

STATE OF TASMANIA v JOHNNY DAVID JONES
COMMENTS ON PASSING SENTENCE

15 JUNE 2021
ESTCOURT J

On 16 October 2019 I sentenced the defendant, born on 22 February 1990, to 18 months' home detention after he pleaded guilty to two counts on indictment, namely trafficking in a controlled substance, and possessing a stolen firearm and also pleaded guilty to a number of associated summary offences, all committed in 2018.

On 1 October 2020 he was found guilty by a jury of one count of dangerous driving, again occurring in 2018 and sentencing was adjourned to allow for a report to be prepared as to his suitability for further home detention.

On 2 December 2020 the State made an application for the defendant to be dealt with for a breach of the home detention order made in 2019.

On 24 August 2020 a urine sample was collected from the defendant which indicated the presence of illicit and prohibited substances.

On 19 October 2020 a further urine sample was obtained which indicated the presence of cannabis and methylamphetamine.

As to the dangerous driving, on 28 December 2018 at around 1:00 a.m. police officers were driving in Bridgewater in a police vehicle when they observed a maroon Ford Falcon sedan displaying South Australian registration plates travelling north on Walker Crescent. They followed the vehicle along Taylor Crescent into Cowle Road, into Hurst Street and then into Paice Street, and at this point they were close enough to the vehicle to read the rear registration plate. They attempted to intercept the vehicle at that time by activating their emergency lights and sirens but the vehicle did not stop. When they approached the roundabout at the intersection of Paice Street and the East Derwent Highway, police went the incorrect way through the roundabout so that they were able to get a view of the driver of the vehicle and it was at that time that both officers could see the driver's face. They could also see that the driver was wearing a distinctive gold necklace and a black baseball cap.

The vehicle exited the roundabout and travelled north on the East Derwent Highway, increasing in speed, and police followed for a short time but despite travelling at up to 130 kilometres per hour were unable to keep up. The vehicle then turned off its headlights and crossed the double centre line dividing the road, and travelled on the incorrect side of the road uphill towards a blind corner. At that point for safety reasons police stopped their pursuit and lost sight of it, and continued to patrol the area.

Moments later as police approached the roundabout at the intersection of the East Derwent Highway and Covehill Road they briefly saw car taillights in the distance. They turned onto Covehill Road at the roundabout in search of that vehicle and as they passed the intersection to Cowle Road the vehicle appeared and it was driving directly at them. The vehicle was also fishtailing sideways with its rear wheels losing traction.

The driver of the police car, swerved out of the way in order to avoid a collision with the Falcon and at that time the vehicle's headlights were still turned off.

Police again lost sight of the vehicle and returned to their regular patrol in the Bridgewater area, and at about 2 am that morning, as part of their duties, they attended a property at 52 Walker Crescent in Bridgewater. When they approached the house they saw a number of people standing around the front porch. One of them was the defendant, they recognised as the driver of the car.

The defendant has a prior conviction for reckless driving for which he received a three months' suspended sentence.

The State points to the fact that excess speed was used and that there were in fact two road users at the time, being the two police officers, who were put in actual danger by the defendant's erratic driving.

On behalf of the defendant it is submitted that the highest level of speed was confined to the East Derwent Highway, which is a road already with an 80 km/h speed limit. It is also pointed out that the driving itself was really of a short duration, there were no actual collisions with any vehicle and no property or persons were harmed.

The pursuit itself did not require the expense of large public funds such as deploying a helicopter, setting up large road spikes, road blocks or employing a large numbers of police officers and vehicles deferring traffic and the like. Apart from police there was no one on the street and there were no other vehicles put in danger.

The defendant is now 30 years old. He is a single man. He has three children by a former relationship. In 2019 he was in a serious motor vehicle accident. He was in a coma for some three months. He suffered injury to his arm which has caused significant problem with bending of the elbow. He lost teeth and he has had plates inserted in his arm and in his face. He suffered chronic pain, which has now subsided. He is prescribed Valium for anxiety and is occasionally medicated with pain medication.

The defendant is educated as far as year 10 and has average literacy. He has held work as a traffic controller and a removalist. He is not currently working because of his injury and is in receipt of a disability pension.

I am told that the motor vehicle accident, while causing serious injury, served as a circuit breaker in a cycle of offending and negative peer association, and that he has made serious efforts to reform his behaviour. He is now focused on being a good father to his young children and has separated himself from negative peer influences.

A home detention assessment report tells me that, although the defendant's general engagement with Community Corrections throughout his order has been satisfactory, his continued drug use and alleged reoffending need to be taken into account. Whilst on his previous home detention order he has tested positive on three occasions to having illicit substances in his system, the last test being carried out on 3 February 2021, which was positive to cannabis and

methamphetamine. This is a further breach of his home detention order, which was not contained in the initial cancellation application. As far as I am aware there were no further breaches, and there had been no further offending.

The pre-sentence report stated:

"Mr Jones claims his latest use of methylamphetamine was out of boredom through being restricted to home detention. He advised he has on occasion taken small amounts of methamphetamine to allow him to stay awake for long periods whilst gaming on his computer. Mr Jones reported he also smokes cannabis as this assists him to relax and with sleeping difficulties. Mr Jones agrees his actions are flawed however being restricted in his movements for such an extended amount of time was 'doing his head in'. He also advised he is suffering due to not being able to support his children as needed during the period of home detention."

The report concludes:

"A further home detention order is not recommended at this time, due to the timeframe associated with his current order and the difficulties Mr Jones has articulated experiencing on this order. Community Corrections would need to consider Mr Jones' circumstances at the time of any future assessments before being able to speak to the appropriateness of a further home detention order."

Subject to the receipt of a medical report, he was deemed suitable to undertake community service.

The breaches of the home detention order were serious in my view, but given they are few in number and given the defendant's overall satisfactory level of the defendant's compliance with the order for over 17 of its 18 months' duration I was reluctant to cancel that order.

I confirmed it and adjourned sentencing in respect of the dangerous driving in order to allow for the completion of the period of home detention and the receipt of an updated report on the defendant's suitability for further period. At that time I indicated that any further breaches of the order would weigh heavily on my decision as to whether or not to impose a sentence of immediate imprisonment in respect of the present offence.

The defendant has finished his period of home detention and I have had a new pre-sentence report since.

The defendant is deemed unsuitable for further home detention on the basis of his continued use of illicit substances and his re-offending whilst being subject to home detention. Community Corrections also hold concerns in regards to his mental health and well-being if he were subject to a further period of home detention.

He stated at his resent pre-sentence report interview that he did not think he could mentally handle being restricted to not leaving the house for a further period of time. He also stated

however, "if a prison sentence was the only alternative, I would need to reassess this as I know my mental and physical health would be even more negatively impacted in prison."

He is deemed suitable for community service and has engaged well with Community Corrections in the past.

Dangerous driving is well understood now as a serious crime which frequently attracts substantial prison sentences, although I observe that this is not the worst example of the crime. In the present case I am minded to impose a suspended sentence, particularly in view of the defendant's recent period of home detention and in the hope that he has learnt something from that. I will not hesitate however to activate the full term of actual imprisonment if the defendant continues to use illicit drugs or is convicted of the relevant offending or of any other imprisonable offending. Mr Jones you should understand that. You will be walking a tight rope. If you do not stop, you will be going to prison and I will be sending you there.

The defendant is sentenced to 12 months' imprisonment which sentence I wholly suspend for a period of 30 months, on condition that he commit no offence punishable by imprisonment during that period. In addition I make a community corrections order for a period of 30 months with all of the core conditions and a condition that within the operative period of that order he complete 175 hours of community service.

I order that the defendant be disqualified from holding or obtaining a drivers licence for period of 2 years to operate from the end of any present period of disqualification or today, whichever is appropriate.