

STATE OF TASMANIA v RICKY PETER BARBER
COMMENTS ON PASSING SENTENCE

22 JANUARY 2025
WOOD J

Ricky Peter Barber has pleaded guilty to charges on indictment, namely one count of unlawfully setting fire to vegetation, one count of aggravated burglary, and one count of unlawfully setting fire to property; and to summary offences arising from the same incident, namely common assault, drive while disqualified, using a motor vehicle with no premium cover, drive a motor vehicle while exceeding prescribed alcohol limit, driving with alcohol present in body, and use unregistered motor vehicle.

At approximately 9.00 pm on 25 April 2024, the complainant was asleep in bed at his rental address in Henry Street in Sorell. He was woken by knocking on the doors and windows of the house.

He heard a voice, which he recognised as the defendant's, yelling out for him to wake up.

The complainant went to the front door and saw the defendant standing on the front porch holding a roll of cling wrap.

The defendant handed the complainant the cling wrap and asked him to wrap himself up in it. The defendant became angry and said, "Do it or I will kill you". The complainant struggled to open the cling wrap. The defendant hit him on the head and jaw with closed fists (common assault, charge 1 on complaint).

The complainant managed to run down the front steps and away from the house. The defendant followed the complainant and caught up with him. He punched the complainant to the right side of his ribs, causing the complainant to fall to the ground onto his side (charge 1 on complaint).

The complainant managed to get back up and ran away, and the defendant chased him. The complainant attempted to flag down passing cars, but none stopped. He managed to outrun the defendant and hid at the back of an aged care facility across the road from Henry Street.

The defendant returned to the complainant's house, where he used a lighter to set fire to a shrub at the front of the house (unlawfully set fire to vegetation).

The defendant then forced open the front door, causing the door frame to splinter and the lock to break, with the intention of committing the crime of unlawfully setting fire to property (aggravated burglary). Once inside, using a lighter, he set fire to a piece of clothing and dropped it on the carpeted floor of the entryway and left (unlawfully setting fire to property).

The complainant returned to the house and saw a fire at the front of the house which was continuing to grow.

On entering the house, the floor of the entryway was on fire. He ran into the kitchen, got some water, and put out the flames. The house was full of smoke and the smoke alarm had activated.

The complainant ran into his bedroom and grabbed his phone, keys, and some clothing, and ran back outside. The shrub was still on fire. He went to a neighbour's house for assistance. Tasmania Fire Service attended the scene and extinguished the fire.

Police officers attended the scene at approximately 9.40 pm. They observed the complainant with bruising and blood on his face; a section of burnt vegetation at the front of the residence that had spread out onto the front lawn; and inside the house, a large, circular burnt patch of flooring just inside the front door.

While police were in attendance, the defendant returned to the complainant's address driving a Holden Commodore.

The defendant was arrested and admitted having driven the vehicle to the address from his own address. He was disqualified from driving at the time and by his act of driving committed offences of drive while disqualified, using a motor vehicle with no premium cover and use unregistered motor vehicle.

He completed a breath analysis with a result of 0.095 grams of alcohol in 210 litres of breath, thereby committing offences of drive a motor vehicle while exceeding prescribed alcohol limit and being a person mentioned in s 6(3) of the Road Safety (Alcohol and Drugs) Act 1970 as he was not the holder of a licence.

The following morning, the defendant participated in an electronically recorded interview. He admitted the assaults and that he had used "full force". He admitted setting fire to vegetation and a piece of clothing inside the house and that he did it because he was angry.

He accepted that he could have set the whole house on fire, but said he didn't think things through. He acknowledged he may have broken open the front door and that setting the fire was the reason for going inside the house.

The defendant was remanded in custody and has been in custody in relation to these matters since 25 April 2024. The appropriate date to backdate any sentence of imprisonment imposed is 24 June 2024.

The defendant is 35 years of age. He has extensive prior convictions in Tasmania, as well as a number in Queensland and Victoria. He has none for setting fire to property or arson. Relevantly, he has prior convictions for destroy property, common assault, aggravated burglary, stealing, and also driving offences, including seven for driving whilst disqualified and three for drink-driving related offences. He has a prior conviction for assault contrary to the Criminal Code which attracted a wholly suspended sentence of imprisonment of six months imposed in 2008. He has served terms of imprisonment at various intervals since 2015, when he served six months' imprisonment. Sentences of suspended imprisonment have been activated because he has breached conditions that have been imposed. Terms of imprisonment have been imposed for the more recent of the driving offences.

The defendant is charged with unlawfully setting fire to property, namely the carpet inside the house. He is not charged with the more serious crime of arson which involves an intention to set alight the building structure or at least foresight of that consequence. Still, it is a very serious crime. There was a significant risk that the structure of the building could have caught alight, and also that neighbouring houses and their occupants would have been endangered.

His assault upon the complainant was persistent and determined. The complainant was subjected to an entirely unexpected and terrifying experience in being assaulted at his home when he answered the door and then chased down and assaulted in the street. I have not been

provided with a victim impact statement and there is fortunately no suggestion of any lasting injury.

The defendant acted out of anger in assaulting the complainant and setting fire to his property. The reasons for his anger and his bizarre behaviour are not explained. There is reference in the plea in mitigation to him hearing voices and believing the complainant was somehow responsible for those voices. While he has long-standing mental health issues, his behaviour and beliefs are not linked in any way to his conditions and symptoms. It is not suggested on his behalf that this explanation gives rise to a reduction in his moral culpability. His blood alcohol level was not so high that it explains his irrational behaviour.

I take into account that his reason for returning to the house and committing the driving offences is because he comprehended what he had done and returned with the intention to check on the welfare of the complainant and put out the fire.

He has pleaded guilty at a relatively early stage. He has an addiction to drugs and alcohol which may be linked to his long-standing mental health conditions, and also abuse he experienced as a child. His drug and alcohol use is to mask symptoms and memories. He has been able to achieve periods of abstinence in relation to drug use. The defendant indicated to Community Corrections when interviewed for the purpose of their report that he has been abstinent from the use of illicit substances for the past 18 months. He has been receiving opiate replacement therapy from the Tasmania Health Service while in custody. This will be available to him on his release.

Alcohol abuse remains an issue and has been linked to past offending and requires intervention.

The defendant has a young daughter with whom he has had regular contact, and she provides him with motivation to remain in the community. He has strong support from his mother. She suffers from a number of health conditions and when in the community, he provides her with day-to-day assistance in a carer's role. He is anxious about her and her condition and wants to provide her with support. His concern for her and desire to care for her and his daughter provide him with motivation to address his mental health conditions and his drug and alcohol abuse.

The defendant is presently enrolled in undertaking a course in vocational fitness professional training which has been paused while he is in custody, but he will be able to resume on his release.

Community Corrections have provided a report dated 2 December 2024 in which they indicate the defendant is suitable for a Home Detention Order at his mother's residence and that, if he is subject to a period of supervision, there would be focus on engaging him with psychological assessments and supports. There are good signs of future compliance, the report providing that he has demonstrated excellent communication with the author of the report.

The common assault was persistent and a particularly serious example, and requires an actual term of imprisonment, so too your offences of drink-driving and driving whilst disqualified given your previous convictions. The crimes of setting fire to vegetation and property and aggravated burglary are serious but, fortunately, no significant damage was caused, and you have no history for setting property on fire. Totality principles have application in determining the appropriate sentence to be imposed for these crimes. You are addressing your underlying

reasons for offending, and you are motivated to stay out of prison and support your mother and daughter. You have prospects of reform. The sentences will make it clear to you and others that stern punishment is to be expected for this kind of violence and offending that puts people and their property at risk but will also encourage your rehabilitation.

The sentencing orders I make are as follows:

In relation to the charge of common assault, I impose nine months' imprisonment backdated to 24 June 2024.

In relation to the charge of driving with alcohol present in body, I impose four months' imprisonment cumulative to the period of nine months, and a period of licence disqualification of three years.

In relation to the offence of driving whilst disqualified, I impose five months' imprisonment cumulative to the period of four months. I impose a period of two years' disqualification concurrent with the period of three years.

The offence of driving while exceeding prescribed alcohol limit is dismissed, applying the principles in *Wood v Major*.

That is a total of 18 months' imprisonment. The balance from today is suspended on conditions that you not commit an offence punishable by imprisonment for a period of two years from today. Further, that you are to be subject to a period of supervision and comply with all reasonable and lawful directions of a probation officer for the same period. Further, you must, during that operational period, undergo assessment and treatment for drug dependency as directed by a probation officer; you must undergo assessment and treatment for alcohol dependency as directed by a probation officer; and you must submit to medical, psychological, or psychiatric assessment or treatment as directed by a probation officer. If directed by a probation officer, you must attend, participate in, and complete the EQUIPS Addiction Program as directed; and further, if directed by a probation officer, you must attend, participate in, and complete the EQUIPS Aggression Program as directed. Further, you must complete 140 hours of community service.

In relation to the counts of unlawfully setting fire to vegetation, aggravated burglary, and unlawfully setting fire to property, I impose a Home Detention Order for a period of ten months.

Home detention is a sentence that is available as an alternative to imprisonment. It is a form of incarceration involving the deprivation of your liberty and an obligation to comply with strict conditions. It is also intended to promote your reform, enabling you to live in the community.

As part of the Home Detention Order, you must remain at [address specified], at all times unless approved by a probation officer. You must attend Community Corrections at Level 1, 75 Liverpool Street, Hobart, immediately upon your release from custody today for induction onto this order. You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact via this device at all times. You must submit to the supervision of a Community Corrections officer as required by that officer.

You must not take any illicit or prohibited substances. Illicit and prohibited substances include: any controlled drug as defined by the *Misuse of Drugs Act 2001*; any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride, or Pseudoephedrine, unless you provide written evidence from your medical practitioner that you have been prescribed the relevant medication.

You must not consume alcohol at all, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol.

It is important you understand that ordinarily, for crimes such as this, a gaol sentence would be imposed, and this is an exceptional case where I am satisfied the alternative of home detention is adequate, particularly noting the time you have spent in prison and the other orders I have made today.

I make a compensation order in favour of the complainant which is adjourned sine die for assessment.