

STATE OF TASMANIA v MILTON LEIGH HICKS
COMMENTS ON PASSING SENTENCE

27 APRIL 2023
BRETT J

Mr Hicks, you have pleaded guilty to the crime of unlawfully setting fire to property.

You and an accomplice committed this crime jointly on 14 July 2022, at Rosebery, where you both live and work. This was an act of vandalism born out of drunken stupidity. You committed the act in the early hours of the morning after a drinking session which had lasted for several hours. You were walking home together when you noticed a large excavator parked at the local railyard. The excavator was owned by a Tasmanian company, and had been used by it for ongoing work on a section of railway between Zeehan and Rosebery. For a reason which you cannot now explain, and could not bear rational explanation in any event, you both spontaneously and mutually decided to set the excavator on fire. Despite the spontaneous nature of this decision, you both showed some determination because it took a couple of attempts and some innovation to achieve your goal. In the end, one of you removed a hatch revealing the excavator's air horn, which was able to be set on fire with a portable lighter.

Local firefighters were alerted by nearby residents. They attended and extinguished the blaze. However, the excavator suffered extensive damage. Some components were salvaged but otherwise the excavator was effectively destroyed. The net loss amounts to \$195,000.

The gratuitous destruction of someone else's property, solely for the purpose of your own misplaced entertainment, is a serious matter. Such a fire will almost certainly involve a response from, and consequent risk, to firefighters. The risk inherent in such an act also involves the possibility that an innocent person seeing the fire, might attempt to intervene. The prosecution concedes that, on this occasion, there was no real risk to nearby residences.

You are 41 years of age. You have two children aged 21 and 16. You are currently employed in Rosebery by a mining company, and I been handed a favourable reference from your employer. You have a relatively lengthy criminal history which consists largely of traffic offending, although it does also include some dishonesty offences committed when you were younger. Your last offence prior to this crime was committed in 2014. On that occasion, you were handed a suspended sentence for drink-driving. You seem to have managed to avoid unlawful conduct after that, at least until you committed this crime. The number of offences involving the use of alcohol on your record, and the fact that you committed this crime within the context of consuming alcohol to excess, suggests to me that you may have a problem with alcohol, although no reference has been made to that question in the presentence report.

I am satisfied that this criminal act was out of character for you. I am also satisfied that it is not something that you would have done but for your intoxication. However, intoxication, of course, does not mitigate your conduct. I accept that you are remorseful and are not likely to repeat such conduct. An indication of your remorse is the fact that, on the day following the crime, you and your companion handed yourselves into police and admitted what you had done. You also, as he did, entered a plea of guilty in the Magistrates Court at an early opportunity.

The objective seriousness of this criminal conduct, and the need to deter others from similar acts of criminal stupidity, requires the imposition of a sentence of imprisonment. However, in view of your early pleas of guilty and your prior character, I intend to give you the opportunity to avoid actually serving this sentence. I intend to impose a wholly suspended sentence, but will

require you to perform community service. Given that I cannot detect any reason to distinguish between the culpability of you and Mr Goodson, I will impose the same sentence.

You are convicted of this crime and sentenced to imprisonment for a term of 12 months. The sentence will be wholly suspended for a period of 36 months on the following conditions:

- a. that you are not to commit another offence punishable by imprisonment during that period.
- b. that you will perform community service for a period of 182 hours. The court notes that the sections referred to in s 24(5A) of the *Sentencing Act* apply to this condition. For the purpose of those provisions:
 - i. you must report to a probation officer at the office of community corrections in Burnie within 3 clear days of today and
 - ii. the operational period of the order is 36 months.
- c. I make the following compensation orders:
 - i. In favour of NTI Limited in the sum of \$192,500
 - ii. In favour of DB Equipment (Tas) Pty Ltd in the sum of \$2,500.

I note that these orders are joint and several liability with Mr Goodson.