

STATE OF TASMANIA v BAILEY DENNIS ROBERTS
COMMENTS ON PASSING SENTENCE

BRETT J
10 JULY 2020

Mr Roberts, you have pleaded guilty to the crimes of aggravated carjacking and dangerous driving. You have also pleaded guilty to the summary offences of evading police with aggravated circumstances, unlicensed driving, failing to submit to the taking of blood and failing to comply with a direction to submit to an oral fluid analysis.

All the crimes and offences arise out of the same series of events, which took place on 1 January 2020. At 1:25pm, you called a taxi to your home. When it arrived, you got into the front passenger seat and asked the driver to take you to an address in the city. The driver asked for a prepayment, and you responded that you would need to get money from an ATM at a nearby service station. Before leaving your house, you had armed yourself with a knife, which you had hidden in the pocket of your jumper. During the journey to the service station, you produced the knife and said to the driver "I need your car, just get out of the car, I need your car. Leave your phone and wallet in the car". As you said this, you were holding the knife in front of the driver's stomach, moving it backwards and forwards, with the tip pointing towards him. The driver stopped the taxi in the middle of the road, and fled. He left his mobile phone and wallet in the car. You then got into the driver's seat and drove away.

You then engaged in a course of driving, which constitutes the crime of dangerous driving. The driving took place over a distance of approximately 33 km and a time period of approximately 30 to 35 minutes. You drove at high speed and in a highly dangerous and erratic manner. Some of the dangerous aspects of the driving are as follows:

- Soon after you drove off, you entered an intersection at Rokeby at speed, causing other traffic to take evasive action.
- A couple of minutes later, you drove at high speed towards an intersection and then entered the intersection by driving through a red light. As you did so, you veered into a left-hand turning lane, in order to speed past stationary vehicles waiting at the red light.
- You drove through a red light at another intersection, notwithstanding that a vehicle was lawfully entering from your left at the time. You swerved around that vehicle to avoid a collision.
- At another intersection, you again drove around vehicles which were stopped at the lights by using the left hand turning lane. A member of the public was so concerned that she recorded the driving on her mobile phone.
- You continued along the South Arm Highway. When you reached the Mornington roundabout, you proceeded straight through the roundabout without giving way to other traffic.
- As you drove along the Flagstaff Gully Link, you crossed the continuous white line into the path of oncoming traffic, in order to overtake another vehicle. You did this as both vehicles were turning right onto the ramp of the Tasman Highway. Other vehicles were forced to brake heavily to avoid a collision.

- You then drove along the highway in an aggressive and erratic manner, which included weaving in and out of lanes, causing other vehicles to take evasive action. At one point, when you were boxed in by two other vehicles, you travelled onto the gravel shoulder of the road to get past the traffic. At this point, you were driving at an approximate speed of 150 km/h in a 110 km/h zone. You continued to travel at this speed when you entered a 70 km/h zone.
- At Rose Bay, you turned onto the East Derwent Highway. You were driving at a speed of 120 km/h in a 70 km/h zone. It was at that point that a police vehicle attempted to intercept your vehicle by activating emergency lights and sirens. However, you accelerated away from the police, weaving through traffic at an estimated speed of 114 km/h. This action constitutes the offence of evading police with aggravated circumstances.
- As police followed you, the traffic became heavy. This forced your speed to slow to 90 km/h, still in the 70 km/h zone. You continued to weave through the traffic.
- A little further on, you increased your speed again. You entered another intersection through a red light travelling at a speed of 117 km/h. You then drove onto the incorrect side of the road to overtake other vehicles. At this point, your speed had increased to 150 km/h. Shortly after, outside Risdon Prison, you executed a U-turn and accelerated away from police at a speed of approximately 145 km/h.
- At the intersection of the East Derwent highway and Golf links Road, you drove straight through a red light without slowing or braking at all. As you did so, a 10-year-old girl was riding her bicycle across a pedestrian crossing in the direction in which you were driving. You went through another red light at an intersection further along the highway, again without slowing at all.
- As you approached another intersection, you were forced to brake heavily due to traffic. Your vehicle travelled up and over a traffic island, before continuing through a red light at the intersection. Other vehicles were forced to take evasive action to avoid a collision.
- You continued to drive along the highway, weaving through traffic without indicating and travelling at high speed. An attempt to stop your vehicle by the use of road spikes was unsuccessful.
- While travelling on the Tasman Highway, you drove onto the shoulder of the road for approximately 200 m. At this point, you were travelling at 160 km/h in a 110 km/h zone.

The driving eventually came to an end when the taxi crashed into a dividing wire separating the opposite flows of traffic on the highway. The vehicle spun out and came to a halt off the road. It sustained extensive damage as a result of the collision. You were apprehended by police almost immediately and have been held in custody since then.

When you committed this crime, you were not licensed to drive a motor vehicle. Further, after your arrest, you refused to submit to the taking of a sample of blood and to an oral fluid analysis.

The taxi driver has provided an impact statement. It is clear, as would be expected, that he found the carjacking distressing and traumatic. He was not able to work as a taxi driver for a significant

period and this caused financial hardship and stress. When he was ready to return to work, it took him some time to find employment. Understandably, he still experiences considerable fear and anxiety when driving a taxi.

You are 19 years of age. You were exposed to and subjected to extensive family violence, neglect and physical and sexual abuse as a child. There was extensive child safety involvement with your family and you were removed from the family home and placed in foster care on a number of occasions. At the age of 11, you were removed permanently and placed in a youth shelter. You have lived in youth shelters or on the streets ever since. Despite these disadvantages and a relatively low intellectual capacity, you managed to complete your secondary education. You have had long-standing problems with the use of cannabis and more recently amphetamines. You have also acquired a significant criminal history. In 2018, you were convicted of driving as an unaccompanied learner driver and with a prescribed illicit drug present in your blood. Three weeks before you committed the criminal conduct with which I am dealing, you were sentenced by the magistrates court for numerous offences, which include a number of assaults as well as bail offences and several breaches of restraint orders and family violence orders. The facts relevant to the assaults indicate a propensity for violence. They related to a number of different victims, and involved apparently gratuitous violence of some gravity. You were sentenced to a term of six months' imprisonment, backdated to 27 July 2019. The remaining 49 days of that sentence was suspended for a period of 12 months. You breached the terms of that suspension when you committed these crimes, three weeks later, and the prosecution has applied to have you dealt with for that breach.

Your mental health at the time of committing these crimes is the subject of a forensic psychiatric report prepared by Dr Mike Jordan. The potential relevance of your mental health arises from comments made by you at the time of your apprehension and subsequently, which suggested the presence of paranoid thoughts. For example, when you were first arrested by police after the collision which brought your vehicle to a stop, you continually repeated comments to the effect that you were being set up and that the police were trying to kill you. Nursing notes of an examination conducted two days later in prison contains a comment that you presented as "facile and appropriately smiling and giggling incongruent with his circumstances scattered with paranoid thoughts but no overt psychosis". Dr Jordan's conclusion is that at the time of this offending you were experiencing a drug induced psychotic episode in which you are experiencing paranoid thoughts. The psychosis is described by the doctor as transient and induced by drug taking, in particular amphetamines, which had occurred about 48 hours earlier. The author suggests that the paranoia affected your capacity for reasoning and judgment.

This opinion helps explain why you acted as you did. However, the psychosis was induced by your drug taking and you have a history of taking illicit drugs. Although there is no evidence that you have experienced psychotic episodes in the past, I indicated to your counsel that I would not accept that your mental state mitigates your moral culpability without evidence to establish that you could not reasonably have anticipated that taking drugs could affect your mental health in the way that it did. In view of your relatively extensive drug history, I considered it to be improbable that you would not anticipate that taking drugs could affect your capacity for judgment and reasoning. Your counsel has now indicated that you do not press an argument that your mental state reduces or mitigates your moral culpability or indicates that your case is not a proper vehicle for general deterrence. On the other hand, although drug taking can be an aggravating factor if there is evidence that the effect on your mental state ought to have been anticipated by you, I will not regard it as such. In my view, the evidence does not support such

a conclusion. I have indicated to both counsel that I intend to proceed on the basis that the effect on your mental health is a neutral factor as far as the assessment of sentence is concerned. Neither counsel has sought to persuade me otherwise.

However, your counsel did submit that your criminal actions were not premeditated. Although you called the taxi and had a knife with you, you did not plan the carjacking, but rather acted spontaneously once you were in the taxi. You took the knife with you for general protection, having regard to your paranoid thoughts. I accept this and will proceed on that basis. Further, your counsel submits that you are remorseful and points to your early pleas of guilty in that regard. Again, I accept that submission.

Your young age, the disadvantages suffered by you in your childhood and your genuine remorse suggest that rehabilitation is and remains an important sentencing consideration. However, this was extremely serious offending. The carjacking was aggravated by the use of the weapon. It was carried out against a vulnerable victim. The taxi driver was directly and immediately threatened by the use of the knife. The dangerous driving was perpetrated over a significant distance and for an extended period of time. Almost all of the dangerous driving was perpetrated through built up residential areas and on major highways. It all took place through significant traffic flow. You entered a number of busy intersections at high speed and, on several occasions, by driving through a red light, and notwithstanding the presence of other traffic entering the intersection. On more than one occasion, you did not moderate your speed as you did so. The danger involved in doing this in particular, was extremely high. Invariably, other traffic was forced to take evasive action to avoid collision. At one such intersection, you endangered a child riding a bicycle. You put numerous innocent road users, police and yourself at high risk of death or serious injury. The fact that that risk did not manifest is a matter of pure luck. The course of driving only came to an end because you lost control of the vehicle after colliding with the dividing wire. You did not desist of your own volition. Taken as a whole, it is difficult to imagine a more serious case of dangerous driving, other than those where the driving actually causes death or serious injury. General deterrence and denunciation are important and predominant sentencing considerations. This is so notwithstanding your age and background. Further, you did all this 3 weeks after the completion of a sentence imposed for serious offending, which included acts of violence. I conclude that personal deterrence is also an important sentencing consideration.

In my opinion, there is no option other than the imposition of a significant sentence of imprisonment. I will, however, allow for your release on parole at a time I consider appropriate having regard to the seriousness of the offending and the need for the protection of the public. I will do so as to permit the parole board the opportunity to support and encourage your rehabilitation. I will also suspend part of the sentence, and provide for supervision as a condition of suspension. I do so in the hope that after spending a significant amount of time in prison, you will be ready to commit yourself to a serious attempt at rehabilitation. In deciding to permit this opportunity, I have been heavily influenced by your still young age.

The orders I make are as follows:

- a You are convicted of the crimes and the offences to which you have pleaded guilty;

- b The suspended sentence of 49 days' imprisonment imposed by the magistrates court on 10 December 2019 is activated. It will be backdated to 1 January 2020. You are not eligible for parole in respect of that sentence.
- c In respect of the charge of evading police with aggravated circumstances, you are sentenced to imprisonment for a period of six months. That sentence will be served cumulatively upon the activated suspended sentence. I order that you not be eligible for parole until you have served one half of that sentence. In respect of this charge, you are disqualified from driving for a period of two years, which is the mandatory minimum.
- d For the crimes of dangerous driving and aggravated carjacking, and the summary offences of refusing an oral fluid test and failing to submit to the taking of blood, you are sentenced to a global term of three years and six months' imprisonment, which will be served cumulatively upon the sentence imposed for the evade police offence. The last 12 months of this sentence will be suspended for a period of 2 years, commencing on the day you are actually released from prison. The suspension will be on the following conditions:
 - 1 That you are not to commit another offence punishable by imprisonment during that period.
 - 2 That you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 2 years. That period will commence from when you lawfully cease to be imprisoned under this sentence. The Court notes that the conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within 3 clear days of the day that you lawfully cease to be imprisoned under the sentence. In addition to the core conditions the order shall also include the following special conditions:
 - (a) you must, during the operational period of the order, attend educational and other programs as directed by the court or a probation officer;
 - (b) you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer;
 - (c) the offender must, during the operational period of the order, undergo assessment and treatment for drug dependency as directed by a probation officer;
 - (d) the offender must, during the operational period of the order, submit to testing for drug use as directed by a probation officer;
 - (e) the offender must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;

You will not be eligible for parole until you have served one half of the operative sentence.

Further, in respect of those offences, you will be disqualified from driving for a period of two years. That period will operate cumulatively upon the two year disqualification imposed for

evading police. That will make a total disqualification of four years, which will take effect on the day you are actually released from prison.

In respect of the charge of unlicensed driving, which in your case because you have not been convicted of that offence before, is not an imprisonable offence, I impose no further penalty.

For the purposes of s 92A(3) of the *Sentencing Act*, I specify that:

- the total term of imprisonment which you are liable to serve in respect of all of the above sentences is three years and 49 days, commencing on 1 January 2020 (excluding the term which is suspended).
- The total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the operative parts of the said sentences, which is a total period of 18 months and 49 days.
- I make a compensation order in favour of Syed Aqeel Abbas Rizvi in respect of the damage to the taxi in a sum to be assessed, and I adjourn that assessment sine die.