

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Restricted
Suitable for Publication

Case No. CR-20-01524, CR-20-01539 and CR-20-01541

DIRECTOR OF PUBLIC PROSECUTIONS

v

ROBERTA WILLIAMS
JAKE SEXTON
HASSAM AL ZWAINY

JUDGE: HER HONOUR JUDGE TODD
WHERE HELD: Melbourne
DATE OF HEARING: Multiple
DATE OF SENTENCE: 26 August 2022
CASE MAY BE CITED AS: DPP v Williams and Ors
MEDIUM NEUTRAL CITATION: [2022] VCC 1379

REASONS FOR SENTENCE

Subject: CRIMINAL
Catchwords: Plea of guilty
Legislation Cited: *Crimes Act 1958 (Vic); Sentencing Act 1991 (Vic); Spent Convictions Act 2021 (Vic)*
Cases Cited: *DPP v Grabovac [1998] 1 VR 664; Bugmy v The Queen (2013) 249 CLR 571; Boulton v The Queen [2014] VSCA 342; R v Vo (Unreported, Supreme Court of Victoria Court of Appeal, Phillips CJ, Callaway and Batt JJA, 14 May 1998); R v Verdins (2007) 16 VR 269*
Sentence: Robert Williams Total Effective Sentence: Community Corrections Order 24 months duration
Hassam Al Zwainy Total Effective Sentence: Community Corrections Order of 12 months
Jake Sexton Total Effective Sentence: Community Corrections Order 24 months duration

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Ms K Richter	Office of Public Prosecutions
For the Accused Williams	Ms E Turnbull	Emma Turnbull Lawyers
For the Accused Sexton	Mr J P McQuillan	Theo Magazis & Associates
For the Accused Al Zwainy	Mr P O'Halloran	Gallant Law

HER HONOUR:

Introduction

Pleas of guilty and maximum penalty

Roberta Williams

- 1 You, Ms Williams, have pleaded guilty to one charge of blackmail and one charge of causing injury recklessly.

Jake Sexton

- 2 You, Mr Sexton, have pleaded guilty to one charge of causing injury intentionally.

Hassam Al Zwainy

- 3 You, Mr Al Zwainy, have pleaded guilty to one charge of causing injury recklessly, two charges of possessing drugs of dependence (Methandienone, Oxandrolone), and to a related summary offence of possession of a schedule 4 poison.

Statutory maxima

- 4 The maximum penalty for blackmail is 15 years' imprisonment; the maximum penalty for causing injury intentionally is 10 years' imprisonment; the maximum penalty for causing injury recklessly is five years' imprisonment.
- 5 The maximum penalty for the offence of possession of a drug of dependence is five years' imprisonment (or one year if the court is satisfied that it was not for any purpose relating to trafficking). For the summary offence of possessing a schedule 4 poison the maximum penalty is 10 penalty units.

Circumstances of the offending

- 6 This case concerns a group of people who decided that it was a good idea to make a 'reality' TV show on the subject of 'mob wives', or, more particularly, about the life of Ms Williams and her family.
- 7 Not all of the people this case is about were part of that plan, but they later became involved once the project soured.

8 Three prosecution openings were filed in this case, dated 14 June 2022,¹ 27 June 2022² and 25 July 2022.³ This happened as the result of these matters resolving serially, going through various procedural steps before the pleas of guilty with which I will now deal. Once the plea hearings occurred I collapsed these matters into one sentencing judgment. I note that I sentenced Mr De Silva on 11 May 2022, and that Mr Harrison, has also entered a plea, and finalise his case with a sentencing hearing shortly.

9 Each respective plea's summary sets out the circumstances of each accused's offending and was tendered on each case. Those openings are attached to and form part of these reasons. I will summarise some of the facts giving rise to each accused's offending here. The narrative commences with Ms Williams and her meeting Mr Naumenko.

10 The first part of the factual summary relates only to you, Ms Williams, and provides context for Mr Sexton and Mr Al Zwainy's subsequent participation.

11 On 6 May 2019, you, Ms Williams, responded to correspondence via direct message on Instagram sent to you by the victim in this matter, Mr Ryan Naumenko. You began discussing the possibility of creating a reality television show with him. The concept of the show would be to 'capture your life'.

12 Mr Naumenko told you, Ms Williams, that he had worked with Channel 9 and SBS' 'Viceland' channel. You spoke of creating this reality TV show in the coming weeks.

13 By 20 June 2019, Mr Naumenko told you, Ms Williams, that he was going to arrange a camera crew; you also had discussions about starting a 'GoFundMe' page so that others could contribute to the project.

¹ Ms Williams.

² Mr Al Zwainy.

³ Mr Sexton.

14 At one point you told Mr Naumenko you had heard he was a 'scammer'. In response, he said that the money for this TV series was coming from 'him'. You continued to message one another about the show.

15 Mr Naumenko sent you messages, Ms Williams, saying he had made a lot of money and could lend you and your partner money.

16 Mr Naumenko then suggested that you meet with a producer friend of his. He claimed that \$50,000 had been raised through 'GoFundMe' and that he was 'happy' to pass this money on to you. Again, he offered you a loan and continued to speak about the prospects for the TV show.

17 By 25 June 2019, Mr Naumenko had contacted Allan Meehan, the 'producer'. He created a WhatsApp messenger group with himself, Mr Meehan and you.

18 On 25 June 2019, Mr Meehan transferred \$10,000 to Mr Naumenko's account for the purpose of funding a 'reality' TV show about your life. You were aware this money had been sent by Mr Meehan.

19 Discussions then moved to renting a location to film in. You, Ms Williams, told Mr Naumenko not to spend too much on rent. You and your partner Rob then had dinner with Mr Naumenko that evening; there were discussions about Mr Naumenko lending money to Rob.

20 Messages between you, Ms Williams, and Mr Naumenko about the show continued over the next few days; Mr Naumenko told you, Ms Williams, that someone from Netflix was interested in investing in the production.

21 However, on 30 June 2019 you sent messages to Mr Naumenko stating you wanted to pull out of the arrangements. Mr Naumenko persuaded you not to; he had, he said, already made deposits in excess of \$50,000 for the show.

22 On 1 July 2019, Mr Naumenko contacted a man named Daniel De Silva who owned a video production company 'Cloakroom Media' in Collingwood.

23 The following day, Mr Naumenko met with Mr De Silva in Collingwood to discuss the production; a quote was prepared for the amount of \$14,300. A deposit was payable. Filming was to begin on 5 July 2019.

24 On 2 July 2019 you, Ms Williams, met with Mr De Silva in Collingwood. On 3 July 2019 Mr Naumenko sent you a message suggesting there had been significant financial investment in the project.

25 Contrary to any of the representations made by Mr Naumenko, the only money that was available for the production was the \$10,000 transferred by Mr Meehan on 25 June 2019.

26 In messages later obtained by police, Mr Naumenko had contacted a third party, commenting that he was delaying you, because only one person had invested in the show.

27 Mr Naumenko set about trying to find a filming location.

28 On 4 July 2019, Mr De Silva contacted Mr Naumenko telling him how to pay the agreed deposit for his work on the project. Mr Naumenko told Mr De Silva he had paid the deposit, which was false.

29 Mr Naumenko rented an apartment in Hampton via Airbnb to film in. He told Mr De Silva he had paid a \$5,000 bond for the apartment, which was untrue.

30 On 5 July 2019, Mr Naumenko, Mr De Silva and others began setting up the apartment for filming, and you arrived at the address accompanied by an associate, Mr James Harrison.

31 After filming finished that day, Mr De Silva asked Mr Naumenko for payment to be made that night. In response, Mr Naumenko said that they had agreed previously that Mr De Silva would own the footage and would be paid once a pilot was made, but said he would endeavour to borrow some money and pay Mr De Silva that evening.

32 I note that the prosecution in this matter did not assert that Mr Naumenko's statements as to the terms of the agreement should be accepted as truthful.

33 That evening, Mr Naumenko sent Mr De Silva messages that he had been pulled over by police and could not pay the money; he then said he would pay the money; however, no such payment was made.

34 On 6 July 2019, Mr De Silva sent messages to Mr Naumenko asking for payment; no payment was made.

35 On 7 July, Mr Naumenko's mother and children flew to Melbourne. They then went to the apartment where Mr Naumenko was staying.

36 At this time you, Ms Williams, were messaging Mr De Silva via WhatsApp. You had come to the mutual view that the complainant was indeed 'scamming' you.

37 Mr Naumenko told you that he could not film that night as his children had arrived. You shared these messages with Mr De Silva.

38 Mr Naumenko told you that he was considering giving Mr Meehan his money back.

39 You and Mr De Silva then came up with a plan to extract money from Mr Naumenko. This is the genesis of the acts giving rise to the charge of blackmail.

40 You, Ms Williams, wrote to Mr De Silva on WhatsApp proposing a plan to meet Mr Naumenko for the purposes of extracting money from him. You discussed potentially taking his car. You, Ms Williams, wrote that "if one of the boys give him an open hand slap and push him to get your money it's no big deal." Mr De Silva spoke of Mr Naumenko "having a stroke" when he saw "the boys".

41 With Mr De Silva, you, Ms Williams, made a plan to lure Mr Naumenko to the studio in Collingwood for the false purpose of viewing footage that had been edited. You would then intimidate Mr Naumenko and extract the money from him.

42 On 8 July 2019, Mr De Silva sent a message to Mr Naumenko asking for payment and also saying that he had edited together footage for viewing. They fixed a time to meet. Mr De Silva told you, Ms Williams, of the time and place of this meeting.

43 It is at this point Mr Harrison's participation commences.

44 You, Ms Williams, had recruited Mr Harrison to come to the meeting and intimidate Mr Naumenko. At this point, Mr Sexton's and Mr Al Zwainy's participation begins. Mr Harrison recruited you, Mr Sexton, and you, Mr Al Zwainy, to attend this meeting. These, I take it were "the boys" previously referred to.

The day of the offending

45 On 9 July 2019, you, Ms Williams, exchanged messages with Mr Harrison in which he confirmed he was bringing two friends to the meeting at the studio in Collingwood.

46 Police later obtained a message sent by Mr Harrison to you, Mr Al Zwainy, saying "Come with me tonight?", which you agreed to. Mr Harrison said he would meet you at 4.45pm, and CCTV footage shows you leaving Mr Harrison's address together at about 5.02pm.

47 At about 5.40pm, Mr Naumenko brought his children and mother to the meeting at Cloakroom Studios. You, Ms Williams, sent a message to Mr Harrison at this time telling him to "play it cool" until Mr Naumenko's family had left.

48 Mr De Silva showed Mr Naumenko the footage. Mr Naumenko sent you, Ms Williams, a message at 6.49 asking where you were. You told him you were there.

49 CCTV footage from this time depicts Mr Harrison and you, Mr Sexton and Mr Al Zwainy, in the area of the studios at 6.51pm.

50 Mr Naumenko left the studio and took his mother and children back to the apartment. He returned to the studio alone at 8.31pm.

The offending

51 When Mr Naumenko returned, Mr De Silva suggested a toast before saying "You're fucked. It's all over now." Mr De Silva then said, "I want money now, Roberta wants money now otherwise you're fucked". When the complainant offered to organise money, Mr De Silva said "It's too late, you're dead".

52 Mr Sexton and Mr Harrison began hitting Mr Naumenko on the sides of his face, and you, Ms Williams, yelled out words to the effect of "Kill the cunt, he has no money." Mr Naumenko was repeatedly punched and kicked and was bleeding. (Ms Williams recklessly causing injury; Mr Sexton intentionally causing injury; Mr Al Zwainy recklessly causing injury.)

53 At 8.40pm Mr Naumenko sent a message to his mother saying "Call police ASAP."

54 One of the accused then produced a handgun and told Mr Naumenko to sit down.

55 Over the next three hours Mr Naumenko was punched and kicked, tied to a chair and threatened. You, Mr Sexton, threatened to break Mr Naumenko's hands, and said you had a mate who would "burn" him. You, Ms Williams, demanded money from Mr Naumenko and told him he was lucky you had not killed his mother and children.

56 Mr Naumenko was forced to call his father and sister, asking them for money. Mr Naumenko's father and sister each transferred \$1,000 to an account, the details of which were provided by Mr De Silva. The bank account belonged to his company Cloakroom Media.

57 Mr De Silva then made Mr Naumenko sign a document to transfer ownership of his mother's car. Mr Naumenko's car key was kept by one of the people present.

58 At about 11.30pm, after being threatened by you and your associates and told not to contact police, Mr De Silva drove Mr Naumenko home.

59 Mr Naumenko was injured, and his mother took photos of his face.

60 On 10 July 2019, you, Ms Williams, sent a number of messages to Mr Sexton thanking him for his help.

Medical evidence

61 Police arranged for the complainant to be examined by Dr Gerald Murphy. The examination took place on 12 July 2019. Dr Murphy recorded the following:

- (a) Bruising behind the right ear
- (b) Redness and swelling to the left side of the face
- (c) Superficial scabs on the scalp
- (d) Puffiness of the right cheek
- (e) Bruising under the right eye
- (f) A large purple bruise on the right jaw
- (g) A laceration on the right upper lip
- (h) Bruising on the inner right cheek, and
- (i) Bruising to the upper and lower lips on the right-hand side.

Possession of drugs of dependence: Mr Al Zwainy

62 On 5 September 2019, a search warrant was executed at your address, Mr Al Zwainy. While there, police seized 74 blister pack tablets labelled 'Oxanabol Anabolic Steroids', later found to contain methandienone (possess drug of dependence, Charge 2 on your plea indictment) and oxandrolone (possess drug of dependence, Charge 3 on your plea indictment).

63 Police also seized a 30ml vial labelled 'Ultimate Anabolics Clenbuterol', later found to contain 5.9 grams of clenbuterol, which is a schedule 4 poison; this gives rise to the related summary charge of possession of a schedule 4 poison.

Investigation and arrests

64 On 12 July 2019 police executed a search warrant at Cloakroom Media. Among other things, they found a blank VicRoads transfer of vehicle ownership form. On 7 August 2019 you, Ms Williams, were arrested at an address in Strathmore. Mr Harrison was arrested on the same day at a unit in Craigieburn. That day police also arrested you, Mr Sexton, at your address in Greensborough. Everyone's phones were seized.

65 You, Mr Al Zwainy, presented yourself at the Epping Police Station on 7 August 2019. When you did so, you indicated to police that you had come to clear up identity because the "wrong person had been taken". This was understood to be a reference to a man who was arrested by police after Mr Naumenko had provided them with images taken from Mr Harrison's Instagram account. That man is not (now) alleged to have any involvement in this matter. You participated in an interview and exercised your right to answer "No comment" to most of the questions put to you other than this identity question. On 5 September 2019 you were interviewed after the execution of the search warrant, and in that interview you said that in the first interview "I was interviewed and just said I was present at the scene." You identified yourself in CCTV footage, and made admissions to the possession of the drugs. You told police that you knew they required a prescription and that you did not have one.

Interviews

66 You, Ms Williams, declined an invitation to be interviewed by police. You, Mr Sexton, exercised your right to silence.

Procedural chronology – all accused

67 You, Ms Williams, were charged and bailed on 7 August 2019; your case moved through the Magistrates' Court and included a committal hearing of three days' duration. You applied for a sentence indication in this Court, and you were subsequently arraigned and pleaded guilty to the charges, and a plea hearing was conducted on 12 July 2022.

68 You, Mr Sexton, also cross-examined Mr Naumenko at committal, and in this Court applied for a sentencing indication, and on 20 July 2022 you entered a plea of guilty to the current indictment.

69 You, Mr Al Zwainy, participated in the committal; your lawyers corresponded with the Office of Public Prosecutions regarding a resolution on 1 February this year; you entered a plea of guilty to the current charges on 10 June 2022.

70 In relation to each accused, there has now been some considerable delay, generally attributable to the pandemic, in resolving your cases, and I accept that these matters have weighed on you in a way that amounts to additional punishment for nearly three years.

Nature and gravity of the offending – Ms Williams

71 The prosecution puts its case against you in the following terms :

- You entered into an agreement with Mr De Silva to blackmail Mr Naumenko;
- At that time, you held a genuine belief that Mr De Silva was owed money, and indeed you had reasonable grounds for holding that belief;
- However, you did not believe the use of menaces was a proper means of making a demand for that money;
- You agreed to participate in a frightening confrontation of Mr Naumenko;
- Although you did not physically assault Mr Naumenko, you were complicit in that assault carried out by your co-offenders;
- That complicity arises from your encouragement of the assault by your continued presence;
- You are to be sentenced on the basis that you foresaw the probability that the complainant would suffer an injury as a result of the assault.

72 I have previously described the offending of your co-accused Mr De Silva as unquestionably serious, terrifying, and traumatic for the victim, and this description applies equally to your offending. You planned these events the day before; your offending unfolded over about three hours; and you offended in the company of others. It seems that Mr Harrison, at least, was recruited by you.

73 Authority and the legislated maximum penalty for blackmail both make it clear that this is to be considered an inherently serious offence. Whilst it is not necessarily always a crime of violence, by its nature it is, as the Court said in *DPP v Grabovac*,⁴ an attack upon a specific victim, and its impact on the victim may be similar to actual violence in terms of the fear, stress, and anxiety it engenders. In your case, the crime of recklessly causing injury sits alongside it. The circumstances of the recklessly causing injury charge to some degree form part of my analysis of the gravity of the blackmail charge, but I pause here to note I am conscious of the need not to doubly punish you for it.

74 Your victim sustained a number of injuries to the face and head as a result of what happened to him.

75 It is accepted by the prosecution that Mr De Silva was legitimately owed the money you then attempted to extract from Mr Naumenko, and in this respect the unwarranted demand consists not of the amount of money sought, but the method by which you sought it.

76 You knew and understood that such an approach was illegitimate. I consider the existence of a true debt to reduce culpability somewhat, and to be a feature which distinguishes this case, to some degree, from the cases where the entitlement for the demand is, in itself, invented.

77 You felt aggrieved by the deceptions Mr Naumenko had made about the financial footing of this proposed 'reality' TV production. You ought to have walked away

⁴ [1998] 1 VR 664

when you first had the instinct to. Instead, you continued to pursue this forlorn project and then to recruit others to assist you in the equally forlorn project of extracting money from Mr Naumenko. Significantly, the prosecution does not assert you, Ms Williams, were directly responsible for any of the violent conduct. You have acknowledged your complicity in it. It was protracted and cruel.

78 I am careful to sentence you, and your co-accused, for the charged conduct and for no other offending: the threats, false imprisonment and related conduct. I note in particular the prosecution does not allege you had foreknowledge of or any role in using the handgun.

79 In the planning stage, you expressed some enthusiasm for the confrontation of Mr Naumenko. Blackmail, Ms Williams, is a crime that requires the victim to be put in fear and kept in fear.⁵ In the scheme of blackmail cases more generally, the period of the demand's operation and its scale was relatively confined.

80 Your participation in these events has a considered quality; and the assault itself was enduring.

Nature and gravity of the offending – Mr Sexton

81 The prosecution puts its case against you, Mr Sexton, on the basis that:

- you agreed to attend Cloakroom Studios to assist your co-accused in a confrontation with Mr Naumenko, for the purpose of adding numbers to intimidate him; and
- once Mr Naumenko had returned to the studio alone, you, Mr Sexton, entered an agreement with your co-accused that Mr Naumenko would be assaulted;

⁵ *R v Vo* (Unreported, Supreme Court of Victoria Court of Appeal, Phillips CJ, Callaway and Batt JJA, 14 May 1998) at 5

- you then, Mr Sexton, with your co-accused, assaulted and threatened Mr Naumenko, intending to cause him an injury; and
- as the result of this assault, Mr Naumenko suffered the injuries which I have already described.

82 Your counsel submitted that you came late to these events, and as such your culpability ought be viewed as lower than those who had greater knowledge, and I do accept this, but I also note that once there, you appeared to engage fully and, as the charge defines, intentionally with this conflict with which you otherwise had no apparent involvement. It is serious offending, apparently carried out by you simply for the cost of being asked. I have already described the injuries.

Nature and gravity of the offending – Mr Al Zwainy

83 The prosecution puts its case against you, Mr Al Zwainy, on the basis that:

- you said things along the lines of “Don’t call the cops”;
- your complicity is based on your presence (which served to intimidate the victim) and your verbal encouragement of that assault;

though I note it is not alleged that you physically assaulted Mr Naumenko yourself.

84 You agreed to attend the scene of the offending, it was submitted, because of your ‘blind loyalty’ to one of the other participants; you also agreed to attend, it was submitted, for a purpose which differed from the specific events that unfolded once at the studios (that being to assist a confrontation by adding numbers to intimidate a person.)

85 Once there, of course, you entered an agreement with your co-offenders that the complainant would be assaulted and you knew it was probable that injury would result. I note that you accept you said the words “Don’t call the cops”, but you were not complicit in the demands for money made by unwarranted means, in any false imprisonment of Mr Naumenko, nor in any of the verbal threats to inflict injury

or to kill made by others and set out in the prosecution opening. I have noted the parts of the evidence of Mr Naumenko, elicited during the committal, in which the witness conceded your minimal role in what occurred.

86 I have regard to the text messages, at Annexure B of your counsel's submissions, these are messages sent by you and your co-accused in the days before and during your offending. On 7 July 2019, Mr Harrison sent you text messages saying: "Come with me tonight?" "Just to see this producer at 6.30 nothing will happen". Other texts follow, and on 9 July further texts show the plan to meet that evening. Then, during what is the period of the offence actually unfolding, you and Mr Harrison exchange the following text messages:

Al Zwainy to Harrison: "I thought we were only gonna be here for 30-45"⁶

Harrison to Al Zwainy: "I said 3-4 hours"⁷

Al Zwainy to Harrison: "That's it, I'm taking tomorrow off"⁸

Al Zwainy to Harrison: "Should have bailed on you"⁹

Al Zwainy to Harrison: "I don't think I'm gonna be able to sleep"¹⁰

87 Regarding Charges 2 and 3, it was submitted that you possessed these drugs, generally only provided pursuant to prescription, in the context of your fitness regime. There were no indicia of trafficking: vast quantities, unexplained wealth, or messages on your phone on the subject. Through your counsel, you recognised that there is a reason that these drugs are taken under a supervised prescription regime. I am satisfied that the possession was not for the purposes of trafficking, and apply the lower maximum penalty in these circumstances.

88 It was submitted that your involvement in the offending is, when considered objectively, the least involved of any participant, and I accept that submission. You

⁶ 09.07.19 at 21.20.20

⁷ 09.07.19 at 21.20.20

⁸ 09.07.19 at 21.20.21

⁹ 09.07.19 at 21.20.34

¹⁰ 10.07.19 at 01.34.18

have accepted formal responsibility in the least serious terms of each of any the accused (a plea to recklessly causing injury). Moreover, your actual participation is marked by both not being an orchestrator of the scheme, nor were you directly involved in the physical assaults. Your simultaneous text messaging provides a window into your developing relationship to these events. They also show that you will need to sharpen up about the decisions you make out of loyalty.

Nature and gravity – handgun

89 I pause here to note that the prosecution alleged the presence of a handgun at these events. Ultimately, no particular accused was able to be attributed with bringing or using or having knowledge of this handgun. In the circumstances of this case I appreciate why this aspect of the evidence would have been very difficult to prove. I mention it here for completeness. I have not forgotten the allegation that a handgun was present throughout these events, but I not applied this fact in the assessment of seriousness of the offending of any accused given the state of evidence about it, and the burden and standard of proof for a fact alleged in aggravation of sentence.

Impact on victims – all accused

90 I am obliged to take into account the impact of your offending on your victim. Mr Naumenko read his victim impact statement to the Court, and through your counsel you each acknowledged the terrifying nature of what was done to him. Mr Naumenko was injured to the face and head and still experiences feelings of fear about what happened. I listened to him read his victim impact statement and I take into account the effect of your offending on him.

91 I am careful not to sentence you, Mr Al Zwainy, or you, Mr Sexton, by reference to the effect of the blackmail on Mr Naumenko.

Mitigation – all accused

Plea of guilty

92 First your pleas of guilty. I accept that in each of your cases your plea is both objectively and subjectively valuable. A committal exposed serious weaknesses in the prosecution case, which might have tempted some to conduct a trial as an exercise in proof of guilt of the victim. Whatever the wisdom of that course, you each steered your cases to a resolution, and have had this matter overhanging your life until today.

93 At any time, your pleas would be acknowledged as delivering a strong utilitarian benefit; a trial of an estimated six weeks' duration has been rendered unnecessary; but at this time, when, even though case waiting times are contracting, the backlog of cases awaiting trial still slows the proper administration of justice, your plea demands an additional and palpable benefit. I make it clear that were it not for this factor your sentence would have been significantly more stern.

Ms Williams

Personal circumstances – Ms Williams

94 Turning now to your personal circumstances, Ms Williams. You are a 53-year-old woman. You were initially cared for by both your parents; however, when you were only eight months old your father burnt to death in a car accident. Your mother would later re-partner with men who abused you both physically and mentally. Ultimately, your mother pushed you out of home onto the street. You were nine years old.

95 You were made a ward of the state and placed in 'secure welfare' institutions. You lived by your wits: sleeping on trains and at the beach. You learned to fight.

96 You are one of seven, but you have lost a brother and sister and do not keep in contact with your remaining siblings.

97 Your first husband was violent to you, which left you with fractures to the face among other injuries.

98 Your next long-term relationship ended with that man's violent murder while he was serving sentence. You had the task of identifying his body at the coronial facility. Whatever else can be said about that relationship, it seems that for you this was the first person who had been kind to you.

99 You have five children, ranging in age from 35 to 11 years old. I will return to your youngest child's circumstances later in these reasons.

100 You are currently single and live with your youngest child.

101 You had no history of regular school attendance except for brief periods when you were held in secure welfare units during late childhood and adolescence.

102 You do not have a history of troubling drug-taking or use of alcohol. You suffer from a range of medical conditions: sleep apnoea, and problems with your hands requiring joint replacement surgery, and you have recently undergone major abdominal surgery.

Prior criminal history – Ms Williams

103 Since this offending, now nearly three years ago, you have not reoffended. While you are no stranger to the courts because of your associations, your own criminal history is limited and, what there is, is stale. Your most recent court appearance was in 2007 for driving. A crime of dishonesty was dealt with in this Court in 2006 (a suspended sentence was imposed). You have some relatively minor and very dated drug offending, and it was 1990 when you were last dealt with for a crime of violence: recklessly causing injury. It is of limited relevance in arriving at this sentence.

Matters in mitigation – Ms Williams

104 Turning now to matters in mitigation personal to you, Ms Williams.

Health Concerns

105 You have a range of physical problems and have had recent hand surgery to both your hands. I read a range of medical material about the conditions from which you currently suffer. I will take that material into account in assessing the content of your community correction order: specifically, your capacity to do unpaid work.

106 A psychological report authored by Mr Ian Mackinnon was tendered on your plea. In his opinion, you present with complex post-traumatic stress disorder, a form of the disorder that evolves in response to multiple, often developmental, traumas as opposed to one acute event. In the opinion of Mr Mackinnon, your complex post-traumatic stress disorder rendered you more likely to fail to apply appropriate reason and make sound judgments, fuelling your propensity to overreact to perceived threats or insults with aggression.

107 It is clear that you have had to learn to live on your wits, and have lived a life exposed to violence in all its forms. You have learned to react quickly, and this puts your offending into context but does not excuse it. When you were very young it seems you learned to fight early and hard, and this instinct now comes into conflict with your other more positive traits of loyalty to and affection for your children. No *Verdins*¹¹ principles were specifically pressed.

Bugmy¹² principles

108 You come before the court as a woman who, from a very tender age, has been exposed to the world with few, if any, adults who were either affectionate to or responsible for you. You were made a ward of the state at nine. You were exposed to violence in whatever homes you had, either at the hands of your mother's partners or later your own.

¹¹ *R v Verdins* (2007) 16 VR 269

¹² *Bugmy v The Queen* (2013) 249 CLR 571

109 I count your deprived background in your favour in terms articulated by the High Court in case of *Bugmy v The Queen*.¹³ I also count this in my assessment of your prospects for rehabilitation and the role for community protection in this sentence.

High-needs child

110 Your current circumstances are defined for now, and probably permanently, by the very high needs of your youngest child, whose autism spectrum disorder, global developmental delay and intellectual disability requires very substantial day-to-day support. He attends a specialist school for autistic children. He is non-verbal. He needs help with performing ordinary self-care tasks and a range of other sensitivities which require careful attention to keep him safe and happy. He is also clearly a source of great affection and joy for you, but his needs will define the way you live indefinitely.

Exceptional circumstances – family hardship

111 On your plea, it was conceded by the prosecution that it was open to me to find that exceptional circumstances exist such that mercy should be extended to you to avoid the hardship that would flow to your youngest child if you were to be imprisoned. I find that such circumstances are in existence by reference to the range of materials authored by the medical professionals about your son's needs. On that basis, I have found that exceptional circumstances are established such that attract the application of the principle of mercy; this sentencing discretion should be exercised in favour of a disposition that does not involve your imprisonment and its consequences for your young son.

Prospects of rehabilitation – Ms Williams

112 I am obliged to deal with the issues that were raised about your statements to the assessing officers for your corrections report. I raised this with your counsel. For whatever reason, your capacity to unequivocally admit the offending is uneven; it varies between the psychological report and the report for the corrections

¹³ Ibid at paragraph [44]

assessment. In the end, it was submitted that the Court might find itself 'not overburdened with evidence of remorse', and indeed that is so. Absence of remorse is not a matter in aggravation of course. I make no positive finding that you are remorseful.

113 I am obliged to have regard to your prospects for rehabilitation. The assessing psychologist observed that while you have some troublesome traits, I interpolate many of these arose from your disturbed childhood; you also possess a number of balancing positive traits: strong emotional connections, in particular loyalty and a tendency to extend help to others in distress.

114 In considering the nature and content of your community correction order, I have considered the submissions made by your counsel and in particular my understanding of the level of caregiving that you must provide on a daily basis to your son. I have also had regard to the range of physical ailments from which you currently suffer.

Mr Sexton

Personal circumstances – Mr Sexton

115 You are now 27 years old. You were 24 at the time you committed these offences. You now live in an eastern suburb of Melbourne. You went through primary school and high school to the end of Year 11 in Melbourne.

116 After leaving school, you have been consistently employed mostly in labouring, concreting, pool tiling, plastering and building industries.

117 At the time of your sentence indication hearing you tendered an employer's reference from a roller-door installation company, but by the time of the plea you had changed to working in the bricklaying trade.

118 You live with your mother and stepfather. It was submitted that you were in a period of using cocaine at the time of your commission of these offences; but that

you have now detached yourself from this habit and the associates with whom you shared it.

Prior criminal history – Mr Sexton

119 You admitted a criminal history. It shows a prior conviction for recklessly causing injury in 2013, burglary and intentionally damaging property in 2016, robbery, criminal damage, unlawful assault and using a carriage service to menace in 2016, intentionally causing injury and false imprisonment in 2016, and in 2017 and 2018 you were found to have contravened community correction orders imposed for a range of this offending.

120 On the sentence indication hearing, I requested further information about the community correction orders you had been subject to, and I was assisted by the provision of a contravention report dated 15 July 2022. I requested this information because I was concerned that you had been placed on CCOs more recently and had breached one or both of those orders.

121 This report sets out your engagement with two orders which commenced respectively on 20 May 2021 and 29 June 2021. I note both orders have now expired. The report sets out your engagement throughout the orders and describes this as “largely positive”. You attended for drug and alcohol treatment and rehabilitation, and although there were problems not of your making with accessing the psychology program you were assigned to, you successfully completed your obligations under this aspect of the CCO. In the main, you attended the anger management programs as directed.

122 You were breached on those CCOs by reason of your admission to possession of a prohibited weapon. The charge appears to have arisen on the basis of your presence in a car during a police search of that car, at which time you admitted that this item belonged to you. That case has not been determined yet and remains outstanding in the Magistrates’ Court. I accept though this, if proven, is a minor breach in the scheme of things.

123 I have had regard to your prior criminal history; it is concerning for someone of your age. However I also note that you have, in the most part, complied with your more recent court orders. You were found to be suitable for another community correction order.

Matters in mitigation – Mr Sexton

124 In your case, your counsel submitted that the case of *Boulton v The Queen*¹⁴ stands for the appropriateness of a community correction order in your case.

125 I accept that your plea holds within it an aspect of remorse, and I apply that in mitigation of your penalty.

126 While your early criminal history is concerning, your recent application of yourself to the community correction order, your capacity for work, and your willingness to accept responsibility for this offending, show that you do have at least some capacity for rehabilitation, and that is why, with some hesitation, I came to the conclusion that I did on your sentence.

Mr Al Zwainy

Personal circumstances – Mr Al Zwainy

127 You are now aged 26, and you were 23 at the time you committed this offence.

128 You have two elder brothers. Your parents were born in Iraq, but separated when you were about four years old. You have half-siblings in your father's new marriage. After the separation, you were cared for full-time by your father and lost contact with your mother until you were 12. Your mother moved away and commenced a new relationship. In your own household, you had to form a new relationship with your stepmother, which was not always easy.

¹⁴

[2014] VSCA 342

129 You suffered physical abuse at the hands of your father, some of it entering the realm of cruelty. It was very unpredictable when you would receive this treatment. You were chronically fearful.

130 At 17 you left your father's home for a while to stay with your mother, but returned subsequently.

131 You completed Year 12 and have worked in a range of labouring type jobs since finishing school: furniture removal, fencing, and truck maintenance.

132 You have some history of cannabis and illicit drug use, though not apparently of a seriously troubling character.

133 You have been in a range of relationships, the current one lasting 2½ years and described by you as a caring one.

134 At 17 you were involved in a car accident and have suffered with problems with your eyesight, headaches and memory loss since that time, though recent investigations have shown no fundamental defects in relation to your spine or brain.

Matters in mitigation – Mr Al Zwainy

135 You have no prior convictions and have no subsequent charges, and I accept that this offending was strikingly inconsistent with your otherwise steady character.

Remorse

136 At the scene and while in the midst of committing this offence by your presence and verbal encouragement, you sent text messages expressing your broad discomfort with the unfolding scenario; so I accept that while you knew what you were doing was wrong, you lacked the judgment of staying clear in the first place, and you lacked the courage, which I accept would have been very great, to extract yourself once these events were unfolding.

137 Your conduct after the offending in delivering yourself voluntarily to the police station and making key admissions to police, in particular placing yourself at the scene and exculpating an innocent man the police had previously charged, is significant. It shows you did take responsibility, take it early, and in doing so implicated yourself and prevented an injustice. I regard this as very significant. It was conceded in your plea that you were probably always going to be detected and at least interviewed by police, but your exoneration of an innocent man does speak to your remorse and good character.

138 I have already addressed the utilitarian value of the plea in circumstances where proof might not have been straightforward. However, in your case I am also prepared to accept that your guilty plea also has within it a subjective element of remorse indicated not only by your plea but by your preparedness to avert a potential injustice to another.

Psychological material

139 A report authored by Mr Simon Candlish, psychologist, was tendered on your plea. The content of that report was not used to argue that the principles of *Verdins*¹⁵ are applicable in your case, given that in the opinion of Mr Candlish there was no clear relationship between your symptoms and your offending.¹⁶ There was a 'diagnostic impression' of a persistent depressive disorder of a mild nature. It seems that much of your distress stems from the fact of your continuing court case. This reflects back into the finding I have already made about delay being punitive in your case. I accept this period has been stressful for you, which I think augurs well for your potential for rehabilitation.

140 Mr Candlish undertook a risk assessment in which he found you to fall into a category where the recidivism rates, taking into account the time you have spent subsequently offence-free, are much lower than the base rate in this group.

¹⁵ Supra, (2007) 16 VR 269

¹⁶ Candlish report at [72].

141 Your bail conditions have, for three years, prevented you from seeing your co-accused. In that time you have developed a relationship with a supportive partner who was in court at your plea. It was submitted that your partner has read the psychological report about you and has remained supportive.

142 I accept that you are now in an adult and durable relationship that has supported you during this time on bail awaiting your case's conclusion. It is positive that you have now what appears to be a positive and adult relationship at the centre of your life.

Submissions as to non-conviction – Mr Al Zwainy

143 Mr O'Halloran, who appeared on your behalf, Mr Al Zwainy, submitted that I should consider not recording a conviction when I imposed a community correction order. Mr O'Halloran relied on the matters in s8 of the *Sentencing Act*, and in the light of the effect of the *Spent Convictions Act* 2021.

144 The prosecutor submitted that the objective offending was too serious for such a disposition, and that the material in relation to how such a record would affect you was insufficient: there was no particular scenario given wherein a record of conviction would hamper your rehabilitation.

145 I have considered the matters in s8 of the *Sentencing Act* and the material before me. You are still a relatively young person at 26 and have suffered a kind of paralysis of your working life these last three years.

146 I have considered the matters in s8 of the *Sentencing Act*, and in particular the nature of your offending, your character and past history (no prior convictions, and expression of real reluctance in the course of the offending), and the potential impact of the recording of a conviction on you, and in all the circumstances I will not order a conviction be recorded.

Matters in mitigation – all accused**All accused: Current sentencing practices**

147 Sentencing for the charge of blackmail, Ms Williams, encompasses a broad range of culpability, and therefore a broad range of dispositions. The range seems to be from an adjourned undertaking to sentences involving many years of imprisonment, though the courts have generally imposed custodial sentences given the gravity of this charge.

148 The sentencing practices for the charges of intentionally causing injury and recklessly causing injury are similarly broad and fact-dependant.

149 I have considered the range of sentences in other cases. No case is like this at all, but I have considered the general landscape.

All accused: Delay

150 I note there has been significant delay in the resolution of your case, and that the charges you have pleaded guilty to are significantly different from those which you originally faced. It has taken three years for your case to resolve, during which time you have each demonstrated your ongoing rehabilitation (I have dealt with my reservations about Mr Sexton) and complied with onerous bail conditions which continued for some years. I accept that the delay of three years between your offending and this sentence, and the uncertainty you experienced in that time, has been punitive for each of you, and I have taken that into account.

All accused: Covid-19 pandemic circumstances

151 I will not be sentencing any of the three accused in this sentence to imprisonment. One of the factors pulling away from such a disposition is the harsher conditions experienced by prisoners brought about by the necessity to manage the Covid-19 pandemic.

Parity: Williams, Sexton, Al Zwainy (De Silva)

152 I have turned my mind to parity as between co-accused in this case. There is significant disparity in the structure of the pleas. Ms Williams (and I note Mr De Silva who I have previously sentenced) pleaded guilty to the much more serious charge of blackmail, as well as to charges of recklessly causing injury on a complicity basis. Mr De Silva and Ms Williams called in aid very different but very powerful matters in mitigation, though they had very similar levels of culpability in relation to the actual offending. Mr De Silva could rely on previous good character and a difficult 5-day remand, among other things. Ms Williams' exceptional family circumstances weighed heavily in her favour in her plea.

153 Each accused's punishment and treatment needs on a CCO, and their capacity to do community work, however, are quite different. Mr Sexton pleads guilty to the charge of intentionally causing injury, which carries double the maximum penalty of recklessly causing injury to which his co-accused Mr Al Zwainy pleads. Mr Sexton and Mr Al Zwainy are separated by significant matters such as Mr Al Zwainy's remorse and lack of prior history and good prospects of rehabilitation. In the end, as I have indicated, each of the accused will be subject to a community correction order, the duration of which and content of which is to be tailored to their level of need and liability, mitigated by the matters personal to them. But each accused has a different starting line and different considerations along the way, pulling him or her more deeply into their own incomparable category.

Sentencing principles

154 I must apply the proper sentencing principles in your case. As I have already said, the role for general deterrence is central in sentencing for blackmail cases. Specific deterrence I find has little weight, with the exception perhaps of Mr Sexton's case. Punishment is required, and denunciation of this behaviour. Each of the CCOs I will impose will be directed, in part, at your rehabilitation.

Disposition

155 Each of you will be subject to a community correction order. Each of you will have different 'special conditions', but the standard or 'core' conditions are the same and apply to each of you:

- (a) You will be first subject to the standard conditions of a community correction order. That means, importantly, that you must not commit any other offences that are punishable by imprisonment during the term of your order. If you do, you will be brought back to court before me and resentenced for these offences.
- (b) You must report to the relevant Community Corrections Service stated on your order within two working days of today.
- (c) You are required to advise your supervisor in the Corrections office of any change of address where you are living or working and you must do so within two clear working days.
- (d) It is a term of all community correctios orders that you must submit to visits as directed and you must obey all of the instructions and directions of a Community Corrections Officer. You are not able to leave the State of Victoria without their prior permission. That is for the entire period of the order.

156 I turn now to the special conditions that will apply to each of you, and the duration of each order.

Ms Williams

157 Ms Williams, on the charges of blackmail and recklessly causing injury you are convicted and sentenced to a community correction order of 24 months' duration. I considered whether I should be attaching a community work condition to that order, but for reasons I have already stated I do not do so.

158 You will be obliged to comply with the core conditions of the community correction order, and, in addition, special conditions that I will attach are to:

- (a) submit to supervision with an allocated case manager;
- (b) comply with conditions directed at mental health treatment; and
- (c) comply with assessment and any recommended treatment under offending-behaviour programs.

159 I am not attaching any conditions of non-association.

160 Pursuant to s 6 AAA of the *Sentencing Act*, I declare that had you been found guilty after a trial for this offending I would have imposed a sentence of imprisonment of 18 months with a non-parole period of 12 months.

Mr Sexton

161 On the charge of intentionally causing injury, you are convicted and sentenced to a community correction order of 24 months' duration.

162 In addition to the core conditions of the community correction order, special conditions will be to:

- (a) submit to supervision with an allocated case manager;
- (b) complete 150 hours of unpaid community work;
- (c) attend for treatment and rehabilitation as directed for drug use;
- (d) attend for treatment and rehabilitation as directed for program to reduce reoffending; and
- (e) attend for judicial monitoring in three months' time to report on your progress.

163 Pursuant to s 48 CA of the *Sentencing Act* I note that hours spent in programs and rehabilitation can be attributed to the work hours requirement.

164 Pursuant to s 6 AAA of the *Sentencing Act*, I declare that had you been found guilty after a trial for this offending I would have imposed a sentence of imprisonment of 16 months with a non-parole period of 10 months.

Mr Al Zwainy

165 On the charge of recklessly causing injury you are, without conviction, placed on a community correction order with a duration of 12 months. On the charges of possessing a drug of dependence (charges 2 and 3) and the charge of possession of a schedule 4 poison I impose, without conviction, an aggregate fine of \$800.

166 In addition to the core conditions of the community correction order, a special condition will be to:

(a) complete 60 hours of unpaid community work.

Ancillary Orders

167 In Ms Williams' case, a disposal order was sought pursuant to s77 of the *Confiscation Act* of an item of 'negligible value'. The prosecution sought disposal of a seized black iPhone, being property of 'negligible value' or being property not fit for the use for which it is intended. The application was opposed. It was submitted that the iPhone was not of 'negligible value', and in any event the phone was not properly to be considered as used 'in connection with the commission of the offence'. I accept that the iPhone, whether or not it ought properly be considered to have been used in connection with the offence, is not of negligible value in the sense contemplated by this section: it was argued, and I accept, it contains a range of personal digital material that is neither replicated elsewhere nor properly backed up for a range of reasons. While the offer to extract this material prior to the item's destruction may have ameliorated the problem, I was not satisfied that this process would render the item 'of negligible value.' I do not make the order for disposal in that case.

168 I make the other disposal orders, which were unopposed, in Mr Sexton and Mr Al Zwainy's case as sought.