

STATE OF TASMANIA v JOSS COLIN BURNS
COMMENTS ON PASSING SENTENCE

25 OCTOBER 2023
GEASON J

Mr Burns you have pleaded guilty to an indictment alleging dangerous driving and I am sentencing you on four summary matters: motor vehicle stealing, evade police, driving while unlicensed to do so and breaching a notice making you subject to a curfew, an offence committed by reason of your absence from an address you were required to be occupying when this offending was committed.

The facts are these:

Rose McDermott is the registered owner of a Nissan Pulsar. On 23 March 2023, she left her vehicle parked and locked on the street outside her address in Lutana. At approximately 1.50 am on 24 March 2023, you approached the vehicle and accessed it. You started the engine by forcing the ignition, using a pair of scissors. You did not have permission to take the vehicle.

Ms McDermott woke up to the sound of the vehicle starting. She looked out her bedroom window and saw it was missing. She contacted police and reported the vehicle as stolen. Police officers were notified at approximately 2 am. At 2.07 am, members of Tasmania Police were conducting patrols in a marked police vehicle in the Lutana area. Police observed the vehicle at the United Service Station on the Brooker Highway, Lutana. As they pulled into the service station, a passenger stopped fuelling the vehicle and returned to the car through the passenger side door.

You exited the service station, by driving in the wrong direction, out of a one-way entry, into the south-bound lanes of the Brooker Highway. Police observed you in the driver's seat. They activated their emergency lights and sirens in an attempt to intercept the vehicle. You failed to stop, driving across all four south-bound lanes of the highway, over the concrete barrier separating the south and northbound lanes.

The contact with the barrier caused the vehicle's airbags to be deployed, restricting visibility. You nevertheless continued to drive in a southerly direction in the north-bound lanes, at an estimated speed in excess of 100 kilometres per hour. Police disengaged the attempted intercept and turned off their emergency lights. They proceeded along the south-bound lane of the Brooker Highway towards Hobart, maintaining sight of the vehicle.

Police observed you continuing to drive on the incorrect side of the highway at an estimated speed in excess of 100 kilometres an hour, before turning into Bowen Road, in Moonah. At this point, they lost sight of the vehicle but at about 2.13 am, it was located abandoned, in the centre of Bell Street in New Town. The airbags were deployed and the front right wheel was deflated.

The two occupants of the vehicle were not present. Police conducted foot patrols of the New Town area, and at approximately 2.20 am, they located you and another male at the Queens Walk Oval in New Town, approximately 200 metres away from the abandoned vehicle. You were arrested and conveyed to the Hobart Police Station, where you participated in an interview, and under caution, you made admissions to the stealing.

You told police that the airbags deployed when you hit a concrete barrier, just after leaving the service station. You said you could not see inside the car after that, due to the deployment of the airbags and the smoke accompanying their deployment.

You claimed to be worried that cars were driving towards you, so wound down the window and put your head out of the window to check. You accepted that you should have stopped when you saw the police emergency lights.

You estimated that your vehicle travelled at approximately 160 kilometres an hour and agreed that speeding was dangerous. You accepted your driving on the wrong side of the road was also dangerous.

You estimated that your driving on the incorrect side of the road lasted for about four seconds, but conceded that the distance travelled was approximately one kilometre. You admitted that you did not have a licence at the time and were aware you should not be driving, and you admitted that you were subject to a curfew at the time.

You were charged, processed, and bailed at the conclusion of that interview.

The distance from the United Service Station on the Brooker Highway to the intersection of Bowen Road is approximately one kilometre, and the distance from Bowen Road intersection to Queens Walk Oval is approximately 1.7 kilometres. Both areas are public streets, with the speed limit on both being 80 kilometres an hour.

Mr Burns you are 19 years old, and you were 18 years old when you committed this offence. In October 2021 you were released from a period of youth detention and until you committed these offences I am told that your circumstances were stable, you were living with your partner and there was no offending.

Your relapsing into the commission of offences coincided with the breakdown of your relationship, the death of your grandfather, drug use, and the resumption of the transient living circumstances which have characterised your past.

In that respect, between early 2019 and October 2021, your living circumstances are described as unstable. You lived in a youth care shelter, with friends and occasionally relatives.

You have had limited family support in your life, engaged in the regular use of alcohol, cannabis and methamphetamine in your teenage years, and endured periods of detention.

However it is reported that during your last period of youth detention at Ashley, you engaged well with programs, you were respectful to staff, and you were in the highest category in terms of behaviour. Your counsel has told me that a youth justice pre-sentence report from that period, noted that you were engaging well with programs including education, psychology and case planning. You appeared to have matured considerably and you are less susceptible to negative peer influence. Unfortunately that did not last; having experienced the grief associated with the death of your grandfather you resumed drug use. In the circumstances of a history of a lack of family support, I accept that a relationship such as that one will have had significance for you, and the loss of it will have impacted you. You fell once more into drug use, and your offending resumed. You committed a number of summary offences for which you are before the Magistrates Court today and you committed this offending, while under the influence of

drugs and absent any real stability in your life. You stole a motor vehicle for no obvious reason and the offending which followed appears to be the result of you having panicked when you saw the police vehicle. Panic which in turn prompted you embark upon a foolish and dangerous act of driving.

At the time of that offending you were not licenced, and the same act of driving, involving as it did your fleeing police involved the commission of the further offence of evading police.

I accept that the act of dangerous driving was of relatively short duration although it was characterised by speed which is inherently dangerous, and your continuation of the act of driving after the airbags had deployed exacerbated the risk to third parties because it severely impacted your capacity to exercise proper control over that vehicle and to identify risks which may have been in your path.

You accept now that you ought to have stopped upon seeing the police vehicle at the service station in Lutana.

I accept that by your plea of guilty you acknowledge the inherently dangerous nature of your conduct and I will regard it as evidence of your remorse.

I accept to that your plea of guilty has a utilitarian benefit which should be recognised in the sentence the Court imposes.

When this matter was adjourned on the last occasion, I was told that a drug treatment report was being prepared with a view to you being channelled into the Court Mandated Diversion Program operated in the Magistrates Court. Preparation of that report appears to have been frustrated by the lack of accommodation available to you. It appears too that due to the fact that the Court Mandated Diversion Program is operating at capacity it will be some time before you can be placed in such program in the event that the Magistrates Court considers such course an appropriate one in relation to your conduct.

You appear before me with a number of prior convictions – a considerable number in fact considering your age, and I suspect that in considering a court mandated diversion the lower Court is attempting to divert you from a pattern of crime followed by periods of imprisonment, a pattern which will destroy any prospects you might have for a worthwhile future.

I would like to think that you have some ambition to achieve stability in your life and move beyond offending which will prevent you from making a successful transition from a troubled past into a stable and productive future. The stable period before the commission of these offences offers some hope.

Dangerous driving is a serious offences, a fact marked by the Parliament's decision to make it an indictable offence. It requires a sentence which serves not only to punish you, but to deter others. It is the need for general deterrence which requires the Court to consider a term of imprisonment in this case.

Accepting that this offending is at the lower end of seriousness for such offending, though not the lowest, I consider that a period of imprisonment of 12 months is sufficient to achieve the sentencing objectives to which I have referred.

In order to encourage your rehabilitation, because you are still a young man, and because I consider rehabilitation to be a very important sentencing objective in all cases, but particularly in your case, I have determined that I should suspend the operation of that sentence for a period of two years on condition that you are of good behaviour and commit no offence punishable by a term of imprisonment in that time. If you do you may well be required to serve that sentence.

In relation to the charge of evade police I record a conviction, and sentence you to three months imprisonment to be served concurrently with the sentence I have just imposed, and suspended on the same terms. I disqualify you from holding or obtaining a drivers licence for a period of 12 months. In respect of the other offences, I record convictions.

The effect of that order, Mr Burns is that you are sentenced to 12 months' imprisonment wholly suspended on condition that you are of good behaviour and stay out of trouble for a period of two years, and that will be the end of it. I do that because I want to encourage you to turn a corner, and I want you to make some significant improvements in your life that will enable you to make some progress from now.