

STATE OF TASMANIA v BRIAN NATHAN STREETS
COMMENTS ON PASSING SENTENCE

11 APRIL 2022
JAGO J

Mr Streets, you have pleaded guilty to one count of dangerous driving contrary to s 172A of the *Criminal Code*. You have also pleaded guilty to associated summary offences of drive whilst disqualified, evade police (aggravated circumstances), unlawful possession of property and breaching bail conditions. I will deal with those matters pursuant to s 385A of the *Criminal Code*.

On Friday 21 January 2022, at approximately 9.15pm, you were driving a motor vehicle in Waratah Court in Devonport. Constable Smith recognised your vehicle. He activated his emergency lights in order to intercept your vehicle. You did not stop but quickly reversed your vehicle towards his police vehicle. He sounded the horn to further alert you. You sped off in your vehicle. You were disqualified at the time of driving. I will sentence on the basis this driving behaviour amounts to the offence of evade police (aggravated circumstances) so as to ensure you are not punished twice for the same criminal conduct given the continuous nature of the driving behaviour and the manner in which the evade police charge has been particularised. You proceeded to drive the motor vehicle over the nature strip at Waratah Court and on to Chichester Drive. You then drove through a number of suburban streets before entering the Homemaker Centre, which is a shopping centre, off Stony Rise Road in Devonport. You travelled the wrong way on a one way street, known as Friend Street, within the Homemaker Centre. The Homemaker Centre has a number of takeaway food outlets within it, and it is reasonable to expect at 9.15pm on a Friday evening, there would be traffic travelling to and from them. You then re-entered the Bass Highway on the incorrect side of the road. You travelled on the incorrect side of the Bass Highway for a short period of time before executing a u-turn. You turned left onto Cutts Road, and then left onto Forth Road. As you travelled along Forth Road, you again crossed to the incorrect side of the road, travelling on the incorrect side of the road for approximately 50 metres. During that course of driving you travelled, still on the incorrect side of the road around an obscured right hand corner and disobeyed a keep left sign at a traffic island. Eventually your vehicle was successfully intercepted by police who deployed road spikes on Forth Road. You exited the vehicle without difficulty and were arrested. Police located in your motor vehicle a large amount of property that they believed to be stolen, including various meat items, pasties, cheeses, pro-biotics, vitamins, yeast packets, bread mix, 8 x 3 pack of Anko socks, 6 x 3 pack of Anko underwear, 7 scented candles, jumper leads, bread-maker, hiking pole, toy car, blue tooth sound bar with sub-woofer, a large quantity of batteries, four torches and a portable radio. Your possession of this property, without explanation, amounts to count 4 on the complaint.

At the time of driving not only were you disqualified, but you were subject to two separate bail orders that you not be found behind the controls of a motor vehicle. The breach of these conditions comprise count 5 & 6 on the complaint. In considering the objective seriousness of this matter, I note the distance you travelled was approximately 10 kilometres. There is no evidence that you travelled at excessive speeds during the course of your driving, but you did travel on both a highway and through suburban areas on the incorrect side of the road. Following your arrest you submitted to an oral fluid analysis. It detected the presence of both methylamphetamine and cannabis. The allegations contrary to the *Road Safety (Alcohol and Drugs) Act* will be dealt with in the magistrates' court, but it is aggravating that you had illicit substances present in your body when the driving occurred. That being said, there is no evidence from which I could properly conclude to what degree the presence of those substances impaired your driving ability.

The traffic flow at the time was minimal. I was not told that any other road users were put at immediate risk, or had to take evasive action because of your driving, but of course, that is always a possibility when one drives dangerously on public roads. It is of course relevant that the driving occurred in the context of avoiding interception by police. That adds to the potential danger of the driving as your focus is directed to that purpose, rather than being alert to the question of the safety of other road users. All of that being said, I assess the level of seriousness associated with this course of driving behaviour as falling towards the lower end of the scale.

The defendant is 40 years of age. He has a lengthy and concerning criminal history, particularly when it comes to driving offences. He has numerous prior convictions for driving whilst disqualified and for driving whilst not the holder of a drivers licence. He has four prior convictions for evading police, one prior conviction for negligent driving, a number of prior convictions under the *Road Safety (Alcohol and Drugs) Act*. He also has various other miscellaneous traffic offences on his record. The defendant additionally has many prior conviction for matters of dishonesty. In particular, I note on 27 May 2020 the defendant was sentenced, amongst other matters, for offences of driving whilst disqualified, offences under the *Road Safety (Alcohol and Drugs) Act*, an offence of evading police in aggravated circumstances and negligent driving. He received a global sentence of fourteen months imprisonment, with no parole eligibility order. He would not have been released from prison until on my calculation March 2021, and within less than 12 months of being released into the community, was again re-offending in a very similar manner. It is trite to say Mr Streets you are not to be resentenced for your prior convictions but specific deterrence has an important role to play in the sentencing exercise. Clearly the sentences imposed upon you in the past have not provided sufficient impetus to encourage you to change your attitude towards your driving behaviour.

You are in a long term relationship. There are two children to that relationship who have some learning difficulties. You have a long standing history of drug addiction. I am told that prior to your most recent remand in custody you experienced a drug induced psychosis which had a salutary effect upon you, and has led to you thinking about the significant negative effect drug addiction has had upon your life. You recognise you need assistance and have applied to undertake a drug and alcohol counselling course whilst in custody. I take into account your plea of guilty to these matters. That counts in your favour. It has a utilitarian value, but beyond that, there is very little to mitigate the offending here. Firstly, you simply should not have been driving. You were disqualified. Secondly, when you saw police indicating for you to stop you should have done so. Instead you drove off in a dangerous manner showing a complete disregard for the law and disrespect for other road users. As I have said, I accept that your driving behaviour does not fall towards the upper end on the range of seriousness, but you still drove on a major highway, and through suburban areas on the incorrect side of the road. The danger associated with that is obvious. Driving such as this can easily result in catastrophic consequences. General deterrence, denunciation and community protection are therefore important sentencing considerations. Parliament has made it very clear by making this offence one which must be dealt within the Supreme Court that dangerous driving is not to be tolerated and a strong response is required from the courts in order to deter others and make the roads safer for the public.

Having regard to the circumstances, your history and the fact you committed these offences despite the order of disqualification and the bail conditions imposed upon you, the only appropriate sentence is a substantial period of imprisonment.

I make the following orders.

1. You are convicted of the crimes and the offences to which you have pleaded guilty.
2. For the crime of dangerous driving and the offences of driving whilst disqualified and breaching bail conditions you are sentenced to a global term of imprisonment of 18 months. That sentence will commence on 21 January 2022 when you were taken into custody. There is an argument, particularly given your prior convictions for driving offences that you should serve considerably more than half of that sentence before being eligible for parole. As I have noted past periods of imprisonment have not proven particularly successful in deterring you. However, I think I should hold out some hope that in time you will change your attitude towards your driving obligations. I order you will not be eligible for parole until you have served 11 months of that sentence of imprisonment. In respect to those offences you will be disqualified from driving for a period of two years commencing on the day of your release from prison.
3. In respect to the offence of evade police with aggravated circumstances, I impose a sentence of 3 months' imprisonment. That will be cumulative to the period of 18 months imprisonment I just imposed. You will not be eligible for parole in respect of that sentence. I order that you be disqualified from driving for a period of two years, which will operate cumulatively to the disqualification period imposed on the dangerous driving charge.
4. In respect to the offences of unlawful possession of property I note your record of prior convictions for matters of dishonesty. I impose a sentence of one months imprisonment cumulative to the other sentences of imprisonment today imposed. You will not be eligible for parole in respect of that sentence.

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

- 1 The total term of imprisonment which you are liable to serve in respect to the above sentences is 22 months, commencing on 21 January 2022;
- 2 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 15 months;
- 3 The total driving disqualification is for an aggregate period of four years commencing on the date of your actual release from prison.