

STATE OF TASMANIA v STEVEN CRAIG MURTAGH
COMMENTS ON PASSING SENTENCE

ESTCOURT J
22 JULY 2020

Steven Craig Murtagh was sentenced to a Drug Treatment Order on 22 November 2018 with a custodial component of 18 months imprisonment. The defendant had pleaded guilty to an indictment containing two counts of unlawfully setting fire to motor vehicles owned by David Lyons, two counts of burglary of motor vehicles owned by Glen Mead and Joshua Foster and two counts of stealing from those motor vehicles. All offences were committed on 1 May 2016. The defendant was heavily affected by drugs at the time and was acting out a sense of grievance he had with Mr Lyons. He subsequently crashed his mother's car. He was not licensed to drive and he removed a clamping device to use the car. He then entered a vehicle owned by Mr Scott Jenkins. The value of the motor vehicles destroyed was in total \$9500. Neither vehicle was insured. The items stolen were an orange fluoro jacket and a pair of trousers and a gym bag, a Stanley knife, an iPod and headphones and an ATM card respectively. None of the stolen property was recovered. The defendant damaged a motor vehicle while being arrested subsequently.

The defendant had also pleaded guilty to a second indictment containing firstly, one count of escaping from the lawful custody of the police officer by driving off after the officer had sprayed the defendant with capsicum spray. That offending occurred on 27 April 2017. The defendant was disqualified at the time and his friend Mr Ford's vehicle was unregistered and uninsured at the time.

I also agreed under s 385A of the *Criminal Code* to deal with a number of related summary matters. They were on complaint 4073/2017 – one count of driving whilst disqualified, one count of using an unregistered motor vehicle, one count of driving an unregistered motor vehicle and those offences occurred on 27 April 2017. The earlier complaint was 3312/2016, and I agreed to deal with count 11 on that complaint which was a charge of driving while not the holder of a drivers licence, count 12 which was a charge of unlawfully interfering with a clamping device; those events having occurred on 30 April 2016 to 1 May 2016, and count 13 and count 18 which were respectively one count of burglary of a motor vehicle and one count of injuring property. Those offences both occurred on 1 May 2016.

Following a cancellation hearing on 11 March 2020, I cancelled the Drug Treatment Order.

It was hoped that the defendant may have had the opportunity to engage in further residential rehabilitation at The Salvation Army Bridge Program and/or Missiondale prior to re-sentence. However, as of 11 March 2020, whilst The Bridge Program had placed a bed on hold for him and were willing to accept him directly from custody, the Bridge Program changed their position due to COVID-19 and were no longer accepting new participants. Therefore the defendant was not been able to engage in any further drug rehabilitation in the community.

The defendant has remained remanded in custody since 11 March 2020, having been refused bail in relation to a charge of aggravated armed robbery.

On re-sentence, counsel for the defendant Mr Fisher submits that the primary factors to consider are the time spent in custody during the Drug Treatment Order (DTO), time spent in residential rehabilitation and the overall level of compliance with the DTO.

The defendant has spent 269 days in custody, which it is submitted should be taken into account on resentencing.

The defendant served a total of 44 sanction days, which must be deducted from the 18 month custodial period, and of the remaining 225 days spent on remand this time, can either be deducted from the custodial period or recognised by backdating any terms of imprisonment imposed.

The defendant engaged in The Salvation Army Bridge Residential Program for 71 days from 6 May 2019 to 16 July 2019 and graduated from the program; something the Court Mandated Diversion Program (CMD) considered to be a remarkable achievement.

On 28 February 2020, CMD Hobart team leader Laura Blackwell gave evidence during the cancellation hearing that it was the accepted practice in the Magistrates Court that any time spent in residential rehabilitation by a DTO participant during the period of the order will be deducted from the custodial component on resentencing.

It is submitted on behalf of the defendant that on re-sentencing there should be a further reduction in the custodial component in recognition of the defendant's compliance with the Drug Treatment Order (usually referred to as "compliance credit").

I have read and considered a Cancellation Report written by Court Diversion Officer Frances Eschler, dated 29 November 2019.

The defendant demonstrated a high level of compliance with the attendance obligations of the DTO by attending:

- 24 out of 27 schedule case management appointments (89%)
- 11 out of 12 counselling appointments (92%)
- 53 out of 55 urinalysis appointments (96%)

Whilst he continued to struggle with drug use, the defendant tested clear to all illicit substances on 19 occasions during the DTO.

The defendant achieved a total of 71 days drug free before graduating from the 10 week residential rehabilitation program at The Bridge, Salvation Army.

It is submitted that this compliance over an extended period demonstrates that the defendant was committed to his rehabilitation and to complying with the program, despite his continuing struggle with drug addiction.

The defendant made progress by recognising that journaling his thoughts was therapeutic and recognised that he must deal with underlying emotions. He has continued the practice of journaling whilst in custody.

The defendant has also demonstrated, from custody, a continued commitment to his rehabilitation through seeking out support and engaging with services. He has expressed a greater level of insight and an acceptance of the level of support which he requires.

In the Cancellation Report, Frances Eschler noted that upon reading the cancellation report to Murtagh in custody on 8 October 2019:

"The defendant indicated that he is continually reflecting on what led to his poor decision making and is cognisant that for him to successfully address his drug use in the future that he will require support from services and must prioritise his own recovery rather than focusing on the relationships with his brother and partner."

The defendant engaged in fortnightly counselling with Louisa Kalimnios of Sexual Assault Support Services since beginning the DTO in 2018, and this has continued whilst in custody. Ms Kalimnios in a letter dated 20 February 2020 said of his recent engagement:

"He has shown good insight by identifying both the positives gained from (sic) which he can continue to build on, and the negative external and internal influences which led to his attempted removal from the program... it is my professional opinion that Steven possesses enormous capacity to successfully integrate into the community."

The defendant has continued to engage with counselling services within the prison. Monique Dykes, High Needs Support Counsellor at Rison Prison, who has known the defendant for over 6 years, has said in a letter dated 27 February 2020:

"... there has been a definite shift in his focus and desire to engage in support and counselling around his addictions wholeheartedly, acknowledging that in order to change his lifestyle he must commit to change and access supports offered 100% and not take these for granted... Breaking free of the cycle he has been in for many years and earning his children back is a strong motivating factor for him... In my experience, Steven's current mindset is at its strongest, having wavered in contemplation for some years and now firmly in an action stage."

In relation to a number of outstanding summary matters, the defendant was placed on a Deferred Sentence Order on 18 March 2020 by Magistrate Hay in the hope that he could engage in further residential drug rehabilitation. This Deferred Sentence Order is next listed for review on 27 August 2020.

It is also of note that the defendant's former partner gave birth to a daughter on 27 March 2020, and the defendant has not had any contact with his daughter.

In summary, Mr Fisher submits that on resentencing:

- 44 days should be deducted from the custodial period for sanctions served;
- 71 days should be deducted from the custodial period for time spent in residential rehabilitation;
- A further reduction in the custodial period for compliance credit is warranted;
- 225 days spent on remand could be recognised either by a further reduction in the custodial period, or by backdating any sentence;
- Suspending any further term of imprisonment would encourage the defendant to continue his efforts towards rehabilitation and allow him to engage in the current Deferred Sentence Order in the Magistrates Court.

I fully accept those submissions made by Mr Fisher and which I note are not opposed by counsel for the State, Mr Allen.

I propose to re-sentence the defendant to a period of 6 months' imprisonment from today, which is suspended on condition that the defendant commit no offence punishable by imprisonment for a period of 12 months.