

STATE OF TASMANIA v STUART ALEXANDER GALLACHER
COMMENTS ON PASSING SENTENCE

20 June 2016
TENNENT J

You have pleaded guilty to three counts of burglary and three counts of stealing on indictment number 649/2016.

Your counsel has also applied pursuant to the *Criminal Code*, s385A, for this Court to deal with some summary matters on complaint number 4682/15. These were counts 7, 12, 14, 15 and 16 which were two counts of motor vehicle stealing contrary to the *Police Offences Act* 1935, s37B(1), one count of driving a motor vehicle while exceeding the prescribed alcohol limit contrary to the *Road Safety (Alcohol and Drugs) Act* 1970, s6(1) (reading .093), one count of driving while disqualified contrary to s19A(1) of the same act and one count of escape from custody contrary to s14(1B), also of the same Act.

On your plea of guilty to those counts, counts 2, 3, 6, 10, 11 and 17 on that complaint were dismissed. Counts 1, 4, 5, 8, 9 and 13 on that complaint became the subject of the counts on the indictment. The Crown did not oppose the s385A application and in the circumstances I will deal with all matters together.

At about 5:30 pm on 9 June 2015, the premises of Performance Automobiles was locked and secured. All of the doors to the vehicles in the premises were closed. Shortly after 1:00 am on 10 June, you used an axe to gain entry to the premises via a window in a roller door near the main entrance to the building. You entered the building and walked around the show room area, carrying the axe. You walked towards a white Subaru outback, pulled the sleeve of your jumper over your hand and opened the driver's side car door. You looked towards the ignition but then moved away. You then approached another car and looked through the driver's side window. You went to an adjoining show room and opened the door to a white Porsche. At about that time the building alarm sounded and you ran from the building.

Some time in the early hours of 10 June, you used an axe to also break into Mark Brown City Cars in Argyle Street. You went in and removed a quantity of car keys that were in the office area of the building. You opened the door to a white Toyota Hilux in the yard. You then entered a white diesel Toyota Landcruiser which was parked on Argyle Street about 20 metres away from the business using one of the keys you had stolen. You drove this vehicle, and at some stage refuelled it with unleaded petrol. You abandoned it at the intersection of Patrick and Argyle Streets. The engine was destroyed as a result of the wrong type of fuel being put in the vehicle.

At some stage, you returned to Mark Brown City Cars, and using a key you had earlier stolen, entered a 2010 white Holden utility. That vehicle was valued at approximately \$25,000. Between about 4:00 am and 4:30 am, you drove the utility to the BP Service Station on the Brooker Highway and put \$85.51 worth of unleaded petrol into it, driving off without paying for the fuel. You then drove outbound on the Brooker Highway. You approached the Elwick roundabout at speed and drove straight through it. The utility hit the kerbing and launched into the air. A witness described the utility as being high enough into the air for him to see the undercarriage.

The utility came back down, nose first, and dug into the ground. You then drove the car through some road signs, across the road and over an embankment adjacent to the Bunning's store. You went through some makeshift fences that were around an area in the car park. You then turned the utility around, reversed it over the embankment and back onto the highway and drove back towards town. The utility was missing part of the front end and the side panelling was damaged.

At about 4:30 am police received a report of a white utility travelling at a high speed on Brooker Avenue. Police attended the scene and saw the vehicle near the intersection of Goodwood Road. You were standing near the front passenger door and flagged police down. You gave your name and told police you had been in an accident and had sore ribs. You said you had been alone in the car and had

had a few drinks about six hours before. You submitted to a random breath test which returned a positive reading. You were taken into custody for the purpose of a breath analysis.

Police began to search you and found a large quantity of car keys in your pocket. The officer searching you called out to another officer at which point you began to run. You were caught and arrested. You were uncooperative and aggressive during the arrest. Police found approximately 20 sets of car keys and a white bottle of diazepam tablets in your possession.

You were found later to have a blood alcohol level of 0.093. As part of the breathalyser process, you were asked about the purpose of your journey, and you said, "*See if I could get a few months locked up*". When you were asked when you had your first alcoholic drink, you said words to the effect of "*continuous for 6 months*" and that you had drunk "*absinthe, 'the green fairy'*".

At some stage during the evening of 9 and 10 June 2015, before you were arrested, you went to a pharmacy in Cambridge. You used an axe to gain entry to the pharmacy. Once inside you collected a quantity of various drugs in a shopping basket and left the pharmacy. The shopping basket with a quantity of drugs in it and the axe were found in the stolen utility.

After your arrest, you remained in custody until 25 September. You were given bail so that you could attend the Bridge program on a live-in basis. You are 33 years old. You have no prior convictions for dishonesty. On 4 March 2015, you were convicted of driving under the influence, driving while your licence was suspended, driving with a blood alcohol level of .175 and failing to comply with the duties of a driver involved in a crash. You were fined \$700 and disqualified from driving for two years.

I obtained a pre-sentence report, principally to obtain an assessment of your progress dealing with drug and alcohol problems. That report outlined that you had what you described as an agreeable upbringing within a supportive family environment in New South Wales. You have maintained close relationships with parents and siblings. You are single and have no children. You did well at school although experienced some difficulties, ultimately explained by an autism spectrum diagnosis some years later. You could have gone to university but chose not to do so, instead obtaining work and travelling. You moved to Tasmania and did attend university here between 2009 and 2014.

In your early 20s you were administered an opiate for pain relief. You found it elevated your mood and eased anxiety. You learned how to extract opium from codeine and other medications and continued this until moving to Tasmania. At that point you changed to using poppy tea. You increased your use and became reclusive. You made a number of attempts to obtain professional help with what was an addiction. In December 2014, you attempted self-detoxification. You used excessive amounts of alcohol to numb the resultant pain and cramps. During this period, you committed the drink driving offences which saw the convictions in March 2015. After that you sought help at the Hobart Clinic in respect of your opiate and alcohol abuse.

You began experiencing suicidal ideations and feelings of despair. You were depressed, had no money and did not care what happened to you or whether you ended up in jail. On the day the present offending occurred, you had been drinking heavily, were in pain from opiate withdrawal and had had little sleep. While the offending on the face of it appears reckless, you had the forethought to take an axe to gain entry to premises and clearly at one point were seeking drugs.

After being released from custody, you resumed a place at the Hobart Clinic on an opiate treatment program and remained on the Bridge program. I am told this afternoon that in fact you finally completed that and have now left the Bridge program as at the end of last week. In the pre-sentence report I obtained it was reported you were engaging well and committed to putting your substance abuse behind you. You realise the damage you have caused to the businesses you entered and the damage to the cars you drove and the consequent loss to their owners.

In the pre-sentence report both community service and probation were recommended. The community service was noted as a way in which you could complete the Sober Driver program.

The *Road Safety (Alcohol and Drugs) Act* prescribes minimum penalties for the offences you have committed under that Act, and I am bound as part of any sentencing to adhere to those penalties. You are currently in receipt of a New Start allowance much of which was allocated to your involvement with the Bridge program. You have fines owing but are making regular payments. While you do not consider yourself to be in dire financial circumstances, it seems, in my view, pointless to impose further substantial fines.

Having said that, there must however be a penalty reflecting the requirements of the *Road Safety (Alcohol and Drugs) Act* and the nature of the other offending. The penalties will be in the context of pleas of guilty, your relative lack of criminal history and the obvious steps, which I accept, that you have taken towards addressing the circumstances which gave rise to your offending

In all the circumstances, the orders of the Court are that:

1. You are convicted of three counts of burglary contrary to the *Criminal Code*, s244, and three counts of stealing contrary to s234, all on indictment number 649/2016, and two counts of motor vehicle stealing contrary to the *Police Offences Act* 1935, s37B(1), one count of driving a motor vehicle while exceeding the prescribed alcohol limit contrary to the *Road Safety (Alcohol and Drugs) Act* 1970, s6(1), one count of driving while disqualified contrary to s19A(1) of the same Act and one count of escape from custody contrary to s14(1B), of the *Police Offences Act*, all on complaint number 4682/2015.
2. In respect of all those matters, you are to serve a global sentence of 18 months' imprisonment with effect from 4 March 2016 (to take into account the period already spent in custody from 10 June 2015 to 25 September 2015). You are to be eligible for parole when you have served one half of that sentence.
3. The execution of the sentence of imprisonment is suspended as from today on condition that
 - a. you are of good behaviour for a period of three years,
 - b. you complete 130 hours of community service, and
 - c. you be subject to and comply with all terms of a probation order for a period of 12 months. That is to include a requirement that you comply with all reasonable directions of your supervising probation officer.
4. Pursuant to the *Sentencing Act*, s68, you are to pay by way of compensation to CGU Insurance the sum of \$21,918. Further, you are to pay amounts to be assessed pursuant to s68 of the *Sentencing Act*, with the assessment of the amounts to be adjourned to a date to be fixed to the following entities, namely, Mark Brown City Cars and Commercial, and Good Price Pharmacy.
5. You are to pay a victim of crime compensation levy of \$400 within 28 days.
6. You are disqualified from driving for a period of 12 months, to commence from the expiration of the period of disqualification already being served. Your licence is to be cancelled.