

Mr Fitzpatrick, you have pleaded guilty to one count of aggravated carjacking and two counts of recklessly discharging a firearm.

You committed these crimes on 13 August 2023. At approximately 3:23pm, you approached the complainant's vehicle on a motorised bicycle. You were carrying a loaded shortened firearm. The complainant had driven his vehicle to the location in order to visit a friend. You pointed the firearm at him and told him to "get out of the car", and to leave the keys in the car. The complainant stepped out of his vehicle and as he did, you struck him once with a firearm to the head causing a laceration. You then got into his vehicle and drove it to an address in Latrobe, which was occupied by a person who you believed had been involved in a home invasion of a home occupied by your son. Your son had been assaulted during the course of the home invasion and it is clear that you were intent on taking some form of revenge. You fired two shots from your firearm towards the premises. One of the shots was fired directly at the premises and the other into an outdoor area. It seems that you then abandoned the stolen vehicle in a remote location where it was subsequently located by police. You were arrested by tactical police two days later. I am told that you suffered injury during the course of that arrest and are still suffering from the effects of those injuries and that those symptoms will make your time in custody more difficult. Police located the firearm and a quantity of live ammunition in the vehicle that you were driving when arrested. The complainant's mobile telephone, which was in the motor vehicle when you stole it, was later found by police smashed and discarded in the bush.

I have received a victim impact statement from the complainant of the carjacking. Understandably, he has experienced significant impact as a result of the trauma inflicted on him by you. In particular, he has suffered from serious and ongoing psychological and emotional consequences. These adversely impact most aspects of his life. He has suffered financial problems, delayed his university studies and generally been affected in the way that he lives his life. He had pre-existing chronic pain in his neck which was aggravated by your senseless assault on him. All of the impact that he has specified to me is completely understandable and to be expected as a result of a crime of this nature. He was a young man, 19 years of age, on his way to engage in a social visit when you approached his vehicle without warning and pointed a loaded shotgun at him through his windshield. He thought he was going to die. You then followed that up by viciously assaulting him when he got out of the car. It would be surprising if he had not suffered the type of psychological and emotional consequences he has described in his impact statement.

I have not received any information concerning the impact or otherwise on anyone who may have been in or near the premises towards which you fired the weapon. These actions were extremely dangerous. The premises were part of a block of units, and you could have had no idea as to who was inside that unit nor whether any innocent bystanders might be injured by the fire, including by a poorly aimed shot or ricochet. As things turned out, I must proceed on the basis that no one was actually hit but I suspect this is more a result of good luck than any form of moderation shown by you. The use of firearms to fire live ammunition in residential circumstances in any situation is abhorrent and undermines the sense of security and safety to which all members of the community are entitled. In our society, the community has a legitimate

expectation of residing in a peaceful environment not a war zone. Crimes like yours are directly inconsistent with that expectation.

Further, both the facts put to me by the prosecution and your own explanation for your conduct makes it clear that your actions were premeditated and part of a plan to take vengeance on the occupier of the unit. You claim that this person had followed up the home invasion and attack on your son by threatening you and your family and this pushed you into doing what you did. Your counsel says that you were under the influence of methylamphetamine at the time but this of course is not a mitigating factor. This aspect of premeditation increases the seriousness of your conduct. Messages which police retrieved from your phone demonstrate that prior to perpetrating these crimes, your son had begged you not take action such as this. He appealed to your sense of parental responsibility and the fact that your children needed you. You proceeded to carry out these crimes despite this. It is clear that you showed no real concern whatsoever for your children, for the innocent victim of the carjacking or for anyone who may have been in the vicinity of the residential premises when you fired shots towards it. The selfishness of your actions and your complete lack of concern and care for the consequences on others significantly increases your moral culpability for this conduct. I also regard the fact that you were seeking revenge as a matter increasing both the objective seriousness and your moral culpability for the conduct. Taking the law into your own hands, particularly in such a violent way, undermines the force and effect of the criminal justice system and ultimately the rule of law.

You are 39 years of age. You had a childhood during which you were exposed both to family violence and illicit drug use. You were also the victim of sexual assault during a camp which you attended during your school years. You are in a long term defacto relationship and have five children. The youngest, who still lives at home is autistic. You have had a significant problem with illicit drug use since you were 13 years of age. Your criminal history, which is lengthy, commences at that age. It continues throughout your life with offences of violence increasing as you get older. In 2009 and again in 2012, you were convicted of common assault. In 2020, you were sentenced by this Court for indictable crimes which included aggravated burglary with intent to assault and assault. These crimes were another example of you taking the law into your own hands. In company with others, you invaded a man's home and is viciously assaulted him in front of his partner. You did this because of your belief that he had abused and threatened your mother and demanded money from her. You were punished with a suspended sentence of imprisonment. About a month before committing the crimes with which I am dealing, you were convicted and fined by the Magistrates Court for offences which included common assault. Subsequent to committing these crimes, you were sentenced to imprisonment by that court for numerous breaches of an interim family violence order.

The serious nature of the crimes of which you are now subject to sentence requires an emphasis on general deterrence, denunciation and community protection. There is also a need to consider specific deterrence. The only possible sentence is a significant term of imprisonment. In assessing the length of that sentence, I will take into account that you have entered a plea of guilty at a relatively early stage. Although the plea could be seen as a response to a very strong prosecution case, it still has utilitarian value. In particular, it will not be necessary for the complainant in the carjacking case to give evidence at a trial.

1 My orders are as follows:

a You are convicted of the crimes to which you have pleaded guilty;

- b I impose a global sentence of imprisonment for a period of four years and three months. This sentence will be backdated to 15 November 2023. Were it not for your plea of guilty I would have imposed a global sentence of five years imprisonment. You are not eligible for parole until you have served two years and six months of the sentence.