

STATE OF TASMANIA v XYZ (A PSEUDONYM)
COMMENTS ON PASSING SENTENCE

20 AUGUST 2021
ESTCOURT J

The defendant, XYZ, aged 28, has pleaded guilty to one count of dangerous driving. In addition I have agree to deal with associated summary offences to which he has pleaded guilty through his counsel, Mr Scott. They are the charges on complaint 221 of 2020 involving one charge of evading police, one charge of driving while disqualified and one charge of motor vehicle stealing.

At approximately 10.55am on Wednesday 18 December 2019, two police officers were travelling in a westerly direction on Renfrew Circle, Goodwood at the intersection of McCartney Avenue.

One of them recognised the driver as the defendant and for reasons not presently relevant they activated the emergency lights and sirens. The vehicle driven by the defendant then accelerated to an approximate speed of 80km/h in a 50km/h zone as it turned left onto Barron Avenue in Goodwood the defendant lost control and veered onto the wrong side of the road as it was turning. The vehicle narrowly missed colliding with a member of the public who was driving west on Barron Avenue.

The defendant then turned right and travelled south along Howard Road at an estimated speed of 90km/h in a 50km/h zone.

Police officers saw the vehicle travel around a roundabout in the incorrect direction and enter Acton Crescent. The defendant travelled along Acton Crescent on the wrong side of the road and turned right into Renfrew Circle.

As the vehicle travelled on Renfrew Circle, it overtook a utility which was also travelling in a westerly direction along the road. Another vehicle was travelling in the opposite direction and the driver was required to slow down to avoid colliding with the defendant's vehicle.

The police officers were unable to apprehend the defendant due to the high volume of traffic and his manner of driving. The vehicle that the defendant was driving, which was been driven without the owner's consent. was later located at 45 Renfrew Circle in Goodwood.

The defendant was arrested on 9 January 2020 on an outstanding warrant in relation to other matters.

At the time of the offending the weather was dry and clear. There were a number of vehicles on the road and the defendant drove on residential roads over an estimated distance of 2.7 kilometres.

The defendant has an appalling record of prior convictions including for evading police and two prior convictions as an adult for dangerous driving. The first in 2014 and the second in 2018. On the occasion of that second conviction the learned sentencing judge remarked in sentencing him to two years and six months imprisonment:

"I have made a detailed reference to the defendant's record because it makes clear that he has no entitlement to any lenience and points to a strong need for

punishment, specific deterrence and protection of the public. It paints a picture of a man who has, over a prolonged period, displayed disregard for the law and for authority and is a danger to the public, the police and to himself, especially when behind the wheel of a car."

A number of things should be said about that assessment which respectfully was correct at the time.

First, the defendant is not to be sentenced for his record.

Second, the dangerous driving conviction in 2018 was of a significantly more serious nature. The learned sentencing judge commented:

"In all, the defendant's dangerous driving continued for about 20 to 30 minutes. He covered a considerable distance from north of Hobart, towards the city and back again through residential and suburban areas, much of the time on roads with a 50 kph speed limit. Given the speed and manner of his driving, especially in close proximity to the police in Feltham Street, and the driving which led to the collision with the car in Lennox Avenue, it was highly fortunate that no-one was injured, although it is relevant of course that they were not. Had someone been killed or grievously injured he would have been charged with a more serious crime. At that time of the night the danger was less than it may have been at a busier time of the day, but he drove without apparent regard to the possibility that there may be other cars on the road, a factor which ultimately led to him colliding with Mr Mohammed's car. The level of danger he posed in all of the circumstances was very high. The defendant had ample opportunity to desist, but he did not do so. It is aggravated that his dangerous driving was motivated by the selfish wish to avoid the police"

Third, the defendant was found guilty by a jury so that he did not, as here, have an entitlement to a discount on sentence for his plea of guilty.

Fourth, in so far as I can tell from his comments on passing sentence, it was not submitted as it is before me, that an appropriate sentence should be modified to take account of the defendant's background as a relevant consideration affording some although I add limited mitigation and I refer to the decision in the *Queen v Millwood* [2012] NSWCCA 2 at [69].

It is submitted on his behalf that the defendant's background is so deprived and dysfunctional that it is appropriate to consider that as mitigatory.

I am told that the defendant grew up in a pro-criminal environment, where a considerable number of his paternal family members were involved in crime and criminal conduct and drug use were normalised within his family unit. His father was imprisoned on several occasions throughout his childhood.

The defendant's father was a drug addict, and in order to fund that addiction, was known to commit extraordinary acts of violence against the defendant's mother in the defendant's presence. The result of this conduct was to leave the defendant's mother without money for food from time to time. In one instance, his father attempted to set fire to the house in which

the defendant was an occupant. Another instance involved the defendant's father forcibly drugging the defendant's mother, which resulted in her hospitalisation.

To escape the violence, the defendant's mother would move their home for their safety. This had a destabilising effect on the defendant during his childhood.

He also suffered sexual abuse by a family member between the ages of 4 to 10. He has not yet sought counselling for this abuse, and he has struggled to come to terms with the impact upon him.

I am further told that in relation to the exposure to criminal activity, the defendant was on one occasion forcibly removed from his mother's care by his father and in the time he was with his father, he was forced to assist him committing criminal acts committed for the purpose of his father gaining money to feed his drug addiction.

The defendant's education was substantially disrupted. He missed a large proportion of his late primary school education following an 8 month long hospitalisation of his mother, due to bowel cancer. His paternal family took him in at that time, as his father was in jail, and he was again exposed to drug abuse and criminal activity.

When his mother left hospital, she was dependent upon the defendant to care for her physically. Consequently, he had a limited high school education only to year 8 and consequently I am told that he is functionally illiterate.

I am told that the defendant was first introduced to illicit drugs at age 13, commencing with the use of cannabis. He found cannabis helped him to forget the troubles in his life. Between ages 15 to 17 years, he began using methyl amphetamines and since that time the defendant has been an addict.

In all of the circumstances I am satisfied that an appropriate sentence for all offences would not exceed two years imprisonment and accordingly the defendant could be subjected to a drug treatment order.

Moreover, it is within a context of illicit drug use and addiction that the defendant has repeatedly driven and operated motor vehicles so contrary to law. So long as he has a drug addiction, his ability to rehabilitate on his own efforts and to cease offending, will be limited. I was of the view that, it may be assisted by a Drug Treatment Order and accordingly I obtained an assessment report.

The report concluded that the defendant was both eligible and suitable for imposition of a Drug Treatment Order and that is the order I propose to make.

XYZ, you are convicted of one count of dangerous driving and of the summary offences I have referred to. I impose a drug treatment order. On the charge of evading police I simply record a conviction and disqualify you from holding or obtaining a driver's licence for a period of two years to be served concurrently with any present period of disqualification.

As to the sentencing order then, the custodial part is a term of 2 years' imprisonment in respect of all charges except for the evade police.

Thus the total custodial period is 24 months and you will not be required to serve any part of that sentence unless you are ordered to do so by a court as a result of you not complying with the treatment and supervision part of that order.

The drug treatment order will contain all of the usual core and program conditions contained in s 27G and 27H of the *Sentencing Act* 1997.

The core conditions of the drug treatment order are as follows:

- You must not, in Tasmania or elsewhere, commit an imprisonable offence.
- You must attend court, as directed by a court.
- You must report to a court diversion officer at Community Corrections, 114 Bathurst Street, Hobart by close of business today.
- You must undergo such treatment for your illicit drug use problem as is specified by a court from time to time.
- You must report to, and accept visits from your case manager or court diversion officer.
- You must, unless there are special circumstances, give your case manager and court diversion officer at least 2 clear working days' notice before any change of address.
- You must not leave Tasmania except with the permission, granted either generally or in a particular case, of a court.
- You must comply with all the lawful directions of a court.
- You must comply with all reasonable directions of your case manager and court diversion officer concerning the core conditions and program conditions of the order.

The following program conditions are added to the order:

- ☐ That you must remain contactable at all times and inform CMD immediately of any change in telephone number;
- ☐ That you must abstain from all synthetic substances, mood and mind altering substances and unidentified substances, and submit to testing as directed by CMD and/or Tasmania Police;
- ☐ That you must refrain from the consumption of alcohol and submit to alcohol testing as required by CMD and/or Tasmania Police;
- ☐ That you must not use any prescription medication without approval from a General Practitioner or Court Diversion Officer, and only take a prescribed medication in accordance with the directions;
- ☐ That you must obey all of the directions of your Court Diversion Officer or any other CMD case worker, including with respect to attending case management appointments,

counselling sessions, urinalysis tests, and any other appointment or assessment required by the Program;

- ☐ That you must reside at any address approved by CMD, and be at those premises between the hours of 9:00pm and 7:00am, unless you have been given prior approval by CMD to be absent;
- ☐ That you must not associate with [named persons] or any other individual determined by CMD as being an inappropriate contact.

The Magistrates Court 3 September 2021 at 10am for commencement of the CMD. I direct that you appear on that date at that time.