

I do not intend to make a drug treatment order. I am not satisfied it is appropriate to do so. Many of the preconditions of the order are satisfied. The connection with drug offending and his general background in terms of the use of illicit drugs, those matters are satisfied, but both reports need to be seen as presenting an interconnecting picture. A drug treatment order is indicated when prison is otherwise the inevitable result and all the other factors are satisfied. What makes it appropriate is if the Court takes the view that as a sentencing option it will promote rehabilitation and my experience with these orders, it requires that a very high level of commitment to rehabilitation be demonstrated, by not just being stated, but also by the surrounding circumstances. The view of the Court and the authors must be that everything is coming together to indicate that this is the time to emphasise rehabilitation over what would otherwise be a more punitive option. That is essentially the principle on which *Joseph* was decided, and it is the thing that gives the drug treatment order the best chance of being successful, given the acknowledged pressures that are on someone who would be residing in the community and attempting to get off a very significant drug addiction which has led to the offending and which sees them in the position that they are in. It seems to me that, having regard to the contents of the reports, and the opinions of the authors, that the requirements of making an order are not met, and it is not appropriate to do so.

Mr Mayne, you have pleaded guilty to one count of dangerous driving. You also pleaded guilty to the following summary offences, which are evading police, unlicensed driving, failing to comply with the duties of a driver involved in a crash, possession of ammunition without an appropriate licence, possession of oxycodone and driving a motor vehicle while a prescribed illicit drug was present in your oral fluid.

The offences were all committed during a course of driving which occurred on 22 April 2020 at about 4:30 pm. Police saw you driving a vehicle in slow-moving traffic on the East Tamar Highway near McDonald's at Invermay. You were in the south-bound lanes, that is travelling towards the CBD. The traffic was slow-moving because it was heavy, which is not surprising, given that the time was approaching peak hour on a weekday. As the police vehicle moved into a position to intercept you, you turned off the East Tamar Highway onto Lindsay Street, and then turned left again into streets off Lindsay Street. Shortly after this, you re-entered Lindsay Street. At this point, police, who had been following you, activated emergency lights and sirens in order to intercept you. You did not stop but rather increased speed as you travelled towards the roundabout at the intersection of Lindsay Street and Invermay Road. Your vehicle was pulling away from the police vehicle, which was travelling at 55 km/h. The speed limit is 50 km/h. There were three vehicles waiting to enter the roundabout. You overtook those vehicles on the incorrect side of the road in the path of oncoming traffic. You entered the roundabout and travelled through it on the incorrect side of the road, still in the path of oncoming traffic. Other vehicles were required to stop to avoid collision with your vehicle. You exited the roundabout and travelled across the Tamar Street bridge, still on the incorrect side of the road. You drove through a red light at the intersection of Esplanade and Tamar Streets. Your vehicle collided with the side of a vehicle that had entered that intersection on a green light. Your vehicle was travelling between 60 and 80 km/h at the time. I infer from all of that that you had not slowed at the time that you entered the intersection against the red light. After the collision, you exited your vehicle and ran from the scene but you were chased down and apprehended by other drivers who had witnessed the collision and your flight from the scene.

When police searched your vehicle, they found the ammunition, two 12 gauge shotgun shells and one .22 rimfire round, as well as six tablets of oxycodone. A subsequent blood test confirmed the presence of amphetamine and methylamphetamine in your body. You did not hold, and in fact have never held a driver's licence. Indeed, you have conceded that you have little skill or experience in driving motor vehicles. As your counsel has correctly pointed out, despite a lengthy and very concerning criminal history, which I will discuss in more detail in a moment, these are your first traffic-related offences.

I am told that the collision caused a large amount of damage to the other vehicle and it had to be towed away. There is no suggestion, though, that the driver suffered any physical injury.

You are 27 years of age. Although there is no prior traffic-related offending on your record, your criminal history generally is appalling. It commences when you were 13 years of age and, as far as I can see, you have been offending more or less continuously since that time. The only significant breaks have been when you have been in youth detention or adult prison, although even then you have committed offences while in custody. There are convictions for numerous offences of various types, including many for serious acts of violence. Given this history, the absence of prior convictions for traffic-related matters does not provide you with any significant mitigation. The inescapable conclusion from this history is that you have a complete disregard for the law and legal constraints, and you seem quite prepared to act accordingly. This is consistent with the fact that this course of driving commenced because you decided to drive this vehicle without good reason, and despite the fact that you had never held a licence, knew your driving capacity was limited and after you had taken drugs. It is also consistent with your decision to drive dangerously to escape from the police instead of simply pulling over and dealing with the consequences.

The information provided to me indicates that you had a dysfunctional and unstable childhood. You suffered sexual abuse while in youth detention. Your brothers introduced you to illicit drugs at the age of 7, and, it would seem, criminal conduct shortly thereafter. You have had a serious problem with drugs for most of your life. This is relevant to this offending because, on your own admission, and as demonstrated by the subsequent testing, in any event, you were heavily affected by illicit drugs when you committed these offences.

Your explanation for your conduct is that you panicked when you saw police. You had only been released from prison for approximately three months, after serving a lengthy sentence, and you did not want to go back to prison. I can understand that sentiment but I must observe that it did not stop you taking drugs and getting behind the wheel of the car in the first place. The fact that you were fleeing from police aggravates the seriousness of the dangerous driving, and this is apparent in any event from the obvious desperation exhibited by the manner of your driving. Although the driving was relatively short lived, it manifested extreme danger to you, the police, and many other road users. It occurred at a time when the traffic was heavy. You in fact collided with another vehicle, but the danger presented by your driving could have easily resulted in serious injury or death to others. The danger was compounded by the drugs in your body. The driving only came to an end because of the collision. There is no reason to think that you would have stopped otherwise. This is confirmed by your immediate flight from the scene.

There is very little that mitigates your culpability. I am told you are remorseful and I note that you pleaded guilty to the dangerous driving charge in the Magistrates Court, at an early time. I will take this into account in your favour. I accept that you probably have some general remorse

and you have expressed a commitment to rehabilitation. However, this claim of remorse must be put into context. That context includes your long history of offending and the fact that you committed this offence so soon after being released after serving a long sentence. Your flight from the scene after the accident without any apparent concern for the driver of the other vehicle, is also relevant. I accept that you regret doing what you did, because of the consequences to your own life. However, I am far from being convinced that you are experiencing genuine remorse in the sense of regret and a desire to atone for the impact of your actions upon others. I have received a reference from a builder with whom you have been working on a part-time basis who seems to think enough of you to make employment available to you. However, there is nothing else that would suggest that you have made a genuine commitment to rehabilitation or have the present capacity to pursue such a commitment. I have had you assessed for a drug treatment order, but, as I have already indicated, the authors of the report have pointed out your long-standing history of non-compliance with community-based sentencing orders, including parole orders, and have assessed you as ineligible and unsuitable for such an order, and I have accepted that assessment.

Having regard to all of the circumstances, the only appropriate sentence is a term of imprisonment. I am required to impose a separate sentence for the evade police offence, and accordingly, I must ensure that the overall punishment is proportionate to your conduct and you are not punished twice for the same criminal conduct. Despite your criminal history and your poor history of compliance with parole orders, I will provide for eligibility for release on parole in the hope that you do develop and demonstrate a commitment to rehabilitation before the completion of your sentence. However, I think the requirement of specific deterrence necessitates a minimum period in custody which is modestly greater than the minimum non-parole period of one half of the sentence. There will also be a lengthy driving disqualification.

The orders I make are as follows:

- 1 You are convicted of the crime and the offences to which you have pleaded guilty.
- 2 For the offence of evading police, you are sentenced to imprisonment for a period of 3 months, which will be backdated to the 22 April 2020. You are not eligible for parole in respect of that sentence. Further, in respect of this offence, you are disqualified from driving for a period of 6 months, which is the statutory minimum. That period will commence from the date of your actual release from prison.
- 3 For the crime of dangerous driving, you are sentenced to imprisonment for a term of 15 months. That sentence will be served cumulatively upon the sentence imposed for evade police. You are not eligible for parole until you have served 9 months of that sentence. Further, in respect of that crime, you will be disqualified from driving for a period of 3 years. That driving disqualification will operate cumulatively upon the 6 month disqualification imposed for the evade police offence.
- 4 In respect of the offence of driving with illicit drugs in your oral fluid, you are fined the sum of \$400, and disqualified from driving for a period of 3 months. That driving disqualification will operate cumulatively upon the 3 year disqualification imposed for the dangerous driving.
- 5 For the balance of the offences, which are all non-imprisonable offences, I impose a global fine of \$500.

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

- (a) The total term of imprisonment which you are liable to serve in respect of all of the above sentences is 18 months, commencing on 22 April 2020.
- (b) The total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the said sentences, which is a total period of 12 months.
- (c) The total period of the driving disqualification is 3 years and 9 months which will commence on the date of your actual release from prison.