime lay with Mr Walker. That motivation arose from Mr Walker's involvement in a drug deal some days earlier. Mr Walker had attended at the same Lillico residence shortly before or on 10 June 2020. At that time, he had provided a Mr Steven Douglas with money to purchase drugs for him. However, before that transaction could be completed, Mr Douglas was arrested, thus leaving Mr Walker "out of pocket".

Whilst you played no part in the drug transaction, I am satisfied that by the time you went to the residence at Lillico, you were aware the purpose of the attendance was to obtain recompense for the missing funds. Both you and Mr Walker forced your way inside the residence and went directly to the complainant's bedroom. Mr Walker entered the bedroom and went straight to the bed where Ms Henricks was. Mr Walker then pressed a set of knuckle dusters that he was wearing into the complainant's cheek and demanded money. He made threats to cause her and her property harm if she did not make good on the payment.

At one point, you told Mr Walker "that's enough" and the incident came to an end shortly thereafter without Ms Henricks being physically harmed. I have no doubt, however, that she was petrified by your and Mr Walker's behaviour and whilst I accept that you did and said little whilst in the bedroom, the presence of two men would undoubtedly have exacerbated the fear she felt, and added to her sense of vulnerability.

You are 36 years of age. In May this year, I sentenced you for the crime of assault. You were sentenced to a period of imprisonment of ten months, six months of which was suspended on condition you commit no offences punishable by imprisonment for a period of two years. Obviously, given this crime occurred in June 2020, it does not breach that suspended sentence, nor is there anything before me to suggest that you have been non-compliant with that sentencing order in any other respect.

When I sentenced you in May this year, I described your criminal history as follows:

You have a long history of criminal offending, including prior convictions for dishonesty matters, matters of violence against both person and property, offences contrary to the *Misuse of Drugs Act* and the *Firearms Act*, bail offences, driving offences, offences committed against police and offences against good order. It would be a fair assessment to suggest your record of prior convictions demonstrates you have scant regard for the law. I do accept that there appears to have been an abatement in your offending in more recent times. The last matter of violence for which you were convicted occurred in 2010. In 2013, you were convicted in this Court of conspiracy. Since then, however, your offending has predominantly been driving offences contrary to the *Road Safety (Alcohol and Drugs) Act* and some offences against police. I am told that you have a number of matters pending before the Magistrates Court, and in respect to some of those matters, including common assault, destroy property, breaches of an interim Family Violence order and breaches of bail conditions, you have entered pleas of guilty. The last of those matters occurred in April 2023. It could not yet be said then that your attitude has evolved to one of a law abiding citizen, and specific deterrence remains a weighty sentencing consideration.

Since I made those comments, there have been some changes. I am now told that you have resolved all outstanding matters in the Magistrates Court. On 2 July 2024, you were sentenced to a six month period of imprisonment, four months of which was suspended on condition you commit no offences punishable by imprisonment for a period of 18 months. There was also an order made that you perform 63 hours of community service. Then, on 12 November 2024, you were sentenced in the Magistrates Court for a matter of threaten a police officer, which occurred on 10 April 2024. For this offence, you were sentenced to a further 56 hours of community service.

I am told you are performing your community service hours regularly and satisfactorily. I am also told you have repaired your relationship with your de facto partner, who was the victim in the assault matter for which you were sentenced in May of this year. The resumption of that relationship has seemingly had a positive influence upon you and you are committed to maintaining it and rebuilding your family. Your involvement in the Bandidos Motorcycle Club has come to an end, and you are hopeful in time of resuming some employment.

Except for the threaten police officer charge, which occurred, as I have noted, in April this year, the last of your criminal offending occurred in early 2023. It does appear then that there has been an abatement in your offending, although the matter that occurred in April of this year is concerning. It is submitted on your behalf, that that offence was committed at a time when you were very emotional in the leadup to the proceedings in respect to the assault charge, and you made a very foolish decision to contact the investigating officer. You made no effort to disguise the fact it was you making the threats, and you pleaded guilty to the charge at a relatively early stage. It is suggested I should view that as an ill-conceived deviation from what otherwise has been a concerted effort to pursue a more law abiding lifestyle. Whilst the blatantness of the offence weighs against that characterisation. I think I should give you the benefit of the doubt in that regard, and consider that offence as an aberration rather than indicative of a return to an attitude of lawlessness.

You played a far lesser role in all of this than Mr Walker, although your behaviour still needs to be strongly condemned. People are entitled to feel safe within their own homes and those

who consider it acceptable to force their way into another person's home in pursuit of illegitimate claims, need to understand such behaviour will be heavily punished. Criminal conduct of this kind must be condemned. That factor, together with attempting to deter others from this type of conduct, are very important sentencing considerations.

As I have described, you have a very poor history of criminal offending, but I am persuaded that I should assess the slowing of your offending over the last two years as indicative of you maturing and beginning to see the sense in living a law abiding life so that you can be there for your family and your children. A period of imprisonment must be imposed to mark the seriousness of your crime, but in all of the circumstances, I intend to suspend it.

Mr Clarke, you are convicted of the crime of aggravated burglary and sentenced to nine months' imprisonment. The whole of that sentence will be suspended on condition that for a period of two years from today, you commit no offence punishable by imprisonment. That leaves you in a position, Mr Clarke, whereby you have several periods of suspended imprisonment hanging over your head. If you do not continue to make a genuine effort to improve your compliance with the law, you may well find yourself serving a substantial period of time in gaol. I remind you that the law is that upon proven breach, a suspended sentence must be activated unless it is unjust to do so.