

STATE OF TASMANIA v TOM ANDREW HICKEY
COMMENTS ON PASSING SENTENCE

ESTCOURT J
10 AUGUST 2020

The defendant, Tom Andrew Hickey, now 21 years of age, 19 at the time of these events, and residing in Arve Road at Geeveston has pleaded guilty to one count of causing grievous bodily harm by dangerous driving and a number of associated summary matters, namely, driving a motor vehicle whilst exceeding the prescribed alcohol limit with a reading of 0.108, being a first year driver with alcohol in his body, driving a motor vehicle whilst a prescribed illicit drug was present in his body, the drug being THC, using an unregistered motor vehicle, using a motor vehicle with no premium cover, driving whilst disqualified, using a vehicle in contravention of vehicle standards in relation to tyre tread requirements and using a vehicle in contravention of vehicle standards, in that the brake pedal had metal exposed on the pedal surface rather than rubber.

At around 7:00pm on Friday 17 August 2018 the defendant, along with two male friends, AH then aged 16 and JC then aged 17, drove a 1997 model green Hyundai Excel two door hatch back from Arve Road at Geeveston to the area of Southwood Bridge on Southwood Road where they met up with some others who had arrived there in separate vehicles. There the defendant and others consumed alcohol and drove the vehicles around the immediate area.

Later in the evening the defendant and his two friends decided to drive to Dover to attend a party at a friend's place where they had more alcohol. At around 10:00pm they went back to the vehicle to return to Geeveston. At this time JC was seated in the rear left passenger seat, AH was in the front passenger seat and the defendant was driving.

As the defendant drove along the Huon Highway from Dover towards Geeveston he drove through a sweeping left hand bend. The speed limit on this bend is 60km/h, but changes part-way through to 80km/h. This is in the vicinity of 6750 Huon Highway. At the time the road was damp and there was light rain falling.

The defendant travelled through this bend at excessive speed for the conditions. He lost control of the vehicle and it veered off to the left onto the grass verge of the roadway, while sliding and rotating anti-clockwise.

As the vehicle left the roadway it struck a small embankment at the edge of the driveway of 6750 Huon Highway which cause the vehicle to momentarily become airborne across the driveway before landing and hitting some shrubs and trees. The vehicle came to rest on the driver's side and right area of the roof with the front of the vehicle facing back towards Dover. The rear of the vehicle was embedded into a tree and the rear passenger and boot area had collapsed towards the front of the vehicle.

Police and other emergency services attended the scene. Police found JC trapped in the rear of the vehicle. He was cut free from the vehicle and air lifted to hospital in a critical condition. He was later transferred to Victoria for intensive care medical treatment.

Police saw a number of empty beer stubbies inside the vehicle along with the strong smell of alcohol.

The defendant and another passenger, AH, were found on the front porch of a nearby house.

A sample of the defendant's blood returned a reading of 0.108 grams of alcohol in 100 millilitres of blood (1106/2019, count 1). THC was also found in his blood (1106/2019, count 3). At the time of driving he was disqualified from driving by a New South Wales court for driving with a mid-range concentration of alcohol (1106/2019, count 1). Consequently, he was not permitted to have any alcohol in his body (1106/2019, count 2). The vehicle he was driving was unregistered, having expired on 20 January 2016 and consequently was also uninsured (1106/2019, counts 4 and 5).

The defendant sustained fractures to his left acetabular and left pubic ramus as well as to his right sacral and lumbar regions. Despite being requested to remain at hospital, the defendant self-discharged the following day against medical advice.

JC was initially admitted to the Royal Hobart Hospital under the emergency surgical unit. He was assessed as having the following injuries:

- Cervical spine: facet fractures C5-6 with dislocation, C7 spinous process fracture, facet fracture with dislocation;
- Extensive bilateral pelvic fractures;
- Bilateral small pneumothoraces;
- Bilateral pulmonary contusions and right lower lobe aspiration;
- Free blood in abdomen;
- Left humeral shaft fracture;
- Comminuted fractures to both scapula.

JC underwent surgery in Hobart before being transferred to Melbourne for pelvic and neck surgery. He was then transferred back to the Royal Hobart Hospital and later to St John's hospital for ongoing rehabilitation. He remains under the care of doctors for his physical rehabilitation, and still requires pain relief medications.

AH received some superficial marks and soreness to his left hip but was otherwise uninjured.

An officer from Tasmania Police Crash Investigation Services concluded that excessive speed for the conditions combined with defective tyres, an un-roadworthy vehicle and perhaps inexperience on behalf of the driver are all contributing factors to the crash.

The vehicle was inspected by a Transport Inspector and found to be in an un-roadworthy condition. Specifically, the front right tyre was found to be devoid of tread, and the rear left tyre was found to be below minimum tread depth. Additionally, the brake and clutch pedals were found to be non-compliant in that the rubber pads had worn away exposing the metal underneath.

The defendant was interviewed on 12 May 2019. He initially stated that he was in the vehicle at the time of the crash but was not the driver, although he later conceded that he could have been driving but did not remember.

Following the interview he was arrested, charged and admitted to police bail.

I have read a Victim Impact Statement prepared by JC. One of the biggest impacts on him after the crash has been that he cannot move freely anymore. Initially the doctors thought he might have been a paraplegic. He had a crushed pelvis and had to have a rod put in one side of his pelvis to the other. This gives him "a lot of grief" and is really painful all day. One of his legs is longer than the other now and this causes a lot of pain. He also had a steel plate put in his neck which means that he cannot move his head very far. The humerus bone in his left arm was snapped and anything over 1kg is too much for me to lift. He was in hospital for a long time and in the rehabilitation ward for 3 months. He has ongoing rehabilitation and takes pain medication. Since the crash, he has panic attacks. Loud noises make him feel scared and jumpy. He saw a psychologist for a while after the crash and was diagnosed with PTSD. His short term memory has also been affected. His memory is not good and he has trouble remembering conversations he has just had with people. His sleeping pattern is terrible. He either cannot sleep or falls into a deep sleep very suddenly.

The defendant has two convictions in New South Wales for two separate drink driving matters, both of which occurred on 1 January 2018 within about half an hour of each other. He has two prior convictions for driving whilst disqualified in Tasmania on 23 January 2017 and 15 March 2017. He has conviction for driving without proper control of a vehicle on 18 November 2016 which was dealt with by way of a traffic infringement notice.

As noted, the defendant is now 21 years of age. He still lives with his father and step-mother in their house at Arve Road, Geeveston. He is in employment with Nets Tasmania doing on site repair work at fish farms at Dover, Nubeena, and Triabunna.

He does not drive. He is fortunate that he is provided with transport to and from work by his employer and work colleagues. All of whom live in the Geeveston area.

He has an eight month old son who lives with his mother in Dover. The defendant has a reasonable relationship with the mother and he spends time with his son.

I have had the benefit of a pre-sentence report. The defendant is eligible for home detention, but not for community service as he has an injury to his knee suffered at work, from which he is still recovering.

I convict the defendant on all counts. I impose a single sentence of 18 months home detention. The order is to date from tomorrow and I direct that the defendant report to Community Corrections, at Highfield House, 114 Bathurst Street in the morning of tomorrow, 11 August 2020, for induction onto the order.

My order includes all of the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act 1997*, including s 42AD(1)(g) as to electronic monitoring.

As to ss 42AD(1)(g) and (h), the following conditions are added to the order:

- 1 you must, during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device.
- 2 during the period that you are required to submit to electronic monitoring:

- a you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
- b you must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
- c you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by:
 - i a police officer;
 - ii a probation officer or proscribed officer; or
 - iii another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring

In addition, the following special conditions are to be added to the Order:

- 1 you must, during the operational period of the order, remain at [the address specified] at all times unless approved by a probation officer.
- 2 tomorrow morning, you must attend the Community Corrections office at Highfield House for induction onto this order.
- 3 You must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times.
- 4 You must submit to the supervision of a Community Corrections officer as required by that officer.
- 5 You must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include:
 - a Any controlled drug as defined by the *Misuse of Drugs Act* 2001;
 - b Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.
- 6 You must not, during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol.

Finally, noting that you have not driven a motor vehicle since the date of the offending, I order that you be disqualified from holding or obtaining a driver's licence for a period of three years, backdated to 17 August 2018.