

20 NOVEMBER 2023

Mr Oates, you have pleaded guilty to one count of dangerous driving contrary to s 172A of the *Criminal Code*. This crime occurred in Burnie on 1 June 2023. You have also pleaded guilty to related summary offences committed on the same day, namely evade police (aggravated circumstances), drive whilst disqualified and contravene conditions of a notice. Additionally, you have pleaded guilty to the summary offences of trespass, destroy property, two counts of burglary, three counts of stealing and one count of motor vehicle stealing. These offences occurred in the lead up to the act of dangerous driving, hence I agreed to deal with them pursuant to s 385A of the *Criminal Code*.

On 1 June 2023 you and another drove a white MG hatchback motor vehicle through some gates at the business premises, MFE Tasmania. After damaging the gates, you drove into the yard before leaving a short time later. This behaviour amounts to the offences of trespass and destroy property. Some hours later, you and your accomplice, again returned to the business premises, this time on foot. You jimmied open an external door to the building and then used a hammer to smash the glass panel in an office door. You entered the office and stole a computer, laptop, four-wheel drive winch, and various tools, including a drill, a blower, a circular saw and a ladder. CCTV footage captured you removing these items from the office. You also stole a handbag from a vehicle which was parked in the business yard. All of this behaviour amounts to the two burglary and three stealing offences to which you have pleaded guilty. You also stole some keys to a Ford Ranger motor vehicle which was parked in the business yard. You placed all of the stolen items into this vehicle and drove off from the premises in the stolen motor vehicle. This amounts to the motor vehicle stealing offence.

Later that same day, at approximately 4.10pm, police observed you on the Bass Highway at Burnie driving the same white MG motor vehicle that had originally driven through the gates at the business premises. You were travelling west and overtook an unmarked police vehicle as it was travelling near Round Hill. Officers estimated your speed at 110 kms per hour in an 80 km zone. They maintained a constant distance behind you in order to confirm your speed. It remained at 110 kms per hour. Police activated the emergency lights of their vehicle in an attempt to intercept you. You continued driving in the right lane, passing a number of vehicles at speed. You then braked suddenly and moved in to the left hand lane without indicating. You proceeded to accelerate and move back into the right hand lane, again without indicating. Police activated their emergency sirens at this point. You swerved into the left lane and then back into the right lane as you approached traffic lights at the intersection of River Road and Bass Highway. You then drove through the intersection on the incorrect side of the road, driving into oncoming traffic. Three vehicles were observed to take evasive action to avoid a collision as you travelled the wrong way on the highway. You drove towards another intersection which was controlled by traffic lights. As the lights turned green for east bound traffic, you drove through the intersection, contrary to the indication of the lights, causing the eastbound traffic to have to take evasive action to avoid a collision with you. You then manoeuvred your vehicle into a slip lane designated for eastbound traffic, and drove up and over the concrete island that separates the eastbound and westbound traffic. As you did this, you caused damage to three of the tyres on your vehicle. Those tyres deflated but you continued to drive on the rim of the tyres. You travelled along the grass median strip for a distance before resuming travel in the westbound lanes. Eventually you turned into the carpark at Bunnings and travelled to the rear delivery area. Police followed you into the carpark and arrested you as you were exiting your vehicle. You submitted to a roadside fluid test, which returned a

positive result for methylamphetamine. A sample of your oral fluid was later taken and analysed. This was also positive for methylamphetamine.

The acts constituting the dangerous driving occurred over a distance of approximately four kilometres. They occurred on a busy highway where traffic was heavy given the time of day. Whilst the speeds involved were not excessive, given the conditions, they were dangerous. You drove on the incorrect side of a major highway causing members of the public who were also driving in the area to be forced into evasive action. The inherent danger associated with that hardly needs to be stated. All of the acts constituting the dangerous driving, save for the original speeding which drew police's attention, were committed whilst you were evading police. This is an aggravating circumstance, although I am, of course, conscious that you are to be sentenced for the offence of evading police (aggravated circumstances) and that you are not to be punished twice for the same behaviour. I also note these crimes were committed when you were subject to bail conditions that you not drive a motor vehicle in respect to allegations of evade police and reckless driving. Your driving behaviour not only put members of the public at risk, but also the police officers who were required to follow you. The danger and your culpability is aggravated by your other offending behaviour, including that you were disqualified from driving, you were driving contrary to bail conditions and you were driving with illicit substances present in your body. Simply put, your driving behaviour showed an arrogant disregard for the wellbeing and safety of others.

By way of relevant prior criminal history, you have three prior convictions for offences contrary to the *Road Safety Alcohol and Drugs Act*, two relating to alcohol and one to illicit drugs. You have a number of traffic infringement matters for speeding. You have no prior convictions directly related to the manner in which you drove a motor vehicle, or for evading police. You have a number of prior convictions for matters of dishonesty. In particular, I note you were sentenced in the Burnie Supreme Court for the crimes of burglary, stealing and arson in 2016 and received a four and a half year period of imprisonment by way of sentence. Additionally, you have prior convictions for *Criminal Code* assault, common assault, drug offences and bail offences.

You are 29 years of age. You have one child. You maintain a good relationship with her and her mother. You grew up in a supportive family and continue to maintain the benefit of their support. During your childhood you and your family lived between Western Australia and Tasmania. I am told that whilst you were in Western Australia you experienced a traumatic incident, the details of which you continue to have difficulty in speaking about, but it led to you developing a drug habit. Despite that, you finished your schooling and went on to hold various positions of employment. Subsequently, however you developed post-traumatic stress disorder apparently arising from the trauma you experienced in your teenage years. You "self-medicated" by using drugs heavily, and developed a serious drug addiction. You have grappled with this for most of your adult life. I am told your drug addiction is linked to all of your criminal offending, both past and present.

These crimes and offences occurred when you had been using drugs heavily. The dishonesty offences were committed in order to obtain funds to purchase more drugs. You also attribute your driving behaviour to your drug use. You suggest that you would not have reacted as you did, if you had not been so badly affected by drugs. Whilst that may be so, the fact that your judgement was so badly impaired by your drug consumption exacerbates the level of danger you presented to other road users. You submit through your counsel that you want assistance

in addressing your drug addiction. You recognise that successfully abstaining from illicit drug use is the key to you being able to live a stable and crime free life.

I had you assessed as to your suitability for a Court mandated drug treatment order. The report concluded that you are both eligible and suitable for the imposition of such an order. You submit through your counsel that you are committed to the CMD program and recognise your need for the assistance it can offer. You consent to a CMD order being made. Before a CMD order can be imposed, however, it is necessary for me to be satisfied of a number of matters, including that in all of the circumstances, it is appropriate to make such an order. Here, there are some complications. You are currently awaiting trial in respect to an allegation of aggravated assault. You have pleaded not guilty to the matter. The fact it is pending, however, necessitates a consideration of s 27B(1)(f)(ii) of the *Sentencing Act*. There is no suggestion of any physical harm being caused by your actions, and I have no direct evidence that any psychological harm was occasioned to the complainant during the commission of the alleged crime. It may be that ultimately you are to be sentenced for that matter in a manner which makes it impossible for you to continue with any CMD programme. If so, an application for cancellation can be made and your efforts on the programme up to that point will be an important consideration in any resentencing order that may be necessary. The reality is however, it is likely to be at least 12 months, if not longer, before you receive a trial in respect to the allegations of aggravated assault. In my view, that matter should not exclude the imposition of a CMD order if I am satisfied such an order will meet the applicable sentencing aims.

Despite the fact this driving behaviour occurred over a distance of only four kilometres, it nevertheless is a serious example 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. I note, however, that you do not have a particularly poor history of driving offences. 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 preparedness to commit 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 the ongoing support you have from your parents.

I take into account your plea of guilty. It counts in your favour as it has saved the need for a trial. In all of the circumstances I am satisfied it is appropriate to impose a Court Mandated Drug Diversion order. A CMD order imposes onerous obligations and has a significant punitive effect. It also, however, allows you to access the type of assistance that may ultimately eradicate your drug addiction and criminal ways, and that must be of benefit not only to you but to the broader community. The custodial component I impose will reflect the seriousness of your criminal conduct, but I also bear in mind the principle of totality given you have already spent over five months in custody and I am required to impose a separate sentence in respect to the evade police charge.

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 count of contravene conditions of a notice I make no further order. In respect to the offence of evade police (aggravated circumstances) you are sentenced to six weeks' imprisonment, commencing 2 June 2023. You are disqualified from holding or obtaining a drivers licence for a period of two years.

In respect to the charge of drive whilst disqualified on complaint 51776/23, and the offences on complaint 52288/23, being trespass, destroy property, two counts of burglary, three counts of stealing and one count of motor vehicle stealing, I impose a global sentence. You are sentenced to four months' imprisonment cumulative to the period of imprisonment imposed for the evade police charge. With respect to the crime of dangerous driving I impose a drug treatment order with a custodial component of 15 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 sub-sections 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 of Tasmania in Burnie at 2.15 pm on 30 November 2023 and thereafter attend the Magistrates Court, or this Court, as and when directed to do so by the Court;
- 3 You must report to a Court Diversion Officer at Community Corrections, Reece House, Burnie by close of business today;
- 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.

There will be further programme conditions of the order, namely that:

- 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 present at that address between the hours of 10pm and 7am daily and present to a police officer as directed;
- 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 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 attend for assessment, and if deemed suitable, participate in and complete any vocational, educational, employment, rehabilitation or other programmes, including the Equips Addiction programme, as directed by your case manager or Court Diversion Officer;
- 19 You must attend counselling and/or treatment as directed by your case manager or Court Diversion Officer;
- 20 You must submit to medical, psychiatric or psychological treatment as directed by your case manager or Court Diversion Officer;
- 21 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;
- 22 You must not consume alcohol throughout the duration of the order.
- 23 You must remain contactable at all times.

In respect to the dangerous driving charge, I impose a licence disqualification of two years, which is to operate concurrently with the other licence disqualification today imposed. The disqualification period will commence as at today's date.

Mr Oates, the end result of my sentencing order is that you are required to serve four months' and six weeks' imprisonment. On my calculation you have served that period of imprisonment. The drug treatment order I made has a custodial component of 15 months. You must understand that the custodial component is a period of imprisonment imposed upon you. If you do not commit to the program and you end up breaching the conditions of the Drug Treatment Order, it is likely to be cancelled and you will be required to serve that custodial component of the sentence. You are disqualified from holding or obtaining a driver's licence for a period of two years from today. A copy of all of the conditions will be provided to you. You must attend upon Community Corrections today for induction into this order.

There will be a compensation order in favour of Mark Chatwin. There will be a compensation order in favour of Joanne Fraser. There will be a compensation order in favour of MFE Tasmania. The terms of all compensation orders will be adjourned sine die.