

STATE OF TASMANIA v TIMOTHY SHAUN VAN DEN BOSCH

11 SEPTEMBER 2024

COMMENTS ON PASSING SENTENCE

JAGO J

Mr Van den Bosch, you have pleaded guilty to one count of dangerous driving. On 16 December 2021, you were driving a four-wheel drive motor vehicle on Woolnorth Road in far north west Tasmania. You had two passengers in your vehicle, being two children, your daughter and stepson. As you were driving on Woolnorth Road, so too was a Mr Jenkins. He was travelling towards Woolnorth to pick up a friend. He observed your car parked at a bridge. He then saw you enter the driver's seat of the vehicle and accelerate away quickly, pulling out in front of his vehicle. You drove off at a speed of between 110 and 130 kph. The speed limit on Woolnorth Road is 100 kph. The State do not assert, however, that your speeding constituted dangerous driving given it was only for a short time and on a relatively straight and isolated piece of road.

At one point, Mr Jenkins' vehicle came within approximately two car lengths of your vehicle. You rapidly applied the brakes in a manoeuvre that is commonly referred to as "brake checking". Mr Jenkins had to quickly respond by heavily applying his brakes to avoid his car running into the rear of yours. Thereafter, Mr Jenkins maintained a greater distance between his vehicle and yours.

Mr Jenkins observed you begin to swerve your car from side to side in an S shaped manoeuvre. At one point, the rear outer wheels of your vehicle left the sealed section of road and hit the gravel edge, causing it to lose traction. You fishtailed across the road. You continued driving in this foolish manner for the next five kilometres or so. Fortunately, there was no oncoming traffic during this time.

As Woolnorth Road changes from a bitumen surface to a gravel surface, you came across a cyclist, a Mr Gray, who was travelling in the opposite direction to you. As you approached the cyclist, you swerved your car hard left, then right, and then left again in a reverse S shape. As you swerved the vehicle towards the right, you were heading directly for the cyclist, who had to take evasive action and manoeuvre his bike off to the side of the road to avoid being struck by your vehicle. This was a difficult task for him as his bike was loaded with equipment as he was touring the State. As you drove past the cyclist, you raised your middle finger towards him and swore at him.

When he observed your driving behaviour, Mr Jenkins began filming your vehicle using his phone, which was mounted to his windscreen. I have seen the footage of that. You swerved very close to the cyclist, and I have no doubt he was fearful that he may be struck. Mr Gray has provided a victim impact statement. I have regard to it. Your driving behaviour was obviously of considerable concern to him.

You drove away but approximately ten to twenty minutes later; you drove back along Woolnorth Road in the opposite direction. You again came across Mr Gray on his bike and again swerved your vehicle towards him before pulling away and raising your middle finger towards him. On this occasion your wheels did not lose traction, but your behaviour was not only dangerous, but incredibly childish, rude and belligerent.

The vehicle you were driving was registered to your partner and on 21 December 2021, Tasmania Police served her with a Requirement on the Registered Owner of a Motor Vehicle

form, which necessitated her nominating the driver at the relevant time. When police served the notice, you were, in fact, present and admitted that you were the driver of the vehicle. You told police that you had "more of a right of way on the road than cyclists". When police put the details of the allegations to you, including that you had swerved directly at the cyclist, you laughed. You certainly demonstrated no remorse for your driving behaviour nor any understanding of the danger your actions presented to other road users and the cyclist in particular.

On 22 December 2021, the Registered Owner Declaration Form was returned to Smithton Police station. On the form you admitted being the driver but claimed that you had been swerving to avoid potholes. There is no suggestion there were any potholes on Woolnorth Road at the relevant time. On the declaration, you also said, "I am sorry if I knew that someone would go out of their way to complaint(sic), I would never have bothered and sorry if it upset anybody".

I take into account that this incident occurred on a remote rural road and there was not a lot of traffic in the area. Nevertheless, your driving was obviously dangerous to Mr Jenkins and Mr Gray, as well as the two children that were in your vehicle. I take into account the fact that high speeds were not involved in your driving and the incident did not go on for an extended period of time. No actual collision with anyone or anything eventuated. But in my view that was more good luck than good management. Swerving directly at a cyclist, whilst on a gravel road where loss of traction can occur suddenly and without warning, is a terribly dangerous thing to do. If you had lost control of your vehicle and struck the cyclist, then he could have been critically, if not fatally, injured.

What is particularly aggravating about your driving behaviour is that you were on bail at the time, having been charged with the crime of assault and dangerous driving. These incidents occurred on 27 November 2019. You were awaiting your trial in the Supreme Court at the time. A jury found you guilty of assault which involved you driving your vehicle at, and striking, the complainant. You pleaded guilty to the dangerous driving charge. On 15 August 2022, I sentenced you to 18 months' imprisonment, wholly suspended on condition that you not commit any offence punishable by imprisonment for a period of two years. You breached the terms of the suspended sentence when you committed 12 offences of breach of Family Violence Order, four offences of common assault and an offence contrary to the *Firearms Act* between March and June 2024. On 30 July 2024, a magistrate activated the 18 month period of imprisonment and you are currently serving it. Your earliest release date, if you are granted parole, in respect to that sentencing order, is 8 February 2025. Because the sentence I am about to impose will come on top of that sentence, the totality principle requires me to take a more lenient course than would otherwise have been appropriate.

I take into account all of your personal circumstances. You had a very difficult upbringing. When you were approximately eight years of age you were abducted and sexually assaulted. You also suffered physical and sexual violence at the hands of your stepfather. Because of the terrible nature of your childhood, you have been left with Post Traumatic Stress Disorder. Additionally, it seems you suffer several other mental health conditions, including borderline personality disorder, depression and Bi-Polar Disorder.

I am told that at the time this incident occurred, you were struggling with your mental health. You had just lost your employment on a dairy farm because of your mental health difficulties. Over the years your mental health has fluctuated considerably, and you have experienced

difficulty in obtaining regular assistance. It has been hard for you to access mental health professionals on a regular basis. There is very limited access to such professionals via the public health service and it is cost prohibitive for you to endeavour to obtain professional mental health assistance on a private basis. The result is that you have had a lot of difficulty in stabilising your mental health with appropriate medication. You have had many changes in the medication that you have been prescribed, with the effect that sometimes your conditions are worsened rather than improved.

Since you have been remanded in custody, a positive has been that you have obtained some consistent and regular mental health assistance, and you have been using medication on a more consistent basis. I am told you feel better for it. Nevertheless, you have found your incarceration difficult. It is the first time you have ever been in a prison environment. You have endeavoured to make the most of opportunities that are available to you by undertaking resilience courses and engaging in counselling. When you were housed in medium security, you worked as a wardsman. You are now housed in minimum security and work as a kitchen hand.

I take into account your plea of guilty, although I note it was entered at a very late stage, in fact on the day the trial was due to commence. Witnesses had been briefed, including your ex-partner who was the victim of the family violence offending I have referenced. Given the evidence against you the plea of guilty was, in many ways, a bowing to the inevitable. I do note however that you had had difficulty in obtaining legal representation, particularly once you were in custody. Had you been able to access that representation earlier, the plea may have come about at an earlier point. The plea, in my view, still retains some value in the sentencing exercise.

I am conscious that when this crime was committed, you did not have a particularly poor record of prior criminal offending. You had some traffic infringement matters and some offences contrary to the *Road Safety (Alcohol and Drugs) Act*, but nothing of this severity. As noted, however, I consider it particularly aggravating that this crime occurred when you were on bail for very similar offending. You seem to have little appreciation of your obligations as a driver and the obvious danger you create for others when you drive your vehicle in such an ignorant and foolish manner. Given you breached the suspended period of imprisonment I imposed on you in August 2022, I do not consider it appropriate to impose a further period of suspended imprisonment, even though as I have said, I acknowledge at the time this crime occurred, your prior convictions were not particularly grave. You were given an opportunity, however, in August 2022 and you chose not to take it up. In my view, this is serious criminal offending, and even bearing in mind the application of the totality principle, it remains necessary that the sentence I impose marks this separate occasion of criminal offending. The only appropriate sentence is a period of imprisonment. I will shorten the head sentence somewhat to take account of totality.

I make the following orders. You are convicted of the crime of dangerous driving and sentenced to imprisonment for 15 months, cumulative to the term of imprisonment you are currently serving. I order that you are not eligible for parole until you have served one half of that sentence.

You are disqualified from driving a vehicle for a period of two years, commencing on the date of your release from prison.

