

STATE OF TASMANIA v HOLLIE MAREE KAINÉ
COMMENTS ON PASSING SENTENCE

7 September 2023
JAGO J

Ms Kaine, you have pleaded guilty to one count of dangerous driving, contrary to s 172A of the *Criminal Code*. This crime occurred in Devonport on 10 June 2020. You have also pleaded guilty to related summary offences committed on the same day, namely evade police (aggravated circumstances), drive whilst not the holder of a driver's licence, use unregistered motor vehicle and using a motor vehicle with no premium cover. Additionally, you have pleaded guilty to two summary offences, which occurred three days earlier on 7 June 2020, namely drive whilst not the holder of a driver's licence and evade police. I am dealing with the summary charges pursuant to s 385A of the *Criminal Code*.

On 7 June 2020, police observed you in the driver's seat of a stationery motor vehicle which was parked on a service road just outside of Burnie. You appeared to be dazed. Consequently, police pulled up to speak with you. As police manoeuvred their vehicle adjacent to yours, you started your vehicle and accelerated away. You drove into the police vehicle as you did so. You then exited the service road and entered Massy Greene Drive before driving away from police. When you were subsequently interviewed by police on 10 June 2020, following the commission of the other charges, you agreed you were the driver when this incident occurred. You admitted that you drove away in order to evade police. You said you were intimidated by the male passenger who was in the vehicle with you at the relevant time.

On 10 June 2020, at approximately 12.30pm, an off-duty police officer observed you driving a motor vehicle on Formby Road in Devonport. Knowing that you were a person of interest in respect to some other matters, the police officer began to follow you. He observed the vehicle you were driving to park outside an address in Parker Street, Devonport. Mr Stephen Douglas, who was known to police, exited the front passenger seat. Mr Douglas was also of interest to police. You remained seated in the driver's seat and waited for approximately two minutes before Mr Douglas re-entered the vehicle and you drove off. Police officers in a marked police vehicle attended the area. They observed you drive from Ronald Street into Steele Street. They followed you along Steele Street and onto Don Road. Your vehicle came to a stop at traffic lights at the intersection of Don Road and Lovett Street. Whilst the traffic light was red, your vehicle turned left onto Lovett Street without indicating. You then drove the vehicle along Lovett Street at an increasingly high speed. Police activated their lights and sirens in an endeavour to intercept you. You continued to drive away from police. Lovett Street is a residential area in Devonport. At one point, you were travelling at approximately 160 kilometres per hour along Lovett Street. The speed limit in this area is 50 kilometres. As you travelled along Lovett Street, you overtook a number of other vehicles. Police desisted in their pursuit of you. You continued to drive along Lovett Street before braking suddenly and turning right onto Lawrence Drive, again without indicating. You then travelled at a fast speed past a primary school, without braking or slowing. Again, the speed limit in this area was 50 kilometres and you were driving at a speed in excess of that. You drove through a roundabout at the intersection of Lawrence Drive and Hillcrest Road before police lost sight of your vehicle.

Police regained observations of your vehicle at the intersection of Lawrence Drive and Stony Rise Road. You turned onto Stony Rise Road, again driving at speed. At the intersection of Stony Rise Road and Tugrah Road, you turned left onto the off ramp which exits the Bass Highway. This is a one way and you drove the incorrect way on this off ramp in order to enter onto the Bass Highway. The off ramp was approximately 250 metres long. It was most

fortunate no other vehicles were using this ramp in the correct manner when you were driving contrary to the direction of traffic. Approximately five minutes later your vehicle was again observed on the Bass Highway. It travelled onto Formby Road. Again, it was observed to be travelling at speed. Formby Road is a main arterial road in and out of Devonport. It has two lanes when travelling north. Your vehicle was in the right lane. At the intersection of Formby Road and Elizabeth Street, your vehicle made a harsh turn left into Elizabeth Street without indicating. In doing so, it cut in front of another vehicle, which had to brake heavily and sound its horn in order to avoid a collision.

Your vehicle accelerated quickly on Elizabeth Street. You lost traction at one point because of the harsh acceleration. You travelled along Elizabeth Street for approximately 100 metres before turning onto Wenvoe Street. Again, these are residential areas. A short time later police were able to intercept you on Wenvoe Street. By this time, you had hidden the vehicle you had been driving and were seated in a different vehicle. Police removed you from that vehicle and placed you under arrest. You admitted to police you had parked the vehicle you had been driving in a nearby garage. You were given an oral fluid test. It returned a positive result for methylamphetamine. You subsequently participated in a record of interview. You admitted to police that you were the driver of the vehicle. You said that you did not hold a driver's licence. You said that you had driven in the manner that you did because Steven Douglas was in the vehicle with you and you were scared of him. You said that he was encouraging you to drive so as to avoid the police. You admitted that as you travelled along Lovett Street, you reached speeds of approximately 160 kilometres an hour. You said you drove the wrong way up the off-ramp because Mr Douglas had directed you too.

The acts constituting the dangerous driving occurred over a 15 minute period and were committed in residential, commercial and built up areas. They involved you travelling at high speeds on roads which were heavily used by members of the public. It was 12.30pm on a Wednesday when it was reasonable to expect relatively heavy use of public roads by other road users. Your driving behaviour put members of the public at risk and also put at risk the passengers in your vehicle, which included a child. All of the acts constituting dangerous driving, save for the original act of travelling through the red light and turning onto Lovett Street without indicating, were committed whilst you were evading police. This is an aggravating circumstance, although I am of course conscious that you are also to be sentenced for the offence of evading police (aggravated circumstances) and you are not to be punished twice for the same behaviour. Multiple police were deployed to the area of the incident in an endeavour to intercept you. You put police officers at risk by your driving behaviour. The danger and your culpability is aggravated by your other offending, including that you did not hold a driver's licence, and you were driving an uninsured and unregistered motor vehicle. The considerable danger inherent in driving at high speeds, such as 160 kilometres per hour in residential areas, whilst overtaking other vehicles, is obvious. Your driving behaviour was dreadful and showed a complete disregard for the well-being and safety of others.

By way of relevant prior criminal history, you have four prior convictions for driving whilst not the holder of a driver's licence in Tasmania and a matter of speeding. You have nine prior convictions in Western Australia for driving without authority, as well as matters of speeding and failing to give way. You also have some prior convictions for drug.

You have had a terrible upbringing. Your father left the family unit when you were very young. You have never shared a meaningful relationship with him. Your mother entered into a relationship with another man who took on the role of step-father. He sexually and physically

abused you from a young age through to when you were approximately ten. Both your mother and step-father were heavy users of alcohol. You had access to alcohol from a young age. You first consumed alcohol when you were about five. You were hospitalised when you were ten for alcohol poisoning. Because of the treatment you were exposed to by your step-father, you had a very difficult relationship with your mother. You blamed her for what was occurring and she provided you with minimal support or refuge. She too was the victim of violence at the hands of your step father.

You were made a ward of the State when you were 11 and placed into foster care. Whilst in foster care you were sexually abused. You also spent time in the Ashley Youth Detention Centre and again, you were subject to sexual abuse at that institution.

You fell pregnant and had your first child at 14. That child was removed from your care by Child Safety Services when she was approximately two months old. You did not see that child again for 16 years. It was shortly after that, that you developed a significant issue with illicit substance abuse. You became a regular and heavy user of cannabis. In your early twenties, you relocated to Western Australia and met a man who introduced you to methylamphetamine. You became a long term, daily user of that substance. You returned to Tasmania from Western Australia following the end of that relationship. It was during that time that these crimes and offences occurred. You left the State, and returned to Western Australia in June 2020, not having dealt with these matters. A Warrant was issued. That Warrant was finally executed in March 2023. You have been in custody since. Whilst you were back in Western Australia you fell pregnant and now have a young son, aged 14 months. Given his young age you have been able to have him in custody with you. You also have five adult children. You maintain a close relationship with two of them who live locally.

You have grappled with addiction to substances for a very long time. I am told these crimes and offences occurred when you had been using drugs heavily over a number of days and some of your driving was associated with sourcing drugs. It is reasonable to infer that you were affected by such substances at the time of your driving, increasing the danger you presented to others. Since the birth of your youngest son you have committed to abstaining from illicit drug use. You recognise, however, that given the entrenched nature of your difficulties, you are going to need assistance. You also recognise that successfully abstaining from illicit drug use is the key to you being able to live a crime free life and one where you can be present for your child and provide him with a stable and happy upbringing.

I had you assessed as to your suitability for a Drug Treatment Order. The report concluded that you are both eligible and suitable for the imposition of such an order, although I note the author of the original report does express some reservations given your recent departure from the State and the fact that many members of your family continue to live interstate. You submit through your Counsel however that you are committed to the CMD programme and recognise that your drug addiction has, essentially, ruined your life to date. You say you are willing to commit to the programme and recognise you need the assistance it can offer. You consent to a CMD order being made.

In my view, this is a serious case of dangerous driving. General deterrence and denunciation are obviously important sentencing considerations in a matter of this nature and ordinarily a lengthy term of actual imprisonment would be imposed. However, I am persuaded that this is an appropriate case in which to make a Drug Treatment Order. I accept, based on the material that was included in the Drug Treatment Order assessment report, and on the basis of

submissions that I have heard, that you have demonstrated a commitment to rehabilitation and that you have appropriate supports to enable you to comply with the demands of a Drug Treatment Order. I note, in particular, that you will have the ongoing support of your daughter with whom you will live. You also have the motivation to succeed on this order because of your desire to be able to properly parent your young son. I take into account your plea of guilty, although note the value of that in the sentencing exercise is largely ameliorated by you fleeing the jurisdiction. The custodial component of the CMD order will reflect the seriousness of your criminal conduct but I also bear in mind the principle of totality given you have already spent nearly six months in custody, and I am required to impose separate sentences in respect to the two evade police charges. The time you have spent in custody has been a salient experience for you given your child has been with you and you have harboured concerns about his welfare whilst in the prison environment.

I make the following orders. I record convictions in respect to all crimes and offences to which you have pleaded guilty. In respect to the two counts of drive whilst not the holder of a driver's licence and the offences of use unregistered motor vehicle and using a motor vehicle with no premium cover, I make no further order. I see no purpose in doing so given the other orders I will impose. In respect to the offence of evade police committed on 7 June 2020 (being count 4 on complaint 52240/2020) you are sentenced to imprisonment for a period of two months. That sentence of imprisonment will be backdated to commence on 13 March 2023. You are disqualified from holding or obtaining a driver's licence for a period of six months. With respect to the offence of evade police (aggravated circumstances), committed on 10 June 2020, you are sentenced to imprisonment for a period of three months, cumulative to the period of imprisonment just imposed. You are disqualified from holding or obtaining a driver's licence for a period of two years. That is a cumulative order. With respect to the crime of dangerous driving I impose a Drug Treatment Order with a custodial component of 14 months. 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 the order. The Drug Treatment Order will contain all of the usual core and programme conditions contained in subsections 27(g) and 27(h) of the *Sentencing Act* 1997. They are lengthy. You will be provided with a copy of them in writing. They are as follows:

- 1 You must not in Tasmania or elsewhere, commit another imprisonable offence;
- 2 You must attend the Magistrates Court, Burnie at 2.15 pm on 21 September 2023 and thereafter attend the Magistrates Court or this Court as and when directed to do so;
- 3 You must report directly to a Court Diversion Officer at Community Corrections, Reece House, Burnie within two working days of your release from custody;
- 4 You must undergo such treatment for your illicit drug use as directed by your case manager or Court Diversion Officer, or as from time to time specified by the Magistrates Court or this Court;
- 5 You must report to and accept visits from your case manager or Court Diversion Officer;
- 6 You must, unless there are special circumstances, give your case manager at least two clear working days' notice before any change of address;
- 7 You must not leave Tasmania except with the permission, granted either generally or in a particular case, of the Magistrates Court or this Court;
- 8 You must comply with all lawful directions of the Magistrates Court or this Court;
- 9 You must comply with all reasonable directions of your case manager and Court Diversion Officers concerning the core conditions and programme conditions of this order.

Further programme conditions will be imposed. They are as follows:

- 10 Throughout the duration of the order, you must reside at [address provided] or another address approved by your Court Diversion Officer or case manager and not change that address without the prior approval of the Court, your Court Diversion Officer or case manager. You must be at that address between the hours of 9pm and 7am daily and present to a police officer if directed to do so;
- 11 You must not use or possess any controlled substance within the meaning of that term in the *Misuse of Drugs Act 2001*;
- 12 You must not use any medication unless prescribed to you by a treating medical practitioner, approved by your Court Diversion Officer, or case manager and in accordance with the medication directions for use;
- 13 You must submit to random testing for the presence of drugs as directed by your case manager or Court Diversion Officer;
- 14 You must submit to urinalysis as directed by your case manager or Court Diversion Officer;
- 15 You must submit to oral fluid testing as directed by your case manager or Court Diversion Officer;
- 16 You must submit to detoxification or other treatment, whether or not residential in nature, as directed by your case manager or Court Diversion Officer;
- 17 You must not associate with persons or classes of persons as directed by your case manager or Court Diversion Officer;
- 18 You must not associate with, or be found in the company of Megan Louise Lellow, Stephen John Douglas, or Tyrone John French.
- 19 You must attend for assessment, and if deemed suitable, participate in and complete any vocational, educational, employment, rehabilitation or other programmes including, if directed to do so, the Equips Addiction programme;
- 20 You must attend counselling and/or treatment as directed by your case manager or Court Diversion Officer;
- 21 You must submit to medical, psychiatric or psychological treatment as directed by your case manager or Court Diversion Officer;
- 22 You must maintain the use of and remain contactable by a mobile phone that is capable of receiving messages about drug testing, case management and/or counselling appointments from your case manager or Court Diversion Officer;
- 23 You must not consume alcohol throughout the duration of the order.
- 24 You must remain contactable at all times.

In respect to the dangerous driving charge, I impose a licence disqualification of two years, that is to operate concurrently with other licence disqualifications today imposed.

Ms Kaine, the end result of my sentencing orders is that you are required to serve five months' imprisonment. You have served that period of imprisonment. The Drug Treatment Order I made has a custodial component of 14 months. You must comply with the terms and conditions of the Drug Treatment Order if you wish to avoid having to serve that time in prison. You are disqualified from holding or obtaining a driver's licence for a period of 2 ½ years. I trust, Ms Kaine, that you can successfully commit to, and find success within the drug treatment programme.