

STATE OF TASMANIA v BRETT ANDREW JAY
COMMENTS ON PASSING SENTENCE

1 JULY 2025
BRETT J

Mr Jay, you have pleaded guilty to one count of assault. You committed this crime on 17 September 2023. At that time, you were subject to 3 suspended sentences and your commission of the crime was in breach of the conditions of suspension of each of them. The prosecution has applied for an order under s 27 of the *Sentencing Act* in respect of each sentence .

The crime was committed in the car park of the Club Hotel in Glenorchy. You were a passenger in a vehicle which was driving past the Club Hotel when your attention was drawn to the complainant. You had been drinking and were undoubtedly affected by the alcohol you had consumed. A sample taken from you two hours later returned a reading of .215 which is considerably in excess of four times the legal driving limit.

You initiated an interaction with the complainant who was outside the hotel with his partner and a friend. It seems clear that although you initiated the contact, you did not actually know the complainant. You were looking for someone else. He responded to you angrily, obviously on the basis of some history that he perceived there was between you and him or at least you and his family. I will accept what you say about that interaction, that he was the aggressor at that point in time, although I also infer from the fact that your window must have been down throughout the whole of this, that you were responding to him as well and participating in the interaction. In fact, I have no doubt that that is the case. In any event, I will accept what you say that he spat in your eye and this obviously caused as you said to the police, for you to become enraged.

After this, the vehicle you were in drove off for a short distance. The driver was your cousin. You required him to pull over so that you could swap seats with him. He initially refused to do so but you obviously coerced him into taking this course of action on the basis that it was your vehicle. I do not know the details of that interaction, but I imagine you were in a fairly agitated state at that point in time and he obviously relinquished or gave into the requirement that he relinquish the control of the vehicle. You then drove the vehicle back to the hotel, and into the car park. Your stated intention was to seriously assault the man in question. You said to the police that it was your intention to bash his head in. I will accept that is the case. It provides you with absolutely no mitigation, but I will accept that that was the truth of the matter. You obviously were affected by alcohol as you drove the vehicle and it is not surprising that when you came into the driveway of the hotel you were driving at an excessive speed and it was only a matter of chance as to who might be present in the hotel car park at that time. As it turned out, the complainant, his partner and friend were walking through the car park at the time. It is clear to me from the CCTV footage, as I have already stated, that you drove directly at the complainant and not at anyone else in the group. You ran into him at speed. He was knocked to the ground. As I have already said, I will accept that this was opportunistic, but I am also satisfied that you could have brought the car to a halt before you hit him if you had desired to do so. It may well be that the combined affect of the alcohol and the rage caused you not to do so, but in my view this resulted in you forming an intention to apply force to him with the vehicle at perhaps the last minute. You then reversed and drove around him. It is clear from the CCTV footage of the incident that when you did so, your car travelled very close to him, narrowly avoiding running over him as he was lying on the ground. You then drove off. You did not stop to check on him or provide assistance. You had absolutely no way of knowing how badly he may have been injured and your state of inebriation meant that you were not in a proper position to judge that

as the driver of the vehicle in any event. Fortunately, a nearby police officer intercepted you a short distance from the hotel and I assume you were taken into custody at that point.

The complainant has provided an impact statement. He has suffered considerable back and shoulder pain since the commission of this crime. These symptoms are ongoing and are having a very significant impact on his functional capacity. He states that he is also suffering from ongoing psychological impact originating from the trauma of the assault itself as well as the effect that his physical limitations are having on his life. I have been provided with an occupational therapy report which would seem to corroborate this. However I have no difficulty with the general tenor of that impact, which is entirely consistent with what one would expect from the perpetration of incident such as what occurred in this case.

I regard this crime is an extremely serious example of assault. There are a number of factors which aggravate its objective seriousness and your moral culpability for it. You used a car as a weapon in a deliberate and violent attack. You drove directly at this man and ran him down, in order to vent your irrational and drunken anger. As I have said, I accept that it was opportunistic but this does not provide you with any excuse or mitigation. You should not have been driving at all, both because of the amount of alcohol you had consumed and the fact that you were disqualified from driving by court order. Your actions were extremely dangerous. Although it is accepted that you must have braked immediately before hitting him, your vehicle collided with him with considerable force. Your capacity to moderate the degree of force of the vehicle or control your actions was severely compromised both by your anger and intoxication. Although you caused injury enough, your actions had real potential to cause far more severe injury or worse. You committed this crime in the car park outside the venue frequented by the public. Your conduct in driving off and leaving your victim to his fate speaks to your moral culpability, as well as compounding the impact of the crime on the victim. It was a callous and reprehensible thing to do.

You are 46 years of age. You live alone, and are in receipt of a disability pension. Until 2012, you had an excellent work history, but you have also had a longstanding problem with the abuse of alcohol. This is consistent with your criminal history which is significant and lengthy. You have been convicted of some offences involving violence and numerous serious traffic offences including drink driving and disqualified driving in the past. My overall impression is that you exhibit a general disregard for the law, and that is particularly so in respect of your use of motor vehicles. That propensity manifested in the commission of this crime. On 13 July 2022, you were sentenced to two months imprisonment wholly suspended for two years for dishonesty offences, a further sentence of two months' imprisonment wholly suspended for the same period for a number of offences of breaching a family violence order and a sentence of nine months' imprisonment, three months of which was suspended for a period of three years for breaching bail conditions, in particular a condition which prevented you from driving or being behind the controls of a motor vehicle. You were also disqualified from driving for a lengthy period and it was that disqualification which you breached when you committed this crime. Your commission of the crime by using a motor vehicle to attack and run down the complainant while bound by these suspended sentences and an order of disqualification makes it clear to me that you have learnt nothing from previous sentencing and you are not deterred by the conditions of suspension or by other court orders such as the disqualification. There is no question, in my view, that a sentence emphasising specific deterrence is called for in this case. In relation to those matters, I observe that you have shown little remorse or insight in relation to your conduct on this occasion. The fact that you regard what you did as somehow mitigated by the fact that you did not

originally intend to hit him with your car, you were driving back drunkenly on a public highway and fast enough into this car park to hit someone, for the purpose of bashing his head in in a public car park, that you regard that as mitigatory, in my view, speaks to your lack of insight in relation to your conduct generally and its impact on other people.

Further, the serious nature of the crime also requires an emphasis on general deterrence, and denunciation. For these reasons, the only appropriate punishment is a substantial term of actual imprisonment. In determining the appropriate length of that term, I will take into account your plea of guilty, and in particular its utilitarian benefit, including that it has saved a trial and avoided the need for the complainant and eye witnesses to give evidence against you. I still maintain that view notwithstanding your unsuccessful dispute of facts. It is clear that the nature of that dispute meant that there was no point in calling the complainant or any other witness, so they have been spared the trauma of having to give evidence in Court in relation to disputed facts. As far as the suspended sentences are concerned, I am required to activate them unless I am of the opinion that it would be unjust to do so. The argument made on your behalf is that I should regard the mere fact that some of the sentences were imposed for offences of a different nature as something which means I should make an overall finding that it is unjust to activate the sentence. I reject that submission. The fact of the matter is that within a year of having these sentences suspended on the very clear and understandable condition that you were not to commit any offence punishable by imprisonment, you decided in breach of those suspended sentences and that particular condition by committing this very serious crime. The thought that the mere fact that they were imposed for something else might render it unjust to activate the sentence is in my view an untenable submission. It may well be that you have not committed any further family violence offences, it may well be that you have not committed any further offences for which any of the suspended sentences were imposed, but having regard to your history of generally disregarding court orders and breaching the law, the fact that you would commit this crime while subject to these suspended sentences means that it is not unjust for them to be activated. Therefore, under law I have no option but to activate the sentences. In relation to the overall sentence, I will fix a non-parole period to provide the parole board with the chance to respond to any meaningful attempt by you to pursue rehabilitation. Finally, the circumstances of this crime require the imposition of a significant driving disqualification. This is a matter of public protection.

Accordingly, the orders I make are as follows:

- a You are convicted of the crime to which you have pleaded guilty;
- b The suspended sentence of two months imprisonment imposed by the Magistrates Court on 13 July 2022 in respect of various offences including those described in complaint number 1960/2022 is activated and will be served from 6 June 2025. You are not eligible for parole until you have served one half of that sentence.
- c The further suspended sentence of two months imprisonment imposed by the Magistrates Court on 13 July 2022 in respect of offences which include those described in complaint 543/2021 is activated and will be served cumulatively upon the sentence already activated. You are not eligible for parole until you have served one half of that sentence.

- d The suspended sentence of three months imprisonment imposed on 13 July 2022 by the Magistrates Court is activated and will be served cumulatively upon the activated sentence relevant to complaint 543/2021. You are not eligible for parole until you have served two months of that sentence
- e For the crime of assault, you are sentenced to imprisonment for a term of 12 months, which will be served cumulatively upon the activated three month suspended sentence. You are not eligible for parole until you have served seven months of that sentence.
- f For the purposes of S 92A(3) of the *Sentencing Act*, I specify that:
 - a the total term of imprisonment which you are liable to serve in respect of all of the above sentences is 19 months commencing on 6 June 2025
 - b The total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the said sentences, which is a total period of 11 months.
- g You are disqualified from driving for a period of five years commencing on the date of your actual release from prison. The said period of disqualification will be served concurrently with any other disqualification then in force.