

Christopher John McDonald has been found guilty of one count of causing grievous bodily harm by dangerous driving. After the trial and verdict, he pleaded guilty to related summary offences, namely: two charges of drive a motor vehicle whilst prescribed illicit drug was present in blood, namely methylamphetamine; exceed applicable speed limit; fail to comply with duties of a driver involved in a crash; and breach of bail by driving with methylamphetamine in blood.

On 10 April 2022 at approximately 7:00 pm, the defendant was driving north on the Midland Highway and at Bagdad he was intercepted by police for driving at a speed of 110 km/h in an 80 km/h zone. The police administered an oral fluid test which did not return a positive result.

He drove on and a short time later pulled into the carpark at Zelda's Bar and Bistro on the Midland Highway at Bagdad. Zelda's was open and there were cars in the carpark and customers in the bar.

A few people were coming and going from their cars in the carpark and walking across the carpark to or from the entrance to the premises. There was limited lighting in the carpark.

The defendant's mother was in the carpark, and the defendant had an argument with her while seated in the car. He was yelling and agitated. He then accelerated and drove off at speed to the far end of the carpark where, on reaching the end of the carpark, in an area where there was loose gravel, he turned the vehicle, screeching his tyres, and did a "burnout". The vehicle slid as it was manoeuvred, lost traction, and fishtailed for a distance as he came out of the burnout. The vehicle straightened its course and the defendant drove back towards Zelda's. The car was travelling at an excessive speed as he drove towards the entrance to Zelda's.

The complainant, Daniel Robert Taylor, stepped out into the carpark and the defendant's vehicle collided with him. The defendant did not apply the brakes before colliding with the complainant.

From the complainant's perspective, the vehicle seemed to swerve towards him at the last minute. There was no suggestion by the State at trial or in these sentencing proceedings that he deliberately swerved towards the complainant.

The State maintains that the evidence establishes the vehicle was still fishtailing in the moments before the collision, resulting in a loss of control which accounts for the swerve towards the complainant. I am not satisfied, however, that it was still fishtailing. There was evidence that the vehicle had straightened and was accelerating in a direct course through the carpark. I find there was a swerve of some degree towards the complainant in the moments before the collision, which may have been due to inattention by the defendant. I accept that the defendant did not see the complainant and that, from his perspective, the complainant suddenly appeared from between parked cars.

The reality is that the defendant was travelling too fast for the conditions and because of his speed there was not time for him to react to the presence of the pedestrians and brake in time to avoid the complainant.

When the complainant was struck by the car, he went up over the bonnet and onto the windscreen, and then rolled off the vehicle and hit the ground with significant force. He lost

consciousness. Police and emergency services were called and the complainant was taken to hospital by ambulance and admitted.

The complainant sustained bruising to the left side of his skull, abrasions to his hand and elbow, and a concussion. He sustained a fracture to the left tibia, and a fractured collarbone. Further, imaging showed multiple fractures to the right side of his face, in particular, the orbit or eye socket into the maxillary sinus. The concussion caused a diffuse generalised dysfunction of the brain, which usually results in full recovery, however, the complainant has suffered ongoing symptoms and is suffering with what is known as a diffuse brain injury. He required surgery for the fractures to his tibia and collarbone. The surgery to his leg involved screws and a nail being inserted to hold the fracture in position while it healed.

The complainant experienced significant pain in the aftermath of the collision. He experienced fainting episodes for approximately a month, and on one occasion was taken to hospital. He was considered to still have a concussion. He was in a wheelchair for approximately three months and needed care and help with daily living. He was then on crutches for approximately six months. After that, he was able to return to work but only 2-3 days per week. He still experiences pain.

Further, the complainant has been diagnosed with anxiety and post-traumatic stress disorder, and prescribed medication to treat those symptoms. He loses his temper more quickly now and experiences panic attacks which have affected his family life. The ongoing symptoms of his brain injury include that he struggles to find the right words when speaking and so avoids talking to people. His memory has also been affected and this has impacted on his work. He finds it distressing to think about what might have happened if he had been carrying his infant son at the time of the collision. While he feels lucky to be alive and not to have lost his leg, his life has been adversely affected to a significant degree.

After the defendant struck the complainant, he drove out of the carpark and then drove along the Midland Highway to Chauncey Vale Road where he abandoned his car with its damaged windscreen. I accept that he acted in panic in leaving the scene of the accident. He telephoned his partner in a state of distress, and she collected him and drove him to the police station in Bridgewater where he spoke to a police officer and made admissions. He submitted to a blood test which detected methylamphetamine in his system. It was a low reading which may explain why when he was intercepted by police earlier in the evening, the drug was not detected by the oral fluid test. He admits by his plea of guilty that he must have had methylamphetamine in his blood at that time, as well as at the time of the accident.

At the time, the defendant was on bail for four charges of driving whilst a prescribed illicit drug was present in his oral fluid with an explicit condition of his bail that he not drive in breach of s 6A, or any other provision, of the *Road Safety (Alcohol and Drugs) Act*.

The defendant has an extensive criminal record. Relevantly, he has a number of convictions for driving offences as an adult. These include nine prior offences for driving with drugs or alcohol in his system, two of which were committed close in time to this crime. Since 2007, he has accumulated five convictions for driving whilst his license was suspended or disqualified.

He has other relevant prior convictions, one for dangerous driving committed in May 2017, a number for motor vehicle stealing, offences of violence including two charges of indictable

assault committed in 2008, and firearms offences including dealing in firearms when not the holder of firearms licence.

It can be seen from his record that there is a cluster of offending committed after the crime of dangerous driving on the 10 April 2022. In this period, he committed four offences of driving with illicit drug in his body within a month, as well as related breaches of bail conditions. He committed an aggravated burglary in May 2022, drive while licence suspended on two occasions, and evade police with aggravated circumstances in July 2022.

The defendant has spent 93 days in custody since the commission of this crime which has not been reflected in any other sentence and, in that sense, is unallocated.

The defendant is 35 years of age. He belongs to a very supportive family. He has had a long-standing drug addiction. This has impacted every aspect of his life, including his engagement with his parents, partner, and children, and it has affected his ability to hold down a job, resulting in offending and periods of imprisonment.

He has four children, the two youngest with his current partner who has remained with him for the past six or seven years. They separated for a time when his drug use escalated in 2020 – 2022. On 7 December 2022, he was sentenced to a court mandated drug diversion order with a custodial component of nine months. Prior to that sentence being imposed, he had been making a significant attempt to address his drug problem and commenced a residential rehabilitation program in October 2022. He successfully completed the 10-week residential Bridge Program. Because this charge was outstanding, however, he was not eligible to complete the drug diversion order. Initially, his response to the order was positive but he relapsed on becoming aware of his ineligibility. The order was cancelled in May 2023 and in lieu of that order, a deferred sentence involving a Community Correction Order for 12 months was imposed, and he completed that successfully. He has been abstinent from drugs since that order was made. He is engaging well with a Community Correction Order imposed in December 2023 for 18 months and has continued to refrain from drug use.

He currently has part-time employment and is looking for full-time work. He is spending time with his family and is optimistic about his future.

The progress he has made represents a very significant turn-around in terms of his drug addiction.

I have a report from Community Corrections dated 11 July 2024. The defendant has been assessed as suitable for the imposition of a Home Detention Order and the home where he resides with his partner has been approved for that purpose. There are some concerns given his history of drug use and offending, and the order is approved on conditions he engage with services regarding those behaviours, that he not consume alcohol or illicit substances, and that he submit to regular urinalysis testing. The report notes that the defendant has been engaging with Holyoake since June 2023 and continues on a monthly basis to engage meaningfully with that service.

This crime of causing grievous bodily harm by dangerous driving has caused very serious harm to Mr Taylor who is left with long-term injuries adversely affecting his life and impacting his family.

While this act of dangerous driving was short-lived, it was highly reckless and immature, and selfishly, Mr McDonald, you paid no attention to the very real risk that there would be pedestrians in your path. The accident happened not on a roadway but a shared use space, a carpark, where there was every likelihood that there would be people on foot.

There was very little lighting and by driving at excessive speed as you did, you abandoned your responsibilities as a driver, and you accepted the strong risk that you might cause someone serious or even fatal injury.

You have a very bad history of driving offences, and you were on bail for offences of driving at the time you committed this crime. Your offending, past and present, is closely tied to a long-standing drug addiction. As I have noted, you have made very good progress in relation to that addiction, and you have been abstinent now for over a year. It does seem to me that you appreciate that you have been given a critical chance to change direction and you have decided, in recent times, to make the most of that opportunity.

The sentence I will impose will give weight to those efforts and encourage your prospects of rehabilitation. It will, though, also reflect the gravity of this crime and the serious harm caused to Mr Taylor. The sentence I will impose is a Home Detention Order. If not for that order, I would have imposed a lengthy gaol sentence.

Home detention is an onerous sanction; it is effectively imprisonment in your home, and imposes conditions which must be complied with. If you breach those conditions, you will be brought back to court and an actual term of imprisonment may be substituted.

I record convictions with respect to the crime on indictment and the offences. I impose a Home Detention Order of 12 months with respect to the causing grievous bodily harm by dangerous driving and a community service order of 98 hours which must be completed within two years.

In relation to the Home Detention Order, I impose the core conditions set out in s 42AD(1). These include an obligation that you not commit an offence punishable by imprisonment for the operational period of the order, which is 12 months from today. You must be at the home detention premises at all times for that period unless for a "relevant reason", as defined in the Act, you are not on those premises, which is a reason approved by a probation officer, or limited reasons set out in the section, such as to enable you to seek urgent medical attention.

I impose the following additional conditions. First, you must submit to electronic monitoring for the operational period, which is 12 months, and all of the ancillary conditions as recommended concerning electronic monitoring, such as: you must not remove the device; you must not tamper with it; you must not allow anybody else to do so; and you must comply with all the reasonable and lawful directions given to you in relation to the electronic monitoring device.

Further, I impose the following special conditions:

- You must, during the operational period of the order, remain at [address as specified], at all times unless approved by a probation officer;
- You must attend the Community Corrections office at Level 1, 75 Liverpool Street, Hobart, during normal business hours and no later than 10:00 am tomorrow for induction onto this order;

- You must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through this device at all times;
- You must submit to the supervision of a Community Corrections officer as required by that officer;
- You must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include:
 - Any controlled drug as defined by the *Misuse of Drugs Act* 2001;
 - Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride, or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.
- You must not, during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol;
- You must, during the operational period of the order, if directed by a probation officer or prescribed officer to engage in a personal development activity, counselling, or treatment, engage in the activity, counselling, or treatment in accordance with any directions given by the probation officer or prescribed officer;
- You must, during the operational period of the order, maintain in operating condition an active internet service and landline, provide the contact details to Community Corrections, and ensure that the electronic monitoring device is connected to this internet service at all times.

The defendant is suitable for a community service order and I consider that such an order should be made. To impose that order, I make a Community Correction Order for two years, which has a special condition that you must complete 98 hours of community service in that time.

I make a further order that you are disqualified from driving for a period of three years from today. Your licence is cancelled.

In relation to the two charges of drive a motor vehicle whilst prescribed illicit drug present in blood, namely methylamphetamine, I impose three weeks' imprisonment on each offence wholly suspended on condition you commit no offences that could attract a term of imprisonment for two years. I impose six months' disqualification on each offence concurrent with the current term of three years.

For the offence of breach of bail by driving with methylamphetamine in blood, I impose two months' disqualification concurrent with that same period of three years.

For exceed applicable speed limit, I impose a fine of \$150.

For fail to comply with duties of a driver involved in a crash, I impose a licence disqualification period of four months concurrent with period of three years.