

STATE OF TASMANIA v KRISHNA KALI BROWN
COMMENTS ON PASSING SENTENCE

GEASON J
18 MAY 2020

Ms Brown, you appear for sentence on a charge of causing grievous bodily harm by dangerous driving.

By your plea of guilty you have accepted that under the influence of alcohol, you drove at an excessive speed and failed to keep your vehicle under proper control. In the course of your driving you caused grievous bodily harm to your son, D.

On 31 August 2017, you were at home with your children. You had been drinking. You decided to drive from your residence in Penguin to the KFC in Ulverstone. Having done that, you drove to Kimberley where you visited friends. You purchased alcohol on the way. There you consumed that alcohol. When you left Kimberley to travel home to Penguin, D was your front seat passenger.

As you were navigating a right-hand bend on Railton Road at about 11.25pm you say you attempted to adjust the car radio. Driving past a cautionary sign which recommended a speed of 65 km/h on the approaching corner, you over-shot the corner, your vehicle crossed both lanes and went into the gravel, whereupon you attempted to steer the vehicle back to the correct side of the road causing it to roll a number of times before it came to rest. It suffered significant damage. Glass and debris were strewn across the road. There was a 17.3 metre skid-mark on the road, and after that a 2.1 metre gouge, followed by a long gouge through grass. Police estimate that the vehicle was travelling at about 94 km/h when you left the road. Members of the public came upon the accident and called police.

You and your passengers, your sons T and D, were taken to hospital. T received minor injuries. D suffered the worst injuries. He received a 20cm laceration to his scalp, running from the top of the head to the back of the scalp. It also involved the right temple, lacerations to his left and right ear and hand, and a significant laceration to his elbow. He required surgery to suture the scalp and elbow wounds. There was an area in the middle of the scalp wound that could not be re-joined and it was dressed in the hope that it would heal over time. The size of this wound created a high risk of infection. The laceration on the elbow could also have lead to serious infection such as septic arthritis. The State asserts, and you have accepted by your plea, that the injury to D's scalp and elbow, were injuries that were likely to cause serious injury to health and thus constituted grievous bodily harm for the purposes of the *Criminal Code*.

Initially you denied that you had been the driver of the vehicle, though you provided a blood sample for analysis which returned a reading of .179 grams of alcohol in 100 millilitres of blood.

In September 2017 you admitted to police what they no doubt suspected, that you were the driver at the time of the accident. You also admitted that you were disqualified from driving at the time as a result of being served an excessive drinking notice on 5 August 2017.

This episode is another example of the consequences of your long-standing issue with alcohol. I have received a report from the Tasmanian Health Service about you to assist me to understand your personal circumstances better. I have received too, a report from Dr Kirkman dated April 2018. Broadly, it confirms the contents of the report prepared by Dr Tuck on behalf of the Tasmanian Health Service.

Alcohol appears to have been a family issue during your childhood, so much so that you were raised by your grandmother due to problems with your mother's alcohol consumption.

You did not have contact with your father until adulthood. He is currently serving a long prison sentence. You were involved in a violent relationship and excessive use of alcohol was a characteristic of that relationship.

You have also used cannabis to alleviate pain associated with your osteo-arthritis and to assist with sleep. I am told that this use is relatively infrequent and no other drug use is reported.

You have acknowledged that alcohol use has had a negative impact on your life, and this offence is an example of that. Your explanation for driving on this night is a typical one: the procurement of food and socialising for the purposes of further alcohol consumption. You were apparently under some stress at the time, but you are aware of the correlation between stress in your life and the increased consumption of alcohol. Your record shows a number of drink driving offences and you should be aware of the importance of not driving having consumed alcohol. It is not just the risk of being caught and disqualified, but the risk of injury to others. Your passengers, D and T, were wholly dependent on you that evening, they entrusted their safety to you. They had no other means of getting home except with you. You failed them in order to satisfy your own desire to consume alcohol and socialise with your friends.

As far back as 2008, a report associated with your participation in a probation order records that alcohol was a problem for you during the period of probation. I note that you attempted to complete the Sober Driver Program without success. Whilst that is some time ago it indicates that attempts have been made to assist you in the past in relation to alcohol consumption in combination with driving, but apparently without success.

Not unusually for this type of offending you stated that you did not feel affected by alcohol when you chose to drive. According to the report, you attributed the accident as much to your inattention due to attempting to tune the radio, as to your alcohol consumption. In my view, that downplays the significance of your alcohol consumption to an extent that suggests you lack insight into the risks of drinking and driving, even after the fact of your son sustaining serious injuries in an accident contributed to by your having been drinking.

More positively it is reported that you have curbed your drinking since the accident, reducing it to once a week. It is also reported that you demonstrate some remorse, and Mr Hilly has reinforced that in his helpful plea in mitigation. I am told that your relationship with D has improved since the difficulties associated with the accident. I have received a victim impact statement from him and I have regard to its contents.

I accept that you have a strong sense of guilt for the injuries you inflicted upon him, and that this has affected the whole family. I also accept that you have endured anger from within your community. Those consequences should serve to cause you to reflect upon your conduct.

I cannot ignore your record for offences involving the use of a motor vehicle after you have consumed alcohol. Whilst you are not to be punished twice for prior offences, they deprive you of the opportunity to claim that driving under the influence of alcohol is out of character for you. Plainly it is not. In that respect, your record indicates a charge of exceeding the prescribed alcohol limit in 2003, again in 2006, a driving whilst disqualified also in that year,

refusing a breath analysis in December 2007, exceeding the prescribed alcohol limit in 2008, and another one in 2017. I do not ignore the fact that most of those offences occurred some time ago in a cluster between 2003 and 2007, but despite a long gap, you had fallen back into that pattern in 2017 and again on this occasion.

I have received a reference from your employer which identifies you as a long term employee, and you are described as an asset to the company. That reference indicates your capacity to engage in the community in a constructive way.

Your offending is serious and the consequences of it could have been much worse than they were, though of course they were serious enough. I accept, as I have said, that you are remorseful and that this accident will have impacted your relationship with your son, which is no doubt an important relationship for you. I am satisfied that those consequences will have a significant effect upon your future conduct. Whilst your record is a poor one, this is the first instance in respect of which serious consequences, such as injury to another, have resulted from your behaviour. Let it be a wake up call.

The Parliament has emphasised the need for weight to be afforded to the principle of general deterrence when it comes to sentencing for offences such as this. Whilst I am urged to differentiate your sentence from others dating as far back as 2005, which were referred to by Mr Hilly and the subject of a table tendered by him, and on the basis that the injuries sustained in most of those cases were much worse than in this case, it cannot be ignored that the actual consequences of this type of offending are out of the control of the offender.

They are relevant to assessing the objective seriousness of the offending, and they are relevant to sentence, but in the context of general deterrence, the Court is addressing the need to deter others from taking the risk of driving having consumed alcohol. General deterrence is directed towards discouraging people from placing themselves in control of a motor vehicle under the influence of alcohol at all. Sentencing is a process of instinctive synthesis. In emphasising general deterrence, I am merely exposing that matter as one which requires the imposition of a sentence directed towards discouraging actions such as yours. In very simple terms, that consideration is less about you, and more about the Court sending a message to the community about the consequences of behaving in the way you have.

I have regard to your personal circumstances and the fact that you are responsible for the care of your son, D, who was injured in this accident. It is clear to me that if you can address your personal circumstances the likelihood of reoffending is reduced, and in that respect I intend to impose an order directed towards that. As I have said, I accept that this episode will have impacted you significantly and caused you to reflect upon your behaviour. I acknowledge your plea of guilty and, though a late plea, I accept that it has a utilitarian benefit. For that benefit I will discount the sentence I would otherwise have imposed by 10%. I do not ignore the fact that you have waited some time for sentencing whilst reports have been prepared and that will have impacted you. You have been in a sort of limbo for some time, with this matter hanging over your head.

The circumstance of your offending not only risked the lives of you and your passengers, but also other road users. Having regard to the need to deter others, and recognising the sentencing principles articulated in the cases to which I have been referred, the conclusion that a term of imprisonment is required cannot be avoided.

Ms Brown, on the indictment I convict you of causing grievous bodily harm by dangerous driving and I sentence you to 18 months' imprisonment.

In accordance with sentencing principles articulated by the High Court in cases such as *Dinsdale*, I am required to consider whether the sentencing objectives that are relevant here can be satisfied while suspending some or all of that sentence.

In my view, it is possible to do that, but I have concluded that an actual period of incarceration is required to punish you, to deter you from future offending of this type, to vindicate your victim who suffered serious injuries because of your actions, and to deter others. Accordingly, I have decided that I cannot suspend the whole of the sentence.

I will suspend the operation of the last 12 months of that sentence. I suspended that on condition that you commit no offence punishable by term of imprisonment for a period of three years.

I also make a community correction order to operate for a period of 12 months from your release from prison. It will contain the core conditions along with the following special conditions:

- 1 That you are to submit to the supervision of a probation officer; and
- 2 That you are to submit to such alcohol and drug counselling, including residential treatment programs as directed by your probation officer.

I am also dealing with two matters of a summary nature on complaint 55217/2017. Each of these offences is a subsequent offence for the purposes of sentencing under the *Road Safety Alcohol and Drugs Act 1970* (the Act).

On the charge of driving whilst disqualified, contrary to s 19A(a) of the Act, I sentence you to 3 months' imprisonment concurrent with the sentence I have just imposed, and I disqualify you from holding or obtaining a driver's licence for a period of 2 years from the date of your release.

On the charge of driving a motor vehicle whilst exceeding the prescribed alcohol limit, contrary to s 6(1) of the Act, you are sentenced to 3 months' imprisonment to be served concurrently with the other sentences I have just imposed, and you are disqualified from holding or obtaining a driver's licence for a period of 2 years, which period commences upon your release from prison. It follows that the disqualification too, runs concurrently with the sentences that I have just imposed.

I have done that, that is, made those sentences concurrent in order to give effect to the principle of totality and to recognise the fact that the conduct arises out of the same episode, the subject of the indictment, even though they constitute discrete offences at law.

Ms Brown, the net effect of the sentence I have just imposed is that you are sentenced to 18 months' imprisonment. I have suspended 12 months of that sentence on condition that you are of good behaviour for a period of three years and subject to the supervision order that I have made. That means that you are required to serve 6 months of the sentence that I have just imposed. I have disqualified you from driving for two years from your release.