

David Wright, you were found guilty by a jury of causing death by dangerous driving. It is my responsibility to make findings of fact based on the evidence, but my findings must be consistent with the verdict. Facts adverse to you must be proved beyond reasonable doubt. Just after 4.30 pm on 13 January 2022 you were riding your motor cycle south on Wellington Street in Longford. Your friend Phillip Milburn was a pillion passenger. You and he had been on a ride around the area and were nearly back to your home in Longford. As you rode down Wellington Street a truck towing a trailer carrying an excavator was on the same road. It was being driven by Jake Sherriff. He worked with his family's civil construction firm which on that day had completed some roadwork north of the intersection of Wellington Street with High Street. The truck and trailer had been parked on the left side of Wellington Street for traffic heading south. As you rode along Wellington Street Mr Sherriff drove out and headed south, the same direction as you, and commenced a right turn into High Street. His evidence was that after pulling out he drove into the centre of the south bound lane and worked through the gears until he reached either third or fourth gear before decelerating to commence the turn.

As you approached that intersection you did not see the truck and trailer until it was too late to avoid a collision. You applied the brakes hard. The wheels skidded. You laid the bike onto the road and it slid under the trailer. You also slid under the trailer but Mr Milburn's head struck the bar on the side. He died from the injuries he sustained. It follows from the verdict that the majority of the jury was satisfied beyond reasonable doubt that you drove at a speed or in a manner which, in all the circumstances, was dangerous and that your dangerous driving caused Mr Milburn's death. That is, the manner of your driving went beyond negligence and involved such a serious breach of the proper conduct of the motor cycle as to be dangerous to others, of course including Mr Milburn.

I find that, at the moment you first saw the truck and trailer on the road, the truck itself had largely cleared the intersection and entered High Street. The rear of the trailer was still in the south bound lane but the rest of the trailer entirely blocked the north bound lane. The truck was 7.3 metres long and the trailer was 8.1 metres long. The combined length was thus more than 15 metres to which the length of the draw bar of the trailer likely had to be added. Mr Milburn struck the trailer about two metres from its front, at the location of the marks seen and documented by Constable Naomi Davey as part of the accident investigation. I find, from the location of the impact mark on the trailer combined with the marks evidencing the path of the motor cycle on the road that, at the moment of impact, that part of the trailer would have been at somewhere around the centre of the north bound lane.

Together, the truck and trailer were a very substantial and obvious presence on the roadway. The large orange excavator on the trailer added to the trailer's visibility. I am also satisfied that the rear and side indicators on both the truck and trailer were operating prior to the commencement of the turn. I accept Jake Sherriff's evidence that he activated the right indicators before he pulled out from the kerb and deliberately kept them operating so as to indicate his intention to turn right into High Street.

The substance of the defence case, and your evidence, was that your riding was not dangerous, and that the collision was an unfortunate and unavoidable occurrence. It was suggested that you had no reasonable opportunity to avoid the truck as it pulled out in front of you. The jury must have rejected that account and I also reject it. Mr Sherriff did not see you before he pulled out

from the kerb but that is a fact of little significance. It follows from the nature of the vehicles he was driving, the distance travelled on the roadway before commencement of the turn, and the time it would have taken from the commencement of the turn for the trailer to reach its location at the moment of impact that it must have been present and visible on the road for a significant time before the collision occurred. The motor cycle you were riding was noisy. I think Mr Sherriff's failure to hear and see you is explained by the fact that, when he looked before pulling out, you were still a considerable distance behind him. I find that the substantial and operative cause of the collision, and thus the cause of Mr Milburn's death, was your dangerous inattention which resulted in your failure to observe what was ahead of you on the road until it was too late. It was a clear sunny day. The road was straight, relatively wide and flat. Your view of the truck and trailer was unobstructed. The brakes and steering of the motor cycle were in good working order. And yet, you did nothing to adjust your speed or position on the road until it was too late to avoid a collision. One issue at trial was the location from which the truck pulled out from the kerb. That evidence is relevant to an assessment of the extent of the opportunity you had to observe and avoid the vehicles before the collision. Mr Sherriff's brother and another witness, Kelsey Exton, gave evidence from which it could be inferred that the truck was quite close to the intersection with High Street before it pulled out, and that it immediately went into the turn. I doubt the correctness of that evidence. Zach Sherriff was not paying much attention, and Ms Exton was much further back along Wellington Street from where she would have found it very difficult to estimate the position of the truck. However, even if the truck pulled out from close to High Street, the time it must have been on the road still allowed you plenty of time to see it, assuming you had been paying attention, driving at a reasonable speed and exercising judgment unaffected by an illicit drug. Until you realised the presence of the vehicles you were in control of the motor cycle. In any event, I am satisfied that the truck started its journey well back from High Street, closer to the location at which Jake Sherriff had been working further up the road. From where Mr Sherriff had been working it made no sense to park the trailer close to High Street. Although Mr Sherriff was ultimately not precisely sure where he was parked, I am satisfied of the truth of his evidence that he drove in the south bound lane for enough distance to accelerate and move through the gears before he commenced the turn, thus increasing the time he was on the road. That is also consistent with Kelsey Exton's evidence, the effect of which was that there was enough time for her to notice events unfolding and anticipate the impending collision. She said she was waiting for you to apply your brakes but you did not do so until it was too late.

There was no evidence at trial of precisely what caused your inattention. You claimed to have been looking at the RSL building on your right as you rode past it but, if that is so, you must have taken your eyes off the road for a considerable time. I am satisfied that the effect of your inattention was likely amplified by your speed. You claimed to be travelling at or just over the 60 kph speed limit, but I regard the higher estimate of your speed made in the accident investigation as much more likely to be true, and consistent with Ms Exton's evidence that you accelerated away from her as she followed you along High Street. It could also be that your inattention was contributed to by the presence of methylamphetamine in your body although it was present at a relatively low level. There was expert evidence that methylamphetamine, even at that level, may impair the judgment of a driver in a number of relevant ways. The extent to which the drug affected you cannot be determined with certainty. A witness who saw you before the crash did not notice that you were affected, but that means little when considering the ways in which driving judgment may be impaired. I am satisfied that it contributed to your inattention. You claimed to have not intentionally used methylamphetamine but I do not believe you. You should have been conscious of the additional risk you posed as a result of having used the drug. To risk driving with a pillion passenger after having taken methylamphetamine adds to the level

of your criminality. Your account was you took a tablet which Mr Milburn gave you telling you it was suboxone. Even if that was true, it makes little difference to the level of your criminality because it was inherently dangerous to drive having taken a drug not prescribed to you without any real means of knowing what it was or what effect it may have.

You are now aged 55. You are not entitled to the mitigation a plea of guilty would have attracted. Earlier in your life you engaged in employment. You married in 1990 and have six children, although you recently separated from your wife. You have a history in three States of violent offending, but you have no prior convictions for serious driving offences. On 26 May 2005 you were convicted of murder and sentenced to imprisonment for eighteen years from 15 August 2004 with eligibility for parole after having served half that term. You are still serving that sentence. That is so because, you were granted parole in 2013, again in 2017, again in 2018, and again in 2019. On each occasion your parole was revoked because of drug use. You were most recently granted parole on 12 March 2021, but it was revoked as a result of this crime. The result was that, although you were granted bail for this crime, you were taken back into custody as a result of it and you have been in custody since then. You had been in the community for less than a year. In light of your parole history, I infer that the presence of methylamphetamine in your blood, as distinct from the driving per se, is likely to have played a significant part in the decision to revoke parole. By operation of the *Corrections Act 1997*, s 79(5)(a), the periods of that release are not to be taken into account in determining how much of the term of your sentence remains to be served unless the Board otherwise directs. The combined result of the various parole orders and revocations is that you still have a substantial part of the eighteen year sentence to serve. Absent another grant of parole you will not complete that sentence until 2027. Because the revocation of your parole and return to custody was at least in part because of this crime it is proper that I take that into account in determining the commencement date of the sentence I will impose.

I accept that you did not drive in an intentionally dangerous way. It was not a prolonged course of dangerous driving. Your speed was not extreme and does not, without more, account for the collision even though it amplified the effect of your inattention. I also accept that you very much regret Mr Milburn's death. You have nightmares as a result of it. However, I have read a moving victim impact statement written by Mr Milburn's mother which describes the trauma which her son's death has caused her. No sentence can make up for that harm. Decisions and sentences in this State over the past 15 years that involve the crimes of causing death and serious injury by dangerous driving demonstrate that there has been a marked increase in the length of the sentences. Consistent with community concern there is now an increased emphasis upon general deterrence and recognition of the need to impose sentences which reflect society's condemnation of driving behaviour which has that result. To allow for totality and for the custody arising from parole revocation for the same conduct I will make orders as to partial concurrency of sentence.

You are convicted. You are disqualified from driving for four years from your release from prison. Any driver licence you have is cancelled. You are sentenced to imprisonment for three and a half years. I order that one and a half years of that term be served concurrently with the term you are presently serving, and the balance is to be served cumulatively. I order that you not be eligible for parole until you have served two and a half years of the three and a half year term. The result is that you will serve a term of two years in addition to the sentence you are presently serving, and that you will not be eligible for parole until you have served at least one year of the additional term.