

STATE OF TASMANIA v MARK THOMAS NOBLE

14 October 2005

COMMENTS ON PASSING SENTENCE

EVANS J

You are convicted on your plea of guilty to one charge of murder.

You first met your victim, Ralph Bocchino, in early 2003 when you and he were seeking assistance for your chronic abuse of alcohol.

Through Mr Bocchino you met his one time partner, Elizabeth Wells, and in about April 2003, she moved to live with you. Mr Bocchino's resentment at this development led to an incident in the course of which he threatened you with a hammer and caused Ms Wells to obtain an interim restraint order against him. You and Ms Wells changed your residence and over the period of about eighteen months prior to 6 January 2005, the date of Mr Bocchino's death, he did not contact you or Ms Wells.

Over Christmas 2004, Ms Wells complained to a friend mutual to her and Mr Bocchino about your violence towards her. The friend passed on Ms Wells' complaints to Mr Bocchino and advised him of her address. At about 1pm on 6 January 2005, Mr Bocchino and three others visited your flat. Whilst Mr Bocchino set out on that visit with retribution in mind, he behaved with moderation upon his arrival, his focus having apparently changed to encouraging Ms Wells to leave you for him. He waited outside the flat for a considerable time until you invited him in and upon him entering, all present behaved without apparent rancour. Alcohol was consumed and Mr Bocchino provided you with the money to purchase another cask of wine. Two of Mr Bocchino's companions departed in the belief that there was no reason for concern.

At some point that night as you and Mr Bocchino continued to drink together, he made threatening comments to you to the effect that you would get fixed up and you would never see the Mainland again. He said he would not leave without Ms Wells, although she indicated that she was not leaving with him. You told Mr Bocchino to go. He swore at you and as he began to stand, you grabbed an axe, at all times kept in the room, and struck Mr Bocchino to the left side of his head with the back of the axe. The explanation for the blow is your fear that Mr Bocchino was about to attack you. He was not armed, and patently your response was excessive in the extreme. This blow resulted in Mr Bocchino's death.

Consistent with the basis on which your plea has been put, I accept that your crime comes within the *Criminal Code*, s157(1)(c). A murder in this category is not as serious as one committed with the intention of causing death and to the point of your first blow that night, your crime is not a remarkable instance of a murder in this category. All too often the Court is called upon to deal with the consequences of an intoxicated person's impetuous excessive and viscerously violent response in emotional circumstances to a perceived threat or provocation. The circumstance that makes your crime remarkable is your conduct after the initial blow that resulted in Mr Bocchino's death. Immediately that blow was struck, the appalling nature of your conduct and its likely consequence should have been apparent. You not only failed to respond with compassion, you did not even desist. You continued to strike Mr Bocchino with the back of the axe and obtained a hammer with which you also struck him. Your initial blow severely fractured Mr Bocchino's skull. Additional injuries caused by your subsequent blows include a compound fracture of his left humerus, a fracture of the mid-shaft of his left femur, a fracture of the distal portion of his left femur, extremely marked

bruising on his right wrist, and a substantial number of other bruises, abrasions and lacerations. When you finally desisted, it must have been apparent to you that medical assistance should be summoned, regardless of what you thought Mr Bocchino's wishes were. Instead, you placed a towel over him and a pillow under his head and went to bed. In the morning, when confronted with Mr Bocchino's death, you phoned your mother and advised her of your need for a lawyer before notifying the authorities.

In these circumstances, I consider that the distress that you manifested when later interviewed by the police was related much more to your own interests than your concern for the deceased.

You are 39 years of age. Since the age of 16, you have been an alcoholic and addicted to amphetamines. You have also experimented with Heroin to the point of overdosing on that drug. Your record includes convictions for crimes involving violence in respect of which you have, on three different occasions, served sentences of imprisonment, the last of which sentences was imposed in 2001.

I pay regard to your plea of guilty. Your recognition of guilt, albeit as late as at the commencement of your trial, is a mitigatory factor to which I attach some weight.

You are sentenced to nineteen years imprisonment with effect from 7 January 2005.

I order that you not be eligible for parole until you have served ten years six months of this sentence.

The levy of \$50 fixed by the Victims of Crime Compensation Act for your offence is to be paid by you to a clerk of petty sessions within fourteen days.

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