

Mr Fenton, you have pleaded guilty to one count of dangerous driving. You have also pleaded guilty to the associated summary offences of driving whilst disqualified, driving a motor vehicle while exceeding prescribed alcohol limit, driving a vehicle while being unlicensed with alcohol in body and driving a motor vehicle while a prescribed illicit drug was present in your blood.

These offences all relate to an act of driving which occurred in and around a bottleshop at New Norfolk on 27 June 2020 in the late afternoon. Earlier that day, you had attended a memorial function for some deceased friends. You had consumed some alcohol, there and you decided that you wanted more. You had also consumed some cannabis at some time before this. You took your partner's vehicle and drove to the bottleshop in order to buy the drinks. You parked the vehicle in the bottleshop's driveway, and went in to make the purchases. As you left the shop, you met two males who were known to you. They were among a group of males that had arrived in a vehicle which was parked in the driveway beside your vehicle. There was clearly some animosity between you and I am told that you and at least one of them engaged in a physical fight. Clearly, this occurred spontaneously, but I am not in a position to make any other judgment about the circumstances in which the fight took place. No one has been charged in respect of that incident. However, it does seem that you suffered some injury during the course of the fight. It can also be inferred, from what subsequently transpired, that this interaction left you angry and emotionally agitated.

The dangerous driving started as soon as you and the other men had returned to your respective vehicles. A brief description of the driving is as follows:

- You started by accelerating hard and to the right, thereby ramming the other vehicle, causing that vehicle to be shunted forward. The movement of your vehicle caused the open rear passenger door of the other vehicle to close on one the passengers of that vehicle, who was standing between the open door and the car. This trapped him and carried him forward with the movement of his vehicle. There is no suggestion that he suffered injury as a result of this, but clearly there was potential for that outcome.
- You then drove forward through the driveway and reversed at speed in the direction of one of the males from the other vehicle. It seems that they had all got out of their vehicle after the initial collision. That man was forced to take evasive action to avoid being run over.
- You then drove forward again towards the other vehicle, stopping just short of it. In doing so, you drove towards an employee of BWS who was standing in front of your vehicle, obviously in an attempt to stop you. That employee had to take evasive action to avoid being run over.
- You drove out of the driveway, through the carpark in a circular path and re-entered the driveway from the side. It is clear that you did this in order to again ram the other vehicle and you did so. The vehicle was again shunted forward by the collision.

- You continued to drive in this fashion, re-entering the driveway at least two more times. On one of those occasions, you collided with a Star Wagon, which was parked in the carpark. The owner was not present and had nothing to do with your argument with these men. However, at one point another vehicle became involved, and there was an occasion when you both drove at each other in the carpark. This particular manoeuvre resulted in you driving into a boundary fence, causing damage to it.
- The final act involved you driving at 32 km/h in the wrong direction through the driveway. It has a speed limit of 10 kph and you are meant to drive in the other direction. You were driving directly at one of the men from the other vehicle, and it seems obvious that you were attempting to run him over. Once again, he was required to take evasive action to avoid this.
- Eventually, you left the area by driving onto the public road but not before you had left rubber on the bitumen and had collided with another fence.

According to the CCTV footage, which I have viewed, the entire episode of driving lasted for approximately three to four minutes. However, during this time you were driving erratically and at considerable speed. It is clear that you were using your vehicle as a weapon in order to attack this group of men and their vehicles. However, there were also several staff and members of the public in the immediate vicinity, and of course other vehicles were parked there as well. The staff, public and owners of the parked vehicles were completely unconnected with the nonsense between you and these other men. Some of these innocent bystanders were directly threatened by your conduct, and all of them must have experienced terror and distress because of what was taking place. The potential for personal injury or even death was clearly present. At some point during the driving, the staff and public took refuge inside the store and closed the roller door. As already noted, you did actually collide with and cause damage to property owned by other people. Your partner's vehicle, the one you were driving, was completely destroyed. This was a vehicle she had leased for her work, and your actions have obviously caused her considerable financial loss and inconvenience. The Star wagon was completely written off, with the value of damage to this vehicle estimated at \$46,380. It is true that it was struck twice during this incident, once by the vehicle being driven by you and another by the vehicle which got involved in the confrontation towards the end, but it seems to me that the moral responsibility for both collisions can be largely attributed to your conduct.

You are now 31 years of age and were 28 when this offending occurred. You have a lengthy criminal history, which includes several examples of unlicensed driving and driving with alcohol in body, albeit at relatively low readings, and some convictions for destroy property and threatening behaviour. You have also been dealt with in the past for violent offending. This includes some convictions for common assault. Further, in 2011, you were sentenced by this court to three years' imprisonment, with eight months suspended, for the crime of causing grievous bodily harm. This crime involved attacking and bashing a man with a jack handle as an act of revenge for a perceived grievance. As the charge suggests, this man suffered serious injury. You were 19 years of age when you committed this crime. About six months after you committed the criminal conduct with which I am dealing, you committed further offences of disqualified driving and driving with alcohol and illicit drugs in your body. These offences amounted to a breach of a suspended sentence. You were sentenced for this on 3 February 2022, when a five-month home detention order was imposed on you. I am told that you successfully completed that order and found the supervision associated with it helpful from the

perspective of your rehabilitation. You are in a long term de facto relationship and your child was born during this period of home detention.

You also have some serious physical health problems. In 2019, well before you committed these offences, you were diagnosed with a grade 2 neuroendocrine tumour. There was no evidence then that it was metastatic, and it was treated surgically. However, in October, 2022, two further lesions were discovered. Your treating oncologist has expressed the opinion that the emergence of these lesions suggests metastatic disease, and that as a result, the cancer is no longer curable. She has recommended an aggressive treatment program with a view to controlling the disease, and presumably extending your life expectancy. The doctor is not prepared to offer an opinion concerning the effect on overall survival, but I accept that the disease itself will reduce your life expectancy, and this will be adversely impacted if there is poor compliance with treatment.

I regard this as a very serious example of dangerous driving. Your moral culpability is extremely high. The driving can only be described as an act of violence and rage. Your actions posed a lethal threat to the men you were in dispute with and to members of the public. You drove in this way in and around a public retail outlet at a time when many members of the public could be expected to be present. You did so in response to a private dispute or grievance. You caused actual damage and the consequences could have been far worse. It is obvious that you had no regard for the welfare of people or property. One of the particular matters of concern is the way that you drove at speed past the public entrance door of the bottleshop on numerous occasions. Any innocent person stepping inadvertently out of the doorway would have been in great danger. Another aggravating factor is that you drove directly at people. The men you were driving at only avoided being run over by constantly taking evasive action. You did all this with both alcohol and cannabis in your body. Your actions were selfish and dangerous. I do not regard the fact that you may have been upset by the function you had attended, or by your confrontation with the men in the car, as providing any significant mitigation. You clearly acted deliberately and aggressively, and could have desisted and driven away from the area at any time. Violent and dangerous conduct such as this has absolutely no place in a civilised and peaceful community. It follows that general deterrence and denunciation are important sentencing considerations.

Further, I consider that personal deterrence is also an important consideration. Your history of violent offending is relevant to this question, as is the fact that you seem to have a propensity for driving while not properly licensed, and after you have been drinking. On this occasion, you were actually disqualified from driving. Your counsel submits that since the short period of home detention imposed earlier last year and the birth of your child, you have had a change of attitude, and are resolved to not offend again. I accept that this is your current intention, and also accept your pleas of guilty as some evidence in that regard. However, it is also clear that you were not deterred from acting in this extreme way by past sentencing, which included a significant period of imprisonment for a serious crime of violence, as well as a lengthy period of parole. The time has come for you to realise that if you break the law, you cannot expect leniency from the courts.

There is no question in my view that, leaving aside the impact of your current health situation, the only appropriate sentence is a significant term of imprisonment. I accept however that your health condition, and, in particular the most recent diagnosis, does require consideration. I am not particularly convinced by the submission that the outcome of treatment will be necessarily adversely impacted by incarceration, in comparison to what will be achieved if you are released earlier than would otherwise be the case. You have not demonstrated a strong capacity for self-

care in the past. I note that your history, as described by the oncologist, includes ongoing heavy alcohol use after the initial diagnosis and during treatment, as well as self-discharge against medical advice after surgery in 2020. I note also that you committed this dangerous and alcohol related offending shortly before undergoing that surgery. In custody, you are, at the very least, being kept away from alcohol. However, I do accept that the diagnosis of incurable cancer, with an undefined impact on your life expectancy is, for a person of your age, a very significant development in your health. It does, I think, warrant consideration as to how long you should spend in custody. You do have a young child, and, for that reason, I think that the impact of time in custody in your case will be significantly more punitive than would be the case without that diagnosis.

Accordingly, I am prepared to moderate the impact of the appropriate sentence. But for this factor, I would not have suspended any of the sentence I am about to impose. Having regard to the diagnosis, I will suspend a significant part of the sentence. You will still have to serve some further time in custody, but my order will give you the opportunity to return to your family at an early time. However, you will still be subject to this sentence when you do, and if you continue to offend then it is highly probable that you will be required to serve the balance of the sentence in prison. In such a case, it is unlikely that you would have any further claim to leniency, irrespective of the state of your health.

The orders I make are as follows:

- You are convicted of the crime and the offences to which you have pleaded guilty;
- You are sentenced to a global term of 21 months' imprisonment, which will be backdated to the 9 November 2022. The final 15 months of the sentence will be suspended for a period of 12 months on the following conditions:
 - (i) that you are not to commit another offence punishable by imprisonment during that period.
 - (ii) that you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 12 months. That period will commence from when you lawfully cease to be imprisoned under this sentence.

The court notes that the conditions referred to in s 24 (5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within three clear days of the day that you lawfully cease to be imprisoned under the sentence.

In addition to the core conditions the order shall also include the following special conditions:

- a) you must, during the operational period of the order,
 - (i) attend educational and other programs as directed by the court or a probation officer;
 - (ii) submit to the supervision of a probation officer as required by the probation officer;

- (iii) undergo assessment and treatment for drug dependency as directed by a probation officer;
- (iv) submit to testing for drug use as directed by a probation officer;
- (v) undergo assessment and treatment for alcohol dependency as directed by a probation officer;
- (vi) submit to testing for alcohol use as directed by a probation officer;
and
- (vii) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

You will not be eligible for parole in respect of the operative part of the sentence, which is a period of six months.

- You are disqualified from driving for a period of three years, which will commence upon your actual release from prison.
- I make compensation orders in favour of Michael Hedger, Williams Mitre 10 New Norfolk and Teagan Heatley in amounts to be assessed, and, in each case, I adjourn the assessment sine die.