

Mr Aylett, you have pleaded guilty to one count of wounding and one count of assault.

You committed the crimes against your long-term partner on 29 July 2023. You were subject to a police family violence order at the time which required you to not enter or be near the house in which your partner was living with her children. You and she have four children together, aged between thirteen and five. Your partner has four other children from different relationships. You had come to the house in breach of the order a couple of days before the offending. Your partner had asked you to leave but you refused. She slept away from the house in her car while you were there.

On the day of the offending, she returned to the house in the early morning. At about 8am, she was asleep on the couch with two of her daughters. You woke her and abused her by calling her “a dirty junky” and telling her she was going to die. You were upset because of your belief that she had been using illicit drugs. You then assaulted her by lying on top of her and attempting to grab at her throat. Your explanation is that she had become angry and agitated and was throwing her arms around and you were, trying to restrain her to prevent her from striking the children. This does not seem to be disputed by the prosecution. Immediately after this struggle, in anger, you obtained a knife from the kitchen, returned and thrust it into the complainant’s hand, handle first. However, the blade of the knife came into contact with her hand and cut her finger. This constitutes the crime of wounding. You say you were trying to make a point that if she was going to continue to take drugs she should simply use the knife on you. This was melodramatic and quite abusive behaviour. However, the prosecution accepts that the requisite mental element was subjective recklessness.

I do not agree with your counsel that this offending is at a low level of seriousness. A particularly serious aspect of your conduct is that it all occurred in the presence of the children. Whatever the reason for your behaviour, it involved abusive and violent treatment of the complainant. It is well-known that children are harmed by exposure to this type of conduct and the legislation provides that the presence of children when family violence is taking place is an aggravating circumstance. I accept that the wound was not as severe as is sometimes seen in wounding cases but the overall impact on both the complainant and the children would undoubtedly have been significant. Further, the crimes were committed while you were at the premises in breach of the order. The principal purpose of these orders is to prevent violence of this nature from taking place at all.

You are 40 years of age. When you committed these offences you did not have any significant prior convictions. However, since then you have been convicted for breaching family violence orders and assault committed in a family violence context. These offences had been committed before and after the offending with which I am dealing. You have also been convicted for offences including offences of dishonesty. You have been in custody now for a period of 248 days in total. Your counsel tells me that since being in custody, you have engaged in a number of programs designed to foster your rehabilitation. It would seem from this material that some of this has addressed a significant alcohol and drug problem. You entered an early plea of guilty to these charges and you are entitled to consideration for doing so.

In my view, the only appropriate sentence is a sentence of imprisonment. I will backdate the sentence to reflect the time spent by you in custody which is unallocated to any other sentence.

Your conviction for these offences including both offences of violence, which are family violence offences, and the breaches of the order means that you now have satisfied that the condition set out in s 29A(2)(b) of the *Family Violence Act* for the making of a declaration that you are a serial family violence perpetrator. In particular, you have now been convicted of at least three family violence offences, each committed on a different day. On 5 February 2024, you were convicted of committing two breaches of a police family violence order on 9 January 2023, two further breaches of a police family violence order and a common assault against the complainant in this case on 13 November 2022, and two further breaches of a police family violence order on 17 October 2022. In respect of the occasion with which I am dealing, both the indictable crimes and the breaches of the police family violence order count for the purpose of this provision. Your counsel does not submit otherwise. Under that provision, I am required to make the declaration if I am of the opinion that the declaration is warranted. In making that determination, I am required to have regard to the nature and circumstances of the family violence offences, the risk that you may commit further family violence offences, your antecedents and character and any other matter that I consider relevant. I note that the relevant offences have now been committed on several occasions over an extensive period of time and include both breaching orders and actual violence. I think this is precisely the kind of repeated conduct that the relevant provisions are aimed at. I am satisfied that there is a significant risk that you will commit further family violence offences and when I have regard to the other relevant considerations, I am satisfied that the declaration is warranted. Accordingly, I intend to make the declaration.

I note that s 29C provides power to make a family violence order. However, I discussed this with counsel and was informed that you are still in a relationship with the complainant and that she does not want an order. Of course, her opinion about that is not the only consideration because children are involved in this relationship. Their exposure to family violence on the occasion with which I am dealing is concerning. However, I note that there is an interim order in place which was made by the Magistrates Court. You are yet to be dealt with by that court. It is expected that the court will deal with the order and some further alleged breaches of that order. In all the circumstances, it seems to me to be appropriate that the Magistrates Court deals with the question of ongoing protective orders. That court will be in a better position to assess your more recent conduct and take into account the wishes and interests of the complainant. Accordingly, I do not intend to make a family violence order at this time.

The orders I make are as follows:

- a You are convicted of the crimes and the offences to which you have pleaded guilty;
- b You are sentenced to a global term of 6 months imprisonment, which will be backdated to the 11 March 2025. This is based on a calculation of all of the unallocated time that you have spent in custody to date. The effect of this is that you have now served this sentence, and the unallocated time in custody has been reduced accordingly. I make this point for the benefit of any judicial officer who may be dealing with future offending.

- c Pursuant to s 13A of the *Family Violence Act*, I direct that each crime and offence be recorded on your criminal record as a family violence offence.
- d Pursuant to s 29A(2) of the Family Violence Act, I declare you to be a serial family violence perpetrator. The declaration will remain in force for a period of five years.