

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: R v Bailey

Citation: [2019] ACTSC 102

Hearing Date: 29 January 2019; 18 April 2019

Decision Date: 18 April 2019

Before: Loukas-Karlsson J

Decision: See [85].

Catchwords: **CRIMINAL LAW** – JURISDICTION, PRACTICE AND PROCEDURE – Judgment and Punishment – Sentence – recklessly inflicting grievous bodily harm – common assault – plea of guilty – intensive corrections order

Legislation Cited: *Crimes Act 1900* (ACT) ss 20, 26
Crimes (Sentencing) Act 2005 (ACT) ss 6, 7, 10, 11, 33

Cases Cited: *Daniels v The Queen* [2016] NSWCCA 35
DPP (Vic) v Dalgleish [2017] HCA 41; 262 CLR 428
Hili v the Queen [2010] HCA 45; 242 CLR 520
Hogan v Hinch [2011] HCA 4; 243 CLR 506
Markarian v The Queen [2005] HCA 25; 228 CLR 357
Mill v The Queen (1988) 166 CLR 59
Monfries v The Queen [2014] ACTCA 46; 245 A Crim R 80
Pattalis v R [2013] NSWCCA 171
R v Bandy [2018] ACTSC 261
R v Bartlett [2016] ACTSC 390
R v Beniamini (No 2) [2017] ACTSC 32
R v Burgess [2017] ACTSC 249
R v Carmody (No 3) [2017] ACTSC 60
R v Cranfield [2017] ACTSC 171
R v Gillett [2019] ACTSC 30
R v Groom [1998] VSCA 146; 2 VR 159
R v Hidic [2017] ACTSC 307
R v Kepaoa [2017] ACTSC 414
R v Laipato (unreported Nield AJ, 16 September 2010)
R v Lattouf (Unreported, NSW Court of Criminal Appeal, Mahoney ACJ, Sully J and Adams AJ, 12 December 1996)
R v Loveridge [2014] NSWCCA 120; 243 A Crim R 31

R v LT [2017] ACTSC 343
R v McBride [2017] ACTSC 102
R v McLean [2014] NSWDC 104
R v Meyboom [2012] ACTCA 48
R v Miller [2018] ACTSC 244
R v Neish (Unreported, Refshauge J, 24 May 2013)
R v Ngerengere (No 3) [2016] ACTSC 299
R v Pallier [2017] ACTSC 112
R v Pham [2015] HCA 39; 256 CLR 550
R v Pumpa [2014] ACTSC 223
R v Rappel [2017] ACTSC 38
R v RC (Unreported, Burns J, 19 October 2012)
R v Rehinberger [2016] ACTSC 14
R v Seretin [2016] ACTSC 45
R v Sharma [2016] ACTSC 180
R v Sikoulabot [2018] ACTSC 217
R v Smith [2016] ACTSC 330
R v Sullivan [2018] NSWDC 366
R v Toumo'ua [2017] ACTCA 9; 12 ACTLR 103
R v Williams [2015] ACTSC 406
Veen v R (No 2) (1988) 164 CLR 465
Wheelan v The Queen [2012] NSWCCA 147; 228 A Crim R 1
Zdravkovic v The Queen [2016] ACTCA 53

Parties: The Queen (Crown)
 Brendan Douglas Bailey (Offender)

Representation: **Counsel**
 Mr A Williamson/ Mr P Dixon (Crown)
 Ms K Musgrove (Offender)

Solicitors
 ACT DPP (Crown)
 Sneddon Hall & Gallop (Offender)

File Numbers: SCC 263 of 2018; SCC 264 of 2018

LOUKAS-KARLSSON J

Introduction

1. On 17 October 2018, Brendan Douglas Bailey (the offender) pleaded guilty to:
 - (a) recklessly inflicting grievous bodily harm, contrary to s 20 of the *Crimes Act 1900* (ACT) (*Crimes Act*) (CC2018/9390); and
 - (b) two charges of common assault, contrary to s 26 of the *Crimes Act* (CC2018/8034; CC2018/8035).
2. The maximum penalty for recklessly inflicting grievous bodily harm is 13 years imprisonment. The maximum penalty for common assault is two years imprisonment.

Agreed Facts

3. The agreed facts are set out in the Statement of Facts, which formed part of the Crown Tender Bundle. In short summary, the circumstances of the offending are as follows.
4. On 17 February 2018, the offender had been drinking with friends in Canberra City and, sometime after 1:00am, the offender was seated at a bench on Alinga Street. Seated at a nearby bench was Max Beitz, who was out clubbing that morning with Thomas Simpson and Samuel Graves. Suddenly, and without warning, the offender stood up from the bench and approached Mr Beitz and proceeded to punch him with an uppercut of his right fist connecting with Mr Beitz's chin. Mr Beitz stumbled backwards and suffered a bruise on his chin. This conduct formed the first common assault charge (CC2018/8034).
5. Following this, Mr Simpson intervened and began pushing the offender backwards. At this point, the offender punched Mr Simpson in the left eye with his right fist. This conduct formed the second common assault charge (CC2018/8035).
6. After Mr Simpson told Mr Graves he had been punched, Mr Graves grabbed the offender's arms from behind in an attempt to pull him aside after which the offender confronted him. At this point, Mr Graves, standing approximately one metre away from the offender with his hands up in a non-threatening manner, was punched in the jaw by the offender with his right fist. This conduct formed the charge of recklessly inflicting grievous bodily harm (CC2018/9390).
7. At 8:30am the same day, Mr Graves went to Calvary Hospital and underwent a CT scan which revealed a left mandibular fracture below the condyle (subcondylar). Mr Graves underwent surgery to repair the fracture. This involved having a metal plate inserted into his jawline secured by three screws, which are permanent.

Victim Impact Statement

8. In evidence before me was a Victim Impact Statement from the victim of the infliction of grievous bodily harm offence, Mr Graves. The Victim Impact Statement formed part of the Crown Tender Bundle.

9. The extent of the impact upon the victim was made clear by the Victim Impact Statement. Courts know the extremely serious effects of such offences. Nevertheless, it is valuable to have the words of the victim before me.
10. The court acknowledges the significant impact that the offence has had and continues to have on the victim.

Objective Seriousness

11. In relation to the assault on Mr Beitz, counsel for the offender submitted that the assault was on the “lower level” of seriousness given it was a single, unprovoked blow that resulted in a bruise to Mr Beitz’s chin. It was submitted there was no evidence of the size of the bruise or any possible sequelae.
12. In relation to the assault on Mr Simpson, counsel for the offender submitted that the conduct was a single, unprovoked blow to Mr Simpson’s left eye and that there was no evidence of any physical or psychological injury suffered as a result, submitting the offence was at a low level of seriousness.
13. In relation to the offence causing grievous bodily harm to Mr Graves, counsel for the offender submitted it was a single, unprovoked blow which resulted in a broken jaw, a single fracture of the mandible, requiring keyhole surgery. Counsel for the offender submitted that Mr Graves experienced post-surgical pain and restriction but that he is “generally pain free and any pain is dealt with by regular analgesic”. Counsel for the offender also noted there was a level of “psychological sequelae” for Mr Graves and his mother. Ultimately, counsel for the offender submitted this particular offence was in the mid-range of offending.
14. The prosecution submitted that, in relation to the infliction of grievous bodily harm, the offending was in the mid-range of objective serious. In this respect, the prosecution referred to the case of *Daniels v The Queen* [2016] NSWCCA 35, where the NSW Court of Criminal Appeal dealt with the equivalent offence in NSW on facts which the prosecution submitted were “very similar” to this present case. In that case, the Court of Criminal Appeal found that the conduct was in the mid-range of objective seriousness.
15. In relation to the common assault offences, the prosecution submitted, noting the offence encompasses a broad range of conduct, that they should be considered to be in a mid-range of objective seriousness. The prosecution noted these assaults were punches to the head, a vulnerable part of the human anatomy in circumstances of drunkenness.
16. I find these three offences to be of mid-range, taking into account the matters set out above.
17. It must be stated that references to low range, middle range and high range objective seriousness are unlikely to be helpful. As has previously been expressed in this jurisdiction, “it is preferable for a sentencing judge to confine themselves to identifying the particular features of the case that inform the objective seriousness of that case” (*R v Toumo’ua* [2017] ACTCA 9; 12 ACTLR 103 at [24]). The relevant matters are set out above.

Subjective Circumstances

18. In evidence before me is the Pre-Sentence Report prepared for the offender, which states the following.

19. The offender is a 26 year old man who moved from Warrnambool in Victoria to Canberra in 2003. His parents divorced in May 2017, and his mother attempted suicide in August 2017. He described this period in his life as being very traumatic.
20. The offender reported a good relationship with his parents and siblings. He has been in a de facto relationship for the past three years, with no dependents. He lives with his partner in rental accommodation.
21. The offender completed school until year 10. He has completed a Certificate III in Data and Voice Communications and is currently enrolled in a Certificate III in Electro Technology. He works full time as an apprentice electrician and works overtime on Saturdays to supplement his income.
22. The offender reported that at the age of 18 he commenced consuming alcohol once a month in social contexts. He reported that problematic use and a binge drinking pattern developed soon after his parents' separation. He is currently attending one-on-one counselling to address his alcohol abuse issues. He denied the use of illicit substances.
23. The offender advised that he has no medical or mental health issues.
24. The report assessed that the offender's stable employment is a protective factor, as is his accommodation. Although he enjoys prosocial family relationships, his parents' divorce and subsequent fallout has had a traumatic effect on him.
25. The offender was assessed as having a low risk of general re-offending, which may be further reduced by continued efforts to address his alcohol issues.
26. In oral submissions, counsel for the offender also submitted that since a previous offence in 2012, he has worked hard to achieve personal success and contribute to society, is currently undertaking a second apprenticeship for which he has taken a pay cut in order to achieve a long-term goal to be self-employed as a technician, and that any conviction will be relevant for the purposes of gaining a security clearance in his employment.
27. Counsel for the offender further noted that the offender:
 - (a) has engaged a psychologist, in the absence of any order requiring him to do so, and is addressing his anger and alcohol issues;
 - (b) is seeking support from his GP for his depression; and
 - (c) at the time of the first sentence hearing, was awaiting an intake interview for an anger management course. The ICO Report dated 15 April 2019 for the offender notes that he has completed eight of twelve sessions of the Preventing Violence Managing Anger program at EveryMan Australia.
28. Ultimately, counsel for the offender submitted the offender "is gaining insight and his rehabilitation is a positive pro-social step in that process of insight and change". Counsel submitted the conduct forming the offences was out of character for the offender.
29. The prosecution conceded that the offender was a person of otherwise good character, was engaged in meaningful employment, is a productive member of the community, has good prospects of rehabilitation, presents a low risk of reoffending and that the offending was an aberration.

Remorse

30. The pre-sentence report notes that the offender acknowledged the impact of his offending on the victims and appeared to take full responsibility for his offending behaviour.
31. The offender also wrote a letter to the court expressing remorse.
32. Counsel for the offender further noted that the plea of guilty entered by the offender at the earliest possible opportunity was also “highly indicative” of remorse. Counsel for the offender submitted that the offender was highly remorseful both for the conduct and its consequences and noted that there had been no fresh offending since the date of the offences before this Court.
33. The offender gave evidence before me and expressed clear remorse for his offending. I am persuaded by his sincerity in this regard. He stated as follows:

I would just like to apologise for this, frankly, abhorrent act. Yes, it's really devastated me and my family, who I apologise to, and it's not – I understand fully that it's not how people should act and they didn't – definitely didn't deserve what happened to them and I only wish that I could take it back because it's awful.

References and Letters

34. In evidence before me were seven references and letters in support of the offender.
35. These are contained in the defence tender bundle, and are as follows:
- A reference from the offender's father dated 17 December 2018;
 - A letter from Dr Kingsley Tonkin, the offender's treating psychologist, dated 12 January 2019;
 - A letter from the offender dated 17 January 2019;
 - A reference from the offender's mother dated 17 January 2019;
 - A reference from the offender's partner dated 17 January 2019;
 - A reference from the offender's employer (undated), and
 - A reference from the offender's sister (undated),
36. I take these impressive references into account on sentence, along with the letter from the offender and the offender's psychologist.

Restorative Justice Report

37. The offender voluntarily participated in a restorative justice program with two of the victims which occurred on 14 January 2019.
38. The subsequent report states that the offender acknowledged the offences and described how he was feeling at the time, and what he has thought about since. He identified those who he believed were likely to have been impacted by his behaviour and in what ways. The report further states that the offender responded to the descriptions by the victims of the harms they had experienced and how they had been affected.
39. The report notes that the discussion satisfied the needs of all participants and no formal agreement was deemed necessary.

40. In his oral evidence, the offender observed of this process as follows:

Through the restorative justice, it was definitely one of the most difficult things that I have ever had to do. I was able to understand even fully, even more fully the damage that had been caused from my actions and able to speak to the victims themselves and understand their reactions to it. And it was - it weighed very heavily on me and it still does to this day because I was no longer thinking of what I had done, I had known from them what I had done and that has been definitely very hard to stomach.

Intensive Corrections Order (ICO) Report

41. When this matter originally came before me I determined that it was appropriate that an assessment be made as to the suitability of the offender for an ICO. To that end I referred the offender for assessment.

42. The assessment was carried out with the assistance of:

- (a) seven interviews and four telephone calls with the offender;
- (b) a home visit at the proposed address;
- (c) an interview with the offender's partner;
- (d) perusal of court documents and ACT Corrective Services files and records;
- (e) email correspondence with ACT Health, EveryMan Australia, AFP, Child Youth and Protection Services, the Protection Unit, and the ACTCS Victims Liaison Officer;
- (f) a revised Level of Service Inventory;
- (g) an Alcohol Use Disorder Identification Test;
- (h) a Drug Abuse Screening Tool; and
- (i) the Corrections Victoria Treatment Readiness Questionnaire.

43. The ICO Report confirms much of the material contained in the PSR. It also notes that the offender has thus far completed eight of twelve sessions of the Preventing Violence Managing Anger program at EveryMan Australia and that the offender self-referred to that service in February 2019.

44. The ICO Report, dated 15 April 2019, concludes with a recommendation that the offender is suitable for an ICO and that he has signed an undertaking to comply with all ICO obligations.

Criminal History

45. The offender has a minor criminal history, constituted by a conviction in the Queanbeyan Local Court for the offence of negligent driving occasioning grievous bodily harm in 2012.

Plea of Guilty

46. The offender entered pleas of guilty in the Magistrates Court on 17 October 2018.

47. Counsel for the offender drew the Court's attention that this plea was entered at the earliest possible opportunity and therefore was entitled to a significant discount.

48. The prosecution accepted the plea was entered at the earliest opportunity and that the offender should receive the maximum, or close to the maximum, discount available.
49. I therefore allow a 25% discount for the pleas of guilty.

Statistics and Comparable Cases

50. On the question of the current sentencing practice in this jurisdiction, the prosecution noted that the maximum penalty for the offence of recklessly inflicting grievous bodily harm was increased by statutory amendment from 10 to 13 years in 2012. The prosecution submitted that the Explanatory Statement for the amending legislation relevantly states:

This bill seeks to outline a clear statement that the ACT Legislative Assembly does not view the prescribed offences as less serious in nature comparison to other Australian jurisdictions. This will allow ACT courts to take further guidance, where they deem appropriate, from the sentencing decisions in other jurisdictions.

51. The prosecution noted the disparity between sentencing decision outcomes in the ACT compared with NSW, with terms of imprisonment more commonly imposed in the latter jurisdiction. Accordingly, the prosecution referred to the decisions of *R v McLean* [2014] NSWDC 104 and *R v Sullivan* [2018] NSWDC 366, where despite findings of compelling subjective circumstances, the court took the view that the objective seriousness was sufficiently strong to warrant a period of fulltime imprisonment.
52. The prosecution accepted there was difference in sentencing ranges between NSW and the ACT, but that NSW in accordance with other jurisdictions and that the ACT “is the aberrant jurisdiction” in this respect. Here, the prosecution referred to *DPP (Vic) v Dalglish* [2017] HCA 41; 262 CLR 428 for the proposition that the sentencing range should not be the only consideration, nor the primary or determinative consideration and should not be followed where clearly wrong.
53. Counsel for the offender submitted that it was not appropriate to look to other jurisdictions where the sentencing range is considered to be too low and that that would be a matter for an appellate court. The sentencing range in this jurisdiction, it was submitted, is appropriate and long established.
54. I am not persuaded that the ACT sentencing range is “clearly wrong” as submitted by the prosecution.
55. In this regard, I note the observation of Murrell CJ in *Monfries v The Queen* [2014] ACTCA 46; 245 A Crim R 80 at [91] that:

The Crown referred to decisions in NSW and Victoria in which an appeal court had reviewed sentences imposed for culpable driving offences of a high level of objective seriousness. In none of those cases did the offender receive a sentence of the severity imposed in the present case. That does not necessarily mean that the subject sentence was manifestly excessive. However, it is a matter of note, particularly as sentencing outcomes in the ACT are often more lenient than those elsewhere in Australia (even where maximum penalties are the same), perhaps reflecting a greater emphasis on rehabilitation and an acknowledgement that there is little hard evidence that very long sentences support general or personal deterrence.

56. Relevantly, I underlined in *R v Gillett* [2019] ACTSC 30 at [92]:

92. As stated by Mahoney ACJ in *R v Lattouf* (Unreported, NSW Court of Criminal Appeal, Mahoney ACJ, Sully J and Adams AJ, 12 December 1996):

There is a public interest in the adoption and articulation of sentencing principles which will deter the commission of serious crime and punish those who commit it ... But there are other interests to which the sentencing process must have regard; these are other objectives which the sentencing process must seek to achieve. Paramount amongst these is the achievement of justice in the individual case.

93. Sentencing must always deliver individualised justice. An approach that would dictate gaol to be served by way of full time custody in every case is anathema to individualised justice.

57. As Mahoney ACJ went on to say in *R v Lattouf* : "...if justice is not individual, it is nothing."

58. Bare sentencing statistics provide limited assistance: *R v Pham* [2015] HCA 39; 256 CLR 550. Statistics do not provide information about why sentences were fixed as they were in each case: *Hili v the Queen* [2010] HCA 45; 242 CLR 520 (*Hili*). There are a number of decisions of this court relating to offenders who committed similar offences. Cases from this jurisdiction provide a "yardstick" as referred to by the High Court in relation to this sentencing exercise: *Hili* at [53]-[54].

59. In *R v Bandy* [2018] ACTSC 261, I reviewed a number of cases from this jurisdiction at [77]-[99] (see *R v Kepaoa* [2017] ACTSC 414; *R v Sikoulabot* [2018] ACTSC 217; *R v LT* [2017] ACTSC 343 [a sentence of two years and three months imprisonment, fully suspended with a good behaviour order]; *R v Burgess* [2017] ACTSC 249 [a sentence of three years and one month imprisonment]; *R v Pallier* [2017] ACTSC 112 [a sentence of 27 months imprisonment]; *R v McBride* [2017] ACTSC 102 [a sentence of three years imprisonment]; *R v Carmody* (No 3) [2017] ACTSC 60 (*Carmody*) [a sentence of two years and five months imprisonment, suspended for three years]; *R v Rappel* [2017] ACTSC 38 [a sentence of two years and 11 months imprisonment]; *R v Beniamini* (No 2) [2017] ACTSC 32 [a sentence of two years imprisonment]; *R v Smith* [2016] ACTSC 330 [a sentence of two years imprisonment, fully suspended with a good behaviour order]; *R v Seretin* [2016] ACTSC 45 [a sentence of four years imprisonment]; *R v Williams* [2015] ACTSC 406 [a sentence of three years imprisonment]; *R v Neish* (Unreported, Refshauge J, 24 May 2013) [a sentence of two years imprisonment, to be served by periodic detention for three months, and suspended thereafter]; *R v Pumpa* [2014] ACTSC 223 [a sentence of two years and eight months of imprisonment, served as 12 months of periodic detention and suspended thereafter]; *R v Laipato* (unreported Nield AJ, 16 September 2010) [a sentence of three years imprisonment]; *R v RC* (Unreported, Burns J, 19 October 2012) [a sentence of six years imprisonment]; *R v Cranfield* [2017] ACTSC 171 [a sentence of three years, seven months and five days imprisonment]; *R v Bartlett* [2016] ACTSC 390 [a sentence of three years and six months imprisonment to be served by way of ICO] and *R v Rehinberger* [2016] ACTSC 14 [a sentence of 18 months imprisonment, full suspended with a good behaviour order]).

Statutory and Other Considerations

60. In sentencing the offender, the court is required to take into account those matters under s 33 of the *Crimes (Sentencing) Act 2005* (ACT) (*Sentencing Act*) that are known and relevant. I have referred to the relevant matters above.

61. The court sentences in the context of the objects of the *Sentencing Act* in s 6 and the sentencing purposes in s 7 of the *Sentencing Act*. The sentencing purposes of punishment, general and specific deterrence, the protection of the community,

accountability, denunciation, and recognition of harm to the victims are important sentencing considerations.

62. Rehabilitation is also an important consideration having regard to the offender's youth, remorse, and generally good character apart from the driving matter.
63. On considerations of rehabilitation, specific deterrence and general deterrence required to be taken into account by the Court on sentencing, counsel for the offender submitted that an Intensive Corrections Order (ICO) would be sufficiently onerous to establish deterrence, both general and specific. In this respect, counsel for the offender referred to *Carmody* where Refshauge J observed at [8]:

It is a punitive sentence while incorporating elements of rehabilitation. It aims to combine supervision and strict conditions with an opportunity for an offender to change his or her behaviour, thus promoting simultaneously the best interests of the community and the best interests of the offender, as well as those who are dependent upon him or her.

64. His Honour (at [59]) also cites French CJ in *Hogan v Hinch* [2011] HCA 4; 243 CLR 506, who observes at [32]:

Rehabilitation, if it can be achieved, is likely to be the most durable guarantor of community protection and is clearly in the public interest.

65. Counsel for the offender noted that considering the seriousness of the conduct and that the offender poses no risk to the community, that the offender has shown remorse and insight and that he has not reoffended since these offences, therefore having regard to the factors under s 11 of the *Sentencing Act*, it would appropriate to order any sentence of imprisonment be served by way of an ICO.
66. The prosecution accepted that there are punitive aspects to an ICO, but also submitted there is a significant degree of leniency inherent within it (citing *Wheelan v The Queen* [2012] NSWCCA 147; 228 A Crim R 1; *R v Ngerengere (No 3)* [2016] ACTSC 299).
67. The prosecution further submitted that in circumstances of alcohol-fuelled violence, sentencing must involve a particular attention to deterrence and denunciation (citing *R v Sharma* [2016] ACTSC 180; *Pattalis v R* [2013] NSWCCA 171; *The Queen v Loveridge* [2014] NSWCCA 120; 243 A Crim R 31). The prosecution further noted that intoxication does not mitigate the offender's culpability for the offending (*R v Groom* [1998] VSCA 146; 2 VR 159).
68. I have taken into account the matters underlined by both the prosecution and defence in this regard.
69. The sentencing process also requires an examination of s 10 of the *Sentencing Act* and alternatives to prison. In this case, it was submitted by counsel for the offender that a term of imprisonment could be served by way of ICO. The prosecution submitted that a significant sentence of imprisonment would be appropriate and that it was "entirely open" for the Court to order that this be served by way of full-time imprisonment.
70. As with every sentencing exercise, careful attention must be paid to the maximum penalty, which provides a yardstick: *Markarian v The Queen* [2005] HCA 25; 228 CLR 357.
71. When sentencing for multiple offences, I must fix an appropriate sentence for each offence and then consider questions of accumulation or concurrence, as well as totality: *Zdravkovic v The Queen* [2016] ACTCA 53 at [64] (*Zdravkovic*). The real

question is whether the total sentence is “just and appropriate” to reflect the total criminality: *Mill v The Queen* (1988) 166 CLR 59 (Mill); *R v Meyboom* [2012] ACTCA 48 at [66]; *Zdravkovic* at [71].

72. One punch attacks by young men that cause significant injury to victims are all too common and the sentencing purpose of general deterrence requires the imposition of a significant sentence. Accountability, denunciation and recognition of harm to the victims are also important sentencing considerations: *R v Hidic* [2017] ACTSC 307 at [34]-[35].
73. As I emphasised in *Bandy* (at [74]), innocent members of the community should not be attacked by drunken individuals. The community must be protected.

Sentence

74. It must be recognised by the Court that the offences committed against the victims have had a serious and significant impact upon them all, in particular Mr Graves who sustained a left mandibular fracture which required the insertion of a permanent metal plate into his jawline. Both the short and long-term consequences of being the victim of such offences must be acknowledged.
75. In this case, I have formed the view that leniency at this stage of the offender’s life may lead to reform. I have formed this view for a number of reasons as set out above, including the following:
- He has pleaded guilty at the earliest opportunity;
 - There is evidence before me that the offender is remorseful, in particular the evidence given by the offender in relation to his remorse and his insights into his offending and his participation in the Restorative Justice Program;
 - He has a strong record of employment; and
 - He has actively sought out treatment from a psychologist, Dr Tonkin, and participated in an anger management program at EveryMan Australia.
76. Both parties have accepted that a sentence of imprisonment is appropriate but at issue is the length of the sentence and whether it is essential that it be served by way of full-time imprisonment or whether it can be served by way of an ICO.
77. The prosecution submitted that, in light of the sentencing factors to be considered, a significant sentence of imprisonment would be appropriate and that it was entirely open to the Court to order that this be served by way of full-time custody. However, the offender’s plea of guilty, his demonstrated remorse, his suitability for an ICO, his good prospects for rehabilitation and his low risk of reoffending, suggest an outcome other than a term of imprisonment served by way of full-time custody.
78. As I stated in *R v Miller* [2018] ACTSC 244 at [57], in *Veen v R (No 2)* (1988) 164 CLR 465 at 476, the High Court emphasised that the guideposts that are the purposes of sentencing sometimes point in different directions:

The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.

79. Moreover, as I observed in *Bandy* at [109]-[110]:

109. It is well to underline at this juncture that where two highly relevant considerations are incompatible, it is not necessarily the case that the end result must constitute some kind of averaging out between the two. There are circumstances in which one is entitled to be determinative: see for example *R v Hopkins* [2004] NSWCCA 105.

110. As stated by Murrell CJ in *R v Hill* [2016] ACTSC 310 (*Hill*) where a person has very good prospects of rehabilitation, the Court, by supporting those prospects in the sentence imposed, thereby also addresses likely future harm to the community and protection of the community. It was also emphasised in *Hill* that sentencing must always deliver individualised justice.

80. In coming to a sentence by way of instinctive synthesis, I have taken into account all the matters discussed above, including the objective seriousness of the offences and the subjective matters.
81. The appropriate sentence for the offence of common assault (CC2018/8034) is 6 months reduced to 4 months on account of the discount for the plea of guilty.
82. The appropriate sentence for the offence of common assault (CC2018/8035) is 6 months reduced to 4 months on account of the discount for the plea of guilty.
83. The appropriate sentence for the offence of recklessly inflicting grievous bodily harm (CC2018/9390) is 28 months reduced to 21 months on account of the discount for the plea of guilty.
84. Overall there will be a sentence of 2 years.

Order

85. I make the following orders:

- (a) I record convictions in relation to the offences.
- (b) In respect of the offence of common assault (CC2018/8034) the offender is sentenced to a term of 4 months of imprisonment, commencing on 18 April 2019 and ending on 17 August 2019.
- (c) In respect of the offence of common assault (CC2018/8035) the offender is sentenced to a term of 4 months of imprisonment, commencing on 18 May 2019 and ending on 17 September 2019.
- (d) In respect of the offence of recklessly inflicting grievous bodily harm (CC2018/9390) the offender is sentenced to a term of 21 months of imprisonment, commencing on 18 July 2019 and ending on 17 April 2021.
- (e) The sentence is to be served by way of an Intensive Corrections Order pursuant to s 11 of the *Crimes (Sentencing) Act 2005* (ACT). I impose the core conditions.

I certify that the preceding eighty-five [85] numbered paragraphs are a true copy of the Reasons for Sentence her Honour Justice Loukas-Karlsson

Associate:

Date: 29 April 2019