

Mr Whiley, you have pleaded guilty to five counts of assault contrary to s 184 of the Criminal Code, one count of recklessly discharging a firearm contrary to s 239B of the Criminal Code and one count of conspiracy to commit crime contrary to s 297(1)(c) of the Criminal Code, arising from seven discreet episodes of criminal behaviour. Separately, you have been committed to this Court for sentence having pleaded guilty to the crime of dangerous driving. I am also dealing with your pleas of guilty to the associated summary offences of evade police aggravated circumstances, two counts of driving whilst disqualified, one count of motor vehicle stealing, one count of possessing a controlled drug, one count of dishonestly altering or displaying a plate in a way calculated to deceive, and one count of breach of bail.

On 1 September 2021, you unlawfully assaulted Nathan Thorne. It was a nasty assault. Mr Thorne and his friend had gone to your residence. You asked them to leave. They walked out of the residence but paused in a shared driveway area. You approached Mr Thorne and hit him hard once to the head. The blow was delivered with sufficient force that it left him unconscious. He fell to the ground. You and another dragged him to the end of a driveway and left him there. When he was later found by a third person, he was unconscious and bleeding heavily from his face. You were still in the area. You were spoken to by the third person. You told that person that Mr Thorne had arrived at your unit without your permission and you had told him to leave as he was not welcome there. As a consequence of the assault Mr Thorne was flown to the Royal Hobart Hospital with serious injuries. He suffered a fractured skull, loss of hearing in his right ear and had several blood clots upon his brain. When you were subsequently interviewed by police, you admitted you had punched him once to the jaw, but claimed it was because he had smashed some solar lights in the front yard and had shaped up to you as though he wanted to fight.

On 16 September 2021, you again committed a serious assault, this time against a Terrence Adams. Mr Adams was walking in a street in Devonport. You were a passenger in a ute, being driven by your step-son. As the ute approached Mr Adams you got out of the vehicle and chased him. Mr Adams ran into a nearby business. You followed him in there and punched him once to the head causing him to fall backwards and roll onto the ground. You then punched him three more times to the head, stomped on his head and face, and kicked his head. All of these acts of violence occurred whilst Mr Adams was lying on the ground. Your violence left Mr Adams unconscious. You then left the business. Others within the business assisted Mr Adams and Ambulance and police were called. Mr Adams was taken to the North West Regional Hospital. Fortunately, he did not suffer any broken bones or other serious medical complications as a consequence of the assault. Mr Adams declined to make a statement to police. Nevertheless, the entire incident was captured on CCTV and police spoke to you about it. You told police that Mr Adams had earlier been involved in an altercation with your step-son. Consequently, you had sought Mr Adams out and assaulted him in the manner I have described. You told police you were "protecting my children" and that you "deal with things with violence". The fact you pursued Mr Adams into a local business and perpetrated this attack in front of members of the public is aggravating. It also demonstrates the danger you present to the public safety generally.

The next day on 17 September 2021, you again committed a violent assault, this time on a Mr McGinley. Mr McGinley had been in the company of a Mr Fitzpatrick throughout the evening. Methamphetamine had been consumed. Later in the evening, Mr McGinley went with Mr

Fitzpatrick to your residence. Mr McGinley did not know you prior to attending at your residence. During a conversation that occurred within your residence, you approached the complainant and punched him once to the head. It was a hard blow and the complainant lost consciousness. The complainant was subsequently taken to a bushland area by others. He woke up with his legs taped around his ankles, and his hands bound behind his back. His mouth was also taped over. It took the complainant several hours to free himself from the restraints before he was ultimately able to wave down a car for assistance. He was taken to the North West Regional Hospital. He was suffering from a broken nose and bruising. Whilst it is not alleged that you were involved in the incident which occurred in the bushland area, it was your blow which rendered him unconscious and left him defenceless and vulnerable to an attack by others.

On 23 September 2021, you assaulted an innocent civilian who was unfortunate enough to be in the same area you were. Around 7.30 pm you and you step-son were seen walking down a driveway towards the back of a business, holding torches. The complainant, Mr Richards, happened to be walking on an adjacent road. He noticed the torch lights and reasonably assumed that the business was being burgled. He went to investigate. He found you and you step-son. A brief discussion occurred before you punched him to the head, knocking him unconscious. You then ran from the scene. As a result of the assault, the complainant suffered a broken nose. He was reluctant to make a statement. The incident was, however, captured on CCTV. When police spoke to you about the matter, you told police you were at the business premises because you thought you had seen someone "snooping over your back fence". You said the complainant challenged you and had a bottle in his hand, so you punched him to the head and "knocked him out".

The next crime of assault was perpetrated upon Marc Wheatley sometime between 27 August 2021 and 20 October 2021. In the course of police undertaking a search of a residence belonging to a Jai Simpson in respect to unrelated matters, they seized Mr Simpson's mobile phone. Located on that phone was footage which recorded you committing the assault upon Mr Wheatley. The footage showed Mr Wheatley arriving at your residence. You then approached him and punched him hard to the face, which knocked him to the ground. Whilst he was on the ground, you kicked him twice. As he tried to get back up, you punched him two more times to the head and knocked him back to the ground. As a consequence of the assault the complainant suffered bleeding from his ear. He did not seek any medical treatment and would not provide police with any information. You were spoken to by police about the incident. Initially you denied assaulting the complainant but upon being told of the existence of the footage, admitted your involvement in the matter.

The crime of recklessly discharging a firearm was committed by you on 23 October 2021. On this date you were told by your then partner that a Mr Pyke, and some of his associates, had turned up at your residence with a firearm. You travelled to an address where you collected a fully automatic shotgun. You and three others then returned to your residence. You confronted Mr Pyke. You removed Mr Pyke from the residence and whilst walking away from him, fired three shots from the firearm. This was a residential area. The shots could easily have caused injury to others. One of the shots, in fact, landed in the guttering of a neighbouring property. Mr Pyke and his associates fled the scene. A number of nearby residents heard the shots and called police, no doubt alarmed and concerned by what was occurring in the neighbourhood. By the time police arrived you had driven off from the residence. Police subsequently located the vehicle in which you were travelling. It had been crashed and abandoned. Located inside it was a shortened, loaded, fully automatic shotgun. Forensic evidence linked you to both the

vehicle and the firearm. When interviewed by police about the incident, you admitted your involvement, telling police that your partner had advised you that Mr Pyke was at the house with a number of other people and that he had a firearm. Consequently, you obtained a firearm and went to the residence in order to remove Mr Pyke. You said the shots were fired as "warning shots".

In respect to the crime of conspiracy to commit a crime, on 4 November 2021 police arrested you. As part of the arrest process your phone was seized and searched. Police located upon it, a series of messages exchanged between you and your son in which you were asked to assault one of your son's associates. You replied by saying "what they want done" and "how much they willing to pay". You said you would do it for no less than \$1,500.00.

When interviewed about this matter you agreed with police that you had been contacted by your son and a request had been made that you assault one of his associates. You told police you had not in fact carried out the assault, but that people come to you for such matters as you had "done this sort of work before" and are known for it.

As to the driving charges, sometime prior to 9 February 2022, you came into possession of a Holden Commodore motor vehicle. This vehicle had been stolen from a residence in Austins Ferry. You drove this motor vehicle whilst disqualified and without the consent of the owner. This behaviour amounts to one of the counts of driving whilst disqualified and the motor vehicle stealing offence. You spray painted the vehicle white and changed its number plates to avoid police detecting you, hence the dishonestly altering a plate charge.

Around 6.35 am on 10 February 2022, you were driving a Subaru Impreza motor vehicle on Davey Street in Hobart. You were subject to bail conditions to be at a residential address in Latrobe until 7.00 am. You were obviously in breach of such conditions. Police were in the area and recognised you as the driver. They saw you drive through a red light at the intersection of Davey Street and Campbell Street. Police followed you into a nearby carpark. They activated their lights and attempted to intercept you. You ignored them and continued to drive slowly through the carpark, eventually turning back onto Davey Street. I will sentence on the basis that it is this behaviour that amounts to evading police and the balance of your driving behaviour encompasses the dangerous driving charge.

The circumstance of aggravation was that you were disqualified from driving. I note the dangerous driving charge particularises evading police and driving whilst disqualified as discreet particulars of the dangerous driving. You cannot be punished twice for the same behaviour and for sentencing purposes I will delineate between the act of evading police and the dangerous driving in this manner, although the whole of your driving behaviour is, of course, relevant to the assessment of the gravity of your offending.

As you reached Davey Street you suddenly increased your speed. You then drove through a red light at the intersection of Davey Street and Argyle Street. As you went through this intersection against the red light, you collided with the rear of another vehicle. The impact forced that vehicle into a bollard on the footpath of Davey Street and then into the rear of a second vehicle. The initial collision also caused your vehicle to collide with a further vehicle. The collisions caused a gap in the traffic. You proceeded through that gap and drove off up Davey Street, but in doing so, collided with yet another vehicle.

You continued in a southerly direction along Davey Street. Police officers drove in the same direction, attempting to keep you under observation. They observed you drive onto Molle Street, through another red traffic light. You then drove off in the direction of West Hobart. Members of the public alerted police to your driving and you were subsequently seen again on Brisbane Street. At this point you were driving on the incorrect side of the road. Whilst the vehicle was still in motion, you exited the vehicle, leaving it unattended on the incorrect side of the road, and ran from the scene. You were later found sitting on the steps of Tasmania Police headquarters. You were arrested and searched. You were found in possession of a snaplock bag containing three MDMA tablets. This grounds the possession of controlled drug charge.

When you were spoken to by police, you made full admissions in respect to your dealings with the Holden Commodore motor vehicle. You also told police that you could not recall proceeding through the first red light but did not dispute the police officers' observations. You agreed that you knew police were behind you in the carpark area, and knew that they wanted you to pull over but you kept driving. You agreed you hit the various motor vehicles in the intersection. You said you hit the cars as you were trying to get through because you "just had to get out of there". You agreed the traffic was "pretty hectic" at the time. You told police at that point you had been using drugs excessively for several months.

You are 38 years of age. You have a terrible criminal history, which manifests persistent and serious violent offending and a complete ambivalence towards your obligations as a road user. You have 14 prior convictions for common assault, prior convictions for indecent assault and assault with indecent intent; prior convictions for offences against police, including assaulting police and threatening police. You also have prior convictions for the destruction of property and for offences contrary to the *Firearms Act* and *Bail Act*. You have a lengthy history of driving offences, including a number of convictions for offences under the *Road Safety (Alcohol and Drugs) Act*, driving whilst not the holder of a driver's licence, motor vehicle stealing and driving whilst disqualified. You have been sent to prison previously for driving offences.

In addition to the matters just mentioned, on 29 June 2005 you were sentenced in this Court in respect to a charge of aggravated armed robbery. You were sentenced to two years and four months' imprisonment. On 6 November 2018 you were sentenced by this Court for offences of evading police, and two counts of dangerous driving. You were sentenced to a term of imprisonment of two years and six months for those crimes and offences. That sentence saw you released from custody in August 2021. Your commission of these crimes commenced very soon thereafter. It seems that sentence did little in terms of deterring you or encouraging your rehabilitation.

I am told that following your release from custody, you immediately resumed what has been a long term methylamphetamine addiction. Your addiction to methylamphetamine is well entrenched and has characterised your life since your early teenage years. Despite a stable upbringing, you began abusing illicit substances from an early age, the catalyst for which seems to have been the cessation of prescribed medication for your ADHD. Your criminal record evidences your long-standing illicit drug use. When effected by drugs you appear to behave in a very self-absorbed manner, not caring about the harm you cause to other individuals or the community at large.

I have been provided with a psychological report authored by Dr Georgina O'Donnell. It indicates that you have previously been diagnosed with anti-social personality disorder, attention deficit hyper-activity disorder and substance use disorder. You have been entrenched in a drug fuelled, criminal lifestyle for many years and have spent large periods of time in gaol. You have recently disclosed that you were the victim of serious abuse whilst a detainee at Ashley Youth Detention Centre. You are participating in a class action in respect to that. Apparently you now consider your difficulties with illicit drug use began after that experience. You describe to Dr O'Donnell having spent most of your life in "fight or flight mode" and using drugs as a coping mechanism.

I am told that when these crimes occurred, you were in a relationship with a partner who was involved in the drug trade. Many of the assaults you committed were related to that criminal lifestyle. The driving behaviour also occurred when you were using drugs heavily. That, of course, in no way mitigates the severity of your behaviour. Your propensity for violence and the complete disregard for the wellbeing of others that you persistently show is a matter of great concern. In my view, the predominant sentencing considerations must be general and specific deterrence, denunciation and community protection.

You have caused a lot of harm to a number of people. The first assault against Mr Thorne was very serious indeed. I have read his victim impact statement. He was in a coma for seven days following the assault, and hospitalised for a further six weeks thereafter. He has lost all hearing in one ear and suffers tinnitus. He has ongoing risk of seizures. He experiences constant headaches and numbness on the right side of his face. He can no longer drive and he can no longer work. His mother has had to become his caregiver. The consequences for Mr Thorne have been terrible, and may well be lifelong. It is important to note, of course, that it is not alleged that you intended or foresaw these consequences, and you will not be sentenced for such, but the fact that the assault was objectively capable of causing such injury is, itself, a factor in the sentencing exercise.

I have not received victim impact statements from any of the other victims. That, of course, does not mean they have not suffered. I have no doubt they all suffered some degree of immediate physical impairment and most likely psychological harm. It is, in my view, most fortunate that some of your other victims did not suffer more serious injuries. Your blows were nearly always delivered to the head and rendered your victim unconscious. The inherently dangerous nature of such behaviour hardly needs to be stated.

As to the driving behaviour it goes without saying that driving through the Hobart CBD at approximately 6.30 in the morning, when many people are commencing their commute to work, ignoring red traffic lights and colliding with others so as to force an escape path to avoid police is inherently dangerous. It is most fortunate someone was not seriously injured. The potential for that to have occurred is obvious. Members of the public and police were endangered by your actions.

In your favour I take into account your pleas of guilty, which obviously have some utility and are reflective of a willingness to accept responsibility for your criminal behaviour. It is necessary for me to bear in mind principles of totality given I am dealing with a number of separate crimes, each encompassing a discreet act of criminal conduct against different complainants, and in respect to the driving charges against the community. I intend to impose a global sentence for the five counts of assault, recklessly discharge a firearm and conspiracy to commit crime, and a separate sentence for the driving charges. I therefore bear in mind that

the total of the sentences must remain proportionate to your overall criminality, but equally must reflect that these crimes were committed against separate complainants, at different times, and caused separate and significant harm to the complainants. I must also ensure that you are not subject to a crushing sentence, not in conformity with your criminal history and your prospects of reform. That being said, the totality principle does not operate to justify an adjustment of an appropriate sentence downwards to a point where it fails to adequately reflect the gravity of the crimes committed. The totality of the sentences must justly reflect the totality of the criminal offending.

I note the period you have spent in custody to date has been onerous. You have been subject to a number of extensive lockdowns, often extending to 23 out of 24 hours a day. You also were required to serve some 70 days in solitary confinement. I was not told why but apparently it gave you cause to reflect upon your behaviours, and the reasons behind them. I am told you are desirous of addressing your long-term drug addiction issues and freeing yourself from your criminal lifestyle. You have attempted to participate in some courses whilst you have been in custody but your ability to do so has been limited because of your remand status. Once sentenced, you intend to take the opportunity to undertake some courses directed at assisting you with your drug addiction. I am told you are motivated to do this so your grandmother, with whom you are close, can see you making positive changes in your life before she passes, and also because your sister who remains a primary support for you, has recently been diagnosed with a serious illness and you wish to be able to support her. It can only be hoped that such factors provide you with sufficient motivation to address your drug addiction in a serious and committed way.

I am also told that in recent times you have formed a new relationship with a female who is not involved in a criminal lifestyle. You are hopeful that her positive influence will assist you in making, and maintaining, the changes you seek. Whether your hope comes to fruition remains, of course, to be seen. In the past, you have made similar claims to courts and expressed a desire to rehabilitate, but it is difficult to identify where there has been any discernible positive change in your behaviours. Whilst rehabilitation should always be encouraged, in my view, at this point, it is a sentencing aim that carries less weight than the need for general and specific deterrence, denunciation and community protection.

The objective seriousness of your crimes requires the imposition of a heavy sentence of imprisonment. I intend to provide for parole in the hope that with some support you may yet change your ways and break this long term cycle of offending. The non-parole period, however, needs to be commensurate with the gravity of your offending, your record of prior offending, your demonstrated propensity for violence and the need for community protection. In my view that means you should serve a substantial portion of the sentence in custody before being eligible for parole.

You are convicted of all crimes and offences to which you have pleaded guilty. I make the following orders:

In respect to the one count of motor vehicle stealing, one count of possessing a controlled drug, one count of dishonestly altering or displaying a plate in a way calculated to deceive, and one count of breach of bail, no further order is made. On the five counts of assault, recklessly discharge a firearm and conspiracy to commit crime, I impose one sentence. You are sentenced to a period of imprisonment of four years and four months. That sentence will be backdated to

commence on 8 February 2022. You will not be eligible for parole until you have served two years and ten months of that term of imprisonment.

For the crime of dangerous driving and the two counts offences of drive whilst disqualified, you are sentenced to imprisonment for a global term of one year and eight months. That sentence will be served cumulative upon the sentence just imposed in respect to the crimes of violence. You will not be eligible for parole until you have served one half, that is ten months, of that sentence. In respect of those offences, you will be disqualified from driving for an aggregate period of two years, which will commence on the date of your actual release from prison.

For the offence of evade police (aggravated circumstances), I am impose a sentence of six months' imprisonment. That sentence will be served concurrently with the sentence imposed for the crime of dangerous driving, and the offences of drive whilst disqualified. I order that you be disqualified from driving from driving for a period of two years, which will be cumulative upon the two years' disqualification period just imposed in respect to the dangerous driving crime, and the drive whilst disqualified offences.

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

- (a) the total term of imprisonment which you are liable to serve in respect of all of the above sentences, is six years commencing on 8 February 2022;
- (b) 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 three years and eight months; and
- (c) the total driving disqualification is for an aggregate period of four years, commencing on the date of your actual release from prison.