

STATE OF TASMANIA v CAINE JERIMIAH DUNNING
COMMENTS ON PASSING SENTENCE

14 MAY 2024
JAGO J

Mr Dunning, you have pleaded guilty to one count of unlawfully injuring property and three counts of aggravated assault. The counts of aggravated assault were committed against police officers.

On 16 January 2022, you were staying at the home of your girlfriend, Ms Walsh. Ms Walsh's unit is at the end of a cul-de-sac and borders onto a park. The two of you had hosted friends overnight. On the morning of 16 January, Ms Walsh said that when you woke up you were "agitated and grumpy". There was a verbal argument. You left the unit. You had in your possession a firearm. Ms Walsh locked you out and told you that she had called police. She, in fact, had not. In response to being told this, however, you discharged the firearm you had twice. There is some conflict as to why you did this. In the plea in mitigation that was presented on your behalf I was told it was a preparatory act for a suicide attempt. In a Forensic Pre-Sentence report that I obtained, you said it was to alert any approaching police to the fact that you were "armed and dangerous". I will return to this issue. In any event, Ms Walsh heard the shot, realised you had discharged a firearm, and called police. She advised them that you were outside the unit discharging the firearm. Although there is no suggestion any threat was being directed at her, she was understandably concerned as she had a six year old child sleeping in the house. Police made their way to the unit, under lights and sirens. Acting Sergeant Abbie Weidinger and Constable Steven Holcombe were travelling in a police vehicle together. They arrived in the cul-de-sac. They slowed their vehicle as they approached Ms Walsh's unit. You discharged the firearm in their direction. The bullets missed the police vehicle, travelling over the top of it. This act constitutes the first count of aggravated assault. The officers stopped the vehicle, ran from it and took cover. As they did so, both were repeatedly shouting "Police, put your weapon down, put your gun down". Several requests for you to drop your firearm were made. You responded by yelling at police "Just shoot me, just fucking shoot me, just kill me".

At one point, Acting Sergeant Weidinger moved across the road to take cover behind a house. As she did this, you discharged the firearm in her direction. The shot did not hit her. Very shortly after the first discharge, you fired a second shot in her direction. These acts constitute the two further charges of aggravated assault.

The shots were heard by a number of people in the neighbourhood. A neighbour looked out her back door to see what was happening at one point and a stray pellet from the shotgun struck her to the lip. Fortunately she was not seriously injured but it is indicative of the danger you presented to innocent civilians by discharging the firearm in a residential area.

Constable Holcombe saw you fire in the direction of Acting Sergeant Weidinger. Understandably, believing that both he and Acting Sergeant Weidinger were under immediate threat of death or serious injury, he discharged five rounds from his firearm towards you. You were struck by one bullet to your left shoulder and a second bullet to your left calf.

You then retreated into the backyard of a unit, jumped over a fence and ran into the park area. At that time, another police officer who had formed a cordon on a nearby street, confronted you. You ran from that officer into a second small park area. Other police officers also chased you. As you were running through the park area, both Acting Sergeant Weidinger and Constable Holcombe fired further shots in your direction. It appears these shots were fired from a considerable distance and had no impact upon you.

You continued to run through the park and into nearby residential streets. Eventually, you ran into the driveway of a residence where you were confronted by a large gate. Police officers surrounded you. They drew their firearms. You continued to ask the officers to kill you. Eventually, Constable Holcombe was able to deploy OC spray and physically restrain you. You were taken into custody and taken to the North West Regional Hospital for management of the gunshot wounds to your left shoulder and left leg. You suffered an acute comminuted displaced fracture of the left leg and a comminuted left proximal humeral fracture. The bullet was removed from your left leg but not from your shoulder.

Both police officers who had discharged their weapons were subject to a full investigation by the Tasmania Police Professional Standards Unit. The investigation took over 12 months to complete. It was a stressful time for the officers. They were found to have acted appropriately. I have seen body worn camera footage of this incident. Your behaviour was confronting and erratic. In my view, the police officers involved acted with great professionalism and courage, and such a finding was entirely warranted.

A subsequent ballistics examination of the firearm you used found it to be in poor condition and only capable of being fired from the left chamber. That means it is likely you reloaded the firearm each time you discharged it. Five cartridges were located throughout the scene which had been fired from the shotgun you had. Two of those had been fired prior to police arrival. Three shots were fired by you at police upon their arrival. One of the shots you fired prior to police arrival hit and damaged Ms Walsh's Subaru Station Wagon that was parked in the driveway. This amounts to the crime of unlawfully injuring property.

You are 27 years of age. You had a very difficult upbringing. You were born in South Australia. Your parents separated when you were only an infant. Initially you were cared for by your mother but when you were approximately four, you relocated to live with your father. Thereafter you lived a very itinerant lifestyle. Your father had a serious drug addiction which resulted in you frequently residing in unstable and sometimes unsafe accommodation. There were also periods of homelessness. Your father moved frequently between South Australia, Tasmania, Western Australia and the Northern Territory, thus your schooling was very spasmodic.

Your father's drug addiction meant he was often unable to care for you. It was frequently the case that you went without food. You would be left alone in parks to sleep whilst your father went off in search of drugs. Your childhood can aptly be described as one of "marked neglect". For various reasons, you spent very little time in your mother's care when you were growing up. There were occasions when you returned to her home, but given the chaos of your upbringing with your father, your behaviour was often unruly and considered "too difficult" by your mother. Her rejection of you has been difficult for you to come to terms with.

By the time you were 13, you were using alcohol and drugs on a regular basis. You were not attending school. You were, in practical terms, living independently and described yourself as "taking whatever drugs and alcohol were available". By the age of 16, you had developed a significant addiction to methyl amphetamine. Around this time you also made your first suicide attempt.

When you were 18, you formed a caring relationship that provided you with some stability. There was a child born to that relationship. You were able to curb your illicit drug use for a

period of about three years but after your child was born, you experienced difficulties in understanding your worth as a parent and your drug use escalated. The relationship came to an end when your child was approximately four months' old. In the context of this relationship ending, you made a second suicide attempt.

In March 2018 you were convicted by this Court of attempting to import a controlled drug and trafficking. You were sentenced to six years' imprisonment with a non-parole period of three years and six months. Other than that conviction, your prior convictions consist of some minor drug offences and some driving offences.

Pursuant to the sentence imposed in March 2018, you were released on parole in September 2021. You went to your father's home in Deloraine following your release. You resumed a friendship with some old associates and within a short period of time had recommenced your use of methyl amphetamine. You were due to attend a drug urinalysis appointment in January 2022. You knew that you would fail that urinalysis and thus did not go. You knew that would inevitably result in you being arrested and having your parole revoked, so I am told you decided to "go on a bender" by heavily using methyl amphetamine and then determined to end your life by suicide. Apparently, you obtained the firearm for this purpose.

When Ms Walsh sent you the message indicating she had called police, it seems you decided not to end your life by your own hand, but to endeavour to incite police to shoot you. I cannot determine why you fired the first two shots given the conflict in what you have said, but it matters little in my view. Once police arrived, you fired the shots in their direction with the intention that they would fire at you and kill you. You did not discharge your firearm directly at police. You fired above police but, of course, given your heightened emotional state, the fact you were under the influence of methyl amphetamine and the very poor condition of the firearm you were using, the reality is you had very limited control over what might occur once you discharged the firearm. The potential for serious or fatal injury was very real. It is most fortunate that none of the police officers suffered physical injury.

Your crimes are very serious for a range of reasons. Your initial discharge of the shotgun occurred outside of a unit where your girlfriend and her young child were living. They were undoubtedly fearful of what might occur. The extreme danger the subsequent discharges of the shotgun posed to the police and others in the vicinity is obvious. You displayed a complete disregard for the safety and wellbeing of the police officers, but also of the other residents within the area. Given the locality in which you were discharging the shotgun, a number of people were potentially put at risk as is evidenced by the fact a neighbour was struck by a pellet from the shotgun. Beyond the physical risk, the discharge of firearms in a residential area also potentially creates an atmosphere of unease, fear and intimidation.

Your crimes have had a terrible impact upon Acting Sergeant Weidinger. Police officers who routinely put their personal safety at risk in the service of the community can also be subject to profound and continuing impacts from crimes of this nature. I have heard a victim impact statement from her. Following the incident, she was unable to leave home because she felt anxious and unsafe in public areas. Thoughts of the day, and what could have gone wrong, constantly permeated her mind. She became irritable and stressed, which affected her relationships with family and friends, and at work. She had to take time away from work which left her feeling guilty because of the additional pressure that placed upon her colleagues. She was subjected to a lengthy and intense internal investigation, which was stressful. Her career prospects were on hold whilst the internal investigation occurred, and she missed out on various

opportunities during that time. Your behaviour has undoubtedly impacted upon her in many adverse ways. Whilst I have not received a victim impact statement from Constable Holcombe, I have no doubt he also found the incident confronting.

I obtained a forensic mental health report in respect to you. The report indicates you suffer from Borderline Personality Disorder and a long standing substance use disorder. The report also indicates you meet the criteria for a diagnosis of Post-Traumatic Stress Disorder and Major Depressive Disorder. I note, however the diagnosis of Post-Traumatic Stress Disorder arises from the very incident that you created with police. The Major Depressive Disorder arises for a number of reasons but includes your current incarceration. The existence of such conditions is relevant generally, but in assessing the weight to be attributed to the existence of such conditions in the sentencing exercise, it is necessary to bear in mind that it was your criminal behaviour that caused them.

It is, however, the opinion of the report writer that your Borderline Personality Disorder arises from the childhood you experienced. The author notes "*The sort of childhood that Mr Dunning has experienced frequently gives rise to a borderline personality structure in which individuals experience intense, unstable, unpleasant emotions that they lack the ability to control, have difficulty maintaining secure and affectionate interpersonal bonds with others, and suffer an absence of identity and self-esteem, which gives rise to feelings of emptiness, worthlessness, and life not being worth living...this pre-disposes individuals to using illicit substances and alcohol in order to alleviate emotional pain and escape the distressing experience of being themselves. Mr Dunning's personality disorder and substance use disorder can be considered a direct consequence of the chronic neglectful parenting and frightening circumstances he was a victim of in childhood.*

Suicidal ideation, self-injurious behaviour and suicide attempts are a diagnostic criteria and common feature of Borderline Personality Disorder...his actions on the morning of 16 January 2022 appear to have been undertaken with the intent to induce police to shoot him dead in the setting of his failure to muster courage to make another attempt on his life himself.

I consider that Mr Dunning's Borderline Personality Disorder was contributory to his suicidal ideation and his actions on 16 January."

The report writer also indicates a prison environment is counter-therapeutic to Borderline Personality Disorder being successfully treated because the type of psychotherapies necessary for successful treatment are simply not available within the prison environment. The report writer notes prison is likely to weigh more heavily upon you than upon an individual without your mental health conditions.

I take into account your plea of guilty. There was some delay in this matter resolving as materials could not be disclosed until the police internal investigations procedures had been completed. Shortly after full disclosure was made to you, you indicated you would plead guilty to appropriate charges. This counts in your favour.

You have been in custody since 16 January 2022. Following your return to prison, a Magistrate made an order revoking your parole and setting your new sentence expiry date (given the time you had been out of custody) as 17 May 2024. Because the sentence I impose will be cumulative to that sentence, it is necessary to be minded to principles of totality. Such principles require me to ensure that the overall effect of both sentences is neither unduly

crushing in terms of your personal circumstances and prospects, nor disproportionate to your overall criminal conduct.

These crimes are serious. You posed an extreme danger to police and others in the immediate vicinity. You displayed a reckless disregard for the safety and wellbeing of the police officers and the surrounding community. I accept your motivation was effected by your mental health, but there is nothing before me which suggests your appreciation of the wrongfulness of your conduct was impaired. You had the means to end your own life if that was your desire, but instead you tried to goad police into shooting you, thereby exposing those police officers to considerable risk and trauma. Your mental health condition is relevant to my assessment of your moral culpability, but it does not completely obviate the need for general deterrence in my view. The community relies heavily on the police for its safety and security. Police officers are routinely required to respond to situations of danger and to put their personal safety at risk. Seeking to use police to end your life is a matter of community concern and is to be discouraged. Whilst I accept that you may not have had any intention to strike the police officers, as I have already mentioned, given the poor condition of the firearm you were using, your highly emotional state, your use of methyl amphetamine, and the intense and fluid circumstances, there was significant room for error and the potential for serious or fatal injury was real. You were armed. You had demonstrated a preparedness to use the weapon. Police gave you every opportunity to surrender, but you refused to do so and forced police to respond by discharging their weapons in a residential area.

I take into account the matters outlined in the forensic mental health report. I accept your upbringing and your Borderline Personality Disorder had a role to play in this incident, and accordingly, your moral culpability should be assessed as somewhat reduced, and the head sentence appropriately moderated. Nevertheless, the overall seriousness of your behaviour calls for strong punishment. Even taking into account your individual circumstances, the sentence I impose must still condemn your behaviour and vindicate the authority of the police. The only possible sentence is a substantial term of imprisonment. I will modify the head sentence and permit release on parole in order to reflect your pleas of guilty, reduced moral culpability and the principles of totality.

I make the following orders. You are convicted on each count to which you have pleaded guilty. I impose one sentence. You are sentenced to imprisonment for four years and six months from today. I order that you not be eligible for parole until you have served two years and six months of that sentence, which is the minimum term I consider you should serve for these crimes.