

STATE OF TASMANIA v ZARLEE RAE PARKER
COMMENTS ON PASSING SENTENCE

2 FEBRUARY 2024
JAGO J

Ms Parker, you have been found guilty by a jury of one count of dangerous driving contrary to s 172A of the *Criminal Code*. This crime occurred in various locations throughout Turners Beach, Ulverstone, Penguin and Sulphur Creek on 28 March 2021. Because the only issue at trial was the identity of the driver, the facts largely follow from the verdict. After the verdict was delivered, you also pleaded guilty to related summary offences committed on the same day, namely evade police (aggravated circumstances), learner driver driving unaccompanied by a licensed driver, use unregistered motor vehicle, use a motor vehicle with no premium cover, possess a controlled drug namely methyl amphetamine, possess thing used for administration of a controlled drug, drive a motor vehicle whilst a prescribed illicit drug was present in your oral fluid, and fail to display L plates. I am dealing with the summary charges pursuant to s 385A of the *Criminal Code*.

The evidence given at trial established that at approximately 2.10 am on 28 March 2021, police were on mobile patrol in the North Motton area. They observed a yellow sedan travelling north on Preston Road. You were the driver of that vehicle. The vehicle was unregistered, and accordingly had no premium cover. As the vehicle turned onto Allison Road, police activated their emergency lights in an endeavour to intercept the vehicle. Instead of stopping, you accelerated away and continued along Allison Road. You then turned right onto Mannings Jetty Road. Police followed you for a distance with their emergency lights still activated. When it became obvious to them, that you had no intention of stopping, police ceased their endeavours to intercept you. They kept observation of your vehicle, however, as it turned right onto Preston Road.

Other police units were notified and tasked to assist with the interception of your vehicle. Over the next 45 minutes or so, a number of police units observed your vehicle at various points of travel. You were seen driving on a number of rural roads in the area including Preston Road, Wilsonia Road, Isandula Road, Central Castro Road, Swamp Road and Kindred Road. As you turned from Kindred Road onto Stubbs Road you were observed to brake heavily before turning without indicating. Your vehicle accelerated to speeds of approximately 120 kilometres per hour along Stubbs Road.

As Stubbs Road enters into the township of Turners Beach, it is sign posted at 50 kilometres per hour. You slowed as you entered this area, and police caught up with you. They reactivated their emergency lights. You increased the speed of your vehicle again to approximately 90 kilometres per hour in a 50 kilometres zone. Nearby, other attending police had deployed road spikes on Stubbs Road near Westella Drive. As you approached these spikes, you swerved to the incorrect side of the road to avoid them. You then turned right onto Westella Drive without indication. You travelled onto Westella Drive without slowing and without checking for oncoming traffic. Westella Drive is a 60 kilometre speed zone. You travelled along it at approximately 80 kilometres per hour.

You travelled along Westella Drive and turned onto Turners Beach Road. This road comes to a dead-end. Instead of stopping you travelled through a barbed wire farm fence and crossed the grass verge and travelled up a relatively steep incline so as to access the west bound lanes of the Bass Highway. You were observed travelling east and against the flow of traffic on the west bound lanes of the Bass Highway. You travelled along the verge, in the incorrect direction

on the Bass Highway for approximately 1.6 kilometres, including crossing the Forth River Bridge where there is no shoulder on the roadway.

Police lost sight of you for a period of time. They next saw your vehicle travelling west on the Bass Highway near the Lovett Street exit at Ulverstone. Your speed when travelling along the Bass Highway was rather erratic. At one point you were travelling at or near the speed limit, you then slowed to approximately 60 kilometres per hour on the highway before slowing again to nearly a stop. You then rapidly accelerated up to speeds of approximately 140 kilometres per hour. At one point you overtook a truck on the highway in a rather erratic manner. As you proceeded under the Creamery Road underpass, your speed was estimated at approximately 140 kilometres per hour.

Another police unit deployed road spikes near the Howth roundabout. In order to avoid these road spikes, you performed a u-turn as you first entered into the roundabout, by turning hard right as you entered the roundabout and travelling contrary to the direction of traffic. You then entered the east bound lanes of the Bass Highway and commenced travelling back towards Penguin.

As you travelled east on the Bass Highway a further set of road spikes were deployed near the Creamery Road underpass. You travelled over these road spikes, which caused your vehicle's tyres to deflate. Again, you did not stop but continued to travel on deflating tyres. A further set of road spikes were deployed near the Mission Hill overpass. You travelled over these road spikes causing further damage to your vehicle's tyres. You continued to travel east on the Bass Highway with deflated tyres.

The tyres began to peel away from the rims. The contact between the rims and the road caused sparks and smoke to emit from your vehicle. You were travelling, at this point, at approximately 100 kilometres per hour. Police vehicles were following in close proximity behind you, essentially forming a protective barrier for other road users who may also be travelling behind you. Your driving was recorded on body worn camera. I observed that footage. Your vehicle was weaving across the Bass Highway, travelling in and out of both travel lanes at various points. You obviously had very little control over the vehicle. At one point your vehicle began to spin sideways before straightening and continuing to travel east on the highway. A similar thing could be observed occurring on the body worn camera footage a little further along the highway.

At one point during your travel your vehicle collided with the central wire fence, which prevents vehicles crossing the centre section of the Bass Highway. After striking the fence, it swerved back across the dual lanes of the highway travelling onto the northern shoulder portion of the roadway before again continuing in an easterly direction.

As your vehicle approached the South Road underpass near West Ulverstone, the vehicle moved suddenly on the roadway and spun out of control. It collided with the Armco barrier. The front left hand side of your vehicle was damaged. At this point your vehicle had spun and was facing in a westerly direction against the flow of traffic. Several police vehicles, which had been following you, approached your vehicle. A police divisional van stopped on the highway facing your vehicle. It was stopped in a position whereby there was slightly more than a vehicle width between it and the Armco barrier. You drove your vehicle between the divisional van and the Armco barrier in a direction which was contrary to the flow of traffic, in an obvious attempt, in my view, to avoid interception. As you drove through this very

narrow passage, a police officer who was attempting to exit from the passenger side of the divisional van, had to pull her legs back in quickly in order to avoid being struck by your vehicle.

Another police vehicle had parked behind the divisional van, partly in the left hand lane of the highway and partly in the median strip. As you drove your vehicle between the divisional van and the Armco barrier, you collided with the front left hand side of this police vehicle. Police officers were in the immediate vicinity of this vehicle and they had to take evasive action to avoid being struck by your vehicle.

As your vehicle came to a stop, you exited it via the rear passenger window and ran into nearby bushes. Police followed and arrested you. They found a black bag with you which contained a used smoking device and a syringe containing 0.3 mls of methyl amphetamine. You were required to participate in an oral fluid test. That sample was later analysed and revealed that methyl amphetamine and amphetamine were present in your oral fluid. At the time of driving you were the holder of a L2 learner driver's licence. Whilst you had a passenger in your vehicle, she was not appropriately licensed. There were no L plates displayed on the vehicle. The fact that you were an inexperienced driver with methyl amphetamine in your system, only added to the risk your driving behaviour posed to others.

The acts constituting the dangerous driving occurred over an extended period of time and involved a considerable distance. It was approximately 50 minutes from the initial attempt to intercept you until you were arrested when your vehicle crashed. It is likely you travelled in the vicinity of 80 kilometres during this time. You drove on a major highway as well as on several rural roads. At times you travelled at high speed, turned suddenly, travelled against the flow of traffic and along the verge of a highway into oncoming traffic. Once your tyres had deflated you continued to travel at a speed that was too fast for the vehicle's condition and in circumstances where you had minimal control. Your behaviour was terribly dangerous. Fortunately, it appears that throughout much of this incident there was not a lot of other traffic on the roads, but of course you drove in areas where at any point you could have come across other road users. Your driving behaviour put members of the public, and you passenger, at risk. She told police she was scared by your driving. All of the acts constituting dangerous driving occurred 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.

It is noteworthy that multiple police resources were deployed to various locations during this incident in an endeavour to intercept you. Police officers were put at risk by your driving behaviour. It was obvious listening to the police on the body worn camera footage that they were most concerned by your driving and the risk it presented to other road users. The police, in my view, exhibited considerable patience and skill in bringing this incident to a conclusion without other members of the public being harmed.

The considerable danger inherent in your driving behaviour is obvious from the facts. Your act of deliberately driving your vehicle between the divisional van and the Armco barrier directly towards the other police vehicle, placed the occupants of those vehicles at grave risk. You used your car as a weapon to try to get away, and showed no regard for the occupants. Your driving behaviour was dreadful and showed a complete disregard for the wellbeing and safety of others persons.

In your favour, you have a very limited criminal history. There are some matters of violence as a youth. In 2013 you were sentenced by this Court in respect to three counts of Criminal Code assault. For those crimes you received a wholly suspended sentence of imprisonment. I note that when this crime occurred you were on bail for other driving offences in the Magistrates Court. Those offences included driving a motor vehicle while exceeding the prescribed alcohol limit, being a learner driver driving unaccompanied by a licensed driver, driving whilst a prescribed illicit drug was present in your oral fluid, and disobeying a road sign. Those matters were dealt with by way of a fine and disqualification in March 2022.

You are 28 years of age. You were 26 at the time of the offending. I am told that when this offending occurred you were struggling with a significant addiction to both alcohol and illicit substances. Substance abuse issues have been an ongoing difficulty for you for a number of years. When you were sentenced by this Court in 2013 it was also suggested you were struggling with an escalation in your alcohol and illicit substance use. Apparently after that sentencing order, you were able to bring your substance abuse under control for a period. You focussed on raising your two young children and you were also able to secure employment. However, I am told that in around 2018/2019 you relapsed and your use of both alcohol and illicit substances again became chronic.

I am told, however, that in the past two years you have made a real effort to address both your alcohol and drug use. It has not been without difficulty, but you say, through your counsel, that you are determined to make improvements particularly for the benefit of your children. You have endeavoured to seek assistance within the community for these issues but have found resources to be limited. You recognise, given the entrenched nature of your difficulties, that you require assistance if you are to be successful in abstaining from illicit drug use.

I had you assessed as to your suitability for a Drug Treatment Order. The report ultimately concluded that you are both eligible and suitable for the imposition of such an order, although there are a number of areas of concern raised within the report. Firstly, you have pending in the Magistrates Court a charge of common assault, to which you have entered a plea of not guilty. Section 27B(f) of the *Sentencing Act* provides a court may make a drug treatment order provided no proceedings are pending against the offender, in any court, for offences involving the infliction of actual bodily harm.

I am told the allegation in respect to the common assault is that you struck the complainant to the head and face area. It is alleged she was left with "scratching and soreness" to both sides of her face but no medical attention was required. I have seen some photographs of the alleged injuries. They are mild in my view, and are aptly described as "transitory". I am not of the view they amount to actual bodily harm such that a prohibition on imposing a Drug Treatment Order arises.

What I am more troubled about is the indications within the Home Detention assessment report which suggest you continue to lack insight into the seriousness of your driving behaviour. Your counsel submits this is not, in fact, the case and the two months or so that you have now spent in custody has given you considerable time for reflection. I am told that you do recognise just how easily your driving could have resulted in very serious harm being caused to others.

The author of the Drug Treatment report also expresses some concerns as to your alcohol consumption. The CMD programme is not equipped to manage participants who present with alcohol dependency. It is submitted on your behalf that in the last two years, your alcohol consumption has reduced and it is not seen as a factor which would prevent your participation on the programme, although you will if a CMD order is made, need to remain vigilant about abstaining from alcohol if you are not to breach its terms.

In my view, this is a very serious case of dangerous driving. General deterrence and denunciation are obviously important sentencing considerations. I also consider the sentence must be a personal deterrent to you given the attitude you have at times displayed. Normally a lengthy term of imprisonment would be imposed for driving behaviour such as this so as to meet those sentencing aims. That is not to say your rehabilitation is to be ignored, particularly given you lack of relevant prior convictions, and the fact that in the past there have been periods of time where you have been able to address your substance abuse and lead a productive life. The issue here is whether it is appropriate to prioritise your rehabilitation, which would be the effect of imposing a Court Mandated Drug Diversion order.

You have now spent a little over two months in custody and I am told it has strengthened your resolve to commit to your rehabilitation. Your successful rehabilitation is, in my view, necessary to guard against a repeat of this type of behaviour and thereby protect the broader community. I accept, based on the material contained within the Drug Treatment Order assessment report, and on the basis of submissions that I have heard, that you are willing to participate in a CMD order and have appropriate supports, particularly your parents, in place to enable you to comply with the demands of a such an order.

On balance, and after careful consideration, I consider you should have the opportunity to participate in such a programme. A CMD order is not without punitive effect. It requires a considerable commitment and application to the requirements of the programme, and if that commitment and application is not maintained, the custodial component of the order is subject to activation. The custodial component of the CMD order will reflect the seriousness of your criminal conduct but its imposition will give you the opportunity to demonstrate you are genuine about addressing your substance abuse issues.

I make the following orders. I record convictions in respect to all crimes and offences to which you have been found or pleaded guilty. In respect to the offences of learner driver driving unaccompanied by licensed driver, use unregistered motor vehicle, using a motor vehicle with no premium cover, possess a controlled drug, possess thing used for administration of a controlled drug and fail to display L plate, given the other sentences I will today impose, I consider no further sentence is required in respect to those offences. In respect to the offence of drive a motor vehicle whilst a prescribed illicit drug is present in your oral fluid, you are fined \$350.00 and disqualified from holding or obtaining a driver's licence for a period of three months. In respect to the offence of evade police, you are sentenced to imprisonment for a period of two months. That sentence of imprisonment will be backdated to commence on 22 November 2023. You are disqualified from holding or obtaining a driver's licence for a period of two years cumulative to the period of disqualification just imposed. With respect to the crime of dangerous driving, I impose a Drug Treatment Order with a custodial component of 16 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 ss 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 15 February 2024 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 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.

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 daily between the hours of 9pm and 7am 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 Melissa Stocks.
- 19 You must not reside with Shannon Mulvey without the prior approval of your case manager or court diversion officer.
- 20 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;

- 21 You must attend counselling and/or treatment as directed by your case manager or Court Diversion Officer;
- 22 You must submit to medical, psychiatric or psychological treatment as directed by your case manager or Court Diversion Officer;
- 23 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;
- 24 You must not consume alcohol throughout the duration of the order.

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. I make an order for disposal of the items identified. I impose the special penalty.