

STATE OF TASMANIA v JAMES ANDREW WRIGHT
COMMENTS ON PASSING SENTENCE

3 FEBRUARY 2020
ESTCOURT J

The defendant James Andrew Wright, aged 29 has pleaded guilty to one count of dangerous driving and one count of wounding. I have also agreed to deal with associated summary offences comprising two charges of destroying property and two charges of assault on complaint 5665/2018. The complainant is Damien Charles Sharpe, aged 35.

At approximately 3:30 pm on Friday, 23 March 2018, the defendant and complainant left their workplace, International Catamarans Tasmania in Derwent Park, at the same time and proceeded west along Derwent Park Road. The complainant was riding a bicycle and the defendant was riding a motorbike. The two were not known to each other.

Both stopped in the left hand lane at the traffic lights on Derwent Park Road at the intersection with the Brooker Highway. The defendant revved his engine and accelerated past the complainant once the lights turned green, passing him in a narrow space between the complainant and a pedestrian island. It is at this point that I find that the dangerous driving commenced.

Both men continued along Derwent Park Road and came to a stop again at red traffic lights at the intersection with Gormanston Road. The complainant stated to the defendant *"no need for that cockhead"* and the defendant replied *"fuck me mate get off the fucking road then you cockhead. Fucken pull up here then cunt"*. The defendant continued to tell the complainant to pull up further along the road. There were a number of other vehicles on the road at this time.

Upon the traffic lights turning green, the defendant accelerated away and around 15 metres along the road he stopped his motorcycle on the side of the road and waited for the complainant. As the complainant rode past the defendant attempted to pull the complainant off his bicycle by grabbing his backpack, but without success (count 1 on the complaint).

The complainant continued along Derwent Park Road and turned left onto Chesterman Street. A motorist witnessed the exchange between the parties at the intersection of Derwent Park Road and Gormanston Road. When the defendant ran to his motorbike, she stopped her vehicle in front of it in an attempt to prevent him from catching up with the complainant. She continued to drive slowly in front of the defendant and watched the complainant turn onto Chesterman Street, at which point she drove her car into the gutter side of the road to prevent the defendant from following the complainant.

The defendant tailgated her car on his motorcycle on Derwent Park Road before driving around it, up onto the footpath and through the property of a business on the corner of Derwent Park Road and Sunderland Street. The defendant continued driving on Sunderland Street. The witness drove to Chesterman Street as she was worried about what might happen.

The defendant turned left onto Chesterman Street where he observed the complainant. He then accelerated heavily and deliberately drove his motorbike at the complainant. The defendant struck the complainant on his bicycle. As a result of the impact the complainant was knocked from his bicycle onto the road. His bicycle was destroyed in the process (count 3 on the complaint).

Following the impact the defendant stopped his motorbike and approached the complainant. The complainant was dazed, bleeding from his leg and stumbling on the street requesting assistance. The defendant's aggressive manner caused the complainant to cower in a ball on the ground and cover his head and face. The defendant grabbed the mobile camera from the

complainant's helmet and forcibly pulled it off the helmet. In the process he shook the complainant's neck and head vigorously (count 2 on the complaint). The defendant threw the camera over the fence of a nearby business, destroying it (count 4 on the complaint).

Police and Ambulance Tasmania personnel attended the scene a short time later and the complainant was taken to the Royal Hobart Hospital for treatment. He received 8 stitches to his right knee, including some internal stitching. His right ring finger was glued and strapped to the little finger. All the other cuts on his leg were bandaged. The complainant required follow-up treatment with his general practitioner and physiotherapy. As a result of his injuries he had two weeks off work.

As a result of this incident the complainant's bicycle worth \$2,000 and \$500 worth of accessories were destroyed, and the lens on his action camera was destroyed and cannot be replaced. The camera was valued at \$200.

I have seen a victim impact statement from the complainant. He says his work and lifestyle will forever be impacted and he will have to manage triggers and fears that may arise due to this incident. Prior to the accident he was a happy father-of-two who enjoyed riding his bike to work and feeling safe in his community. He is not sure if he will ever regain that trust again. The incident has had a large impact on his life. He used to ride my bike all the time for work to stay fit for his children. He now does not feel comfortable riding on the road after what happened.

The defendant has prior convictions for traffic offences but not for dangerous driving. He has prior convictions for assault, resisting arrest, destroying property and disorderly conduct. He is entitled to a discount on an otherwise appropriate sentence as a result of his pleas of guilty.

I have had the benefit of a pre-sentence report prepared by Community Corrections. The author of that report states that the defendant is the second youngest child from the marriage of his parents, that he recalled a generally positive and unremarkable upbringing. His father was a painter and his mother was an accountant. He was well provided for and was not exposed to any abusive behaviours in the family home. He described close present-day relationships with all of his family. In particular, he shares a very close relationship with his sister, with whom he resides. He is single and reportedly content with that situation. He does not have any dependants.

The defendant was diagnosed with ADHD when he was a teenager. He told the author of the report that he ceased taking Ritalin as an adult, and found that exercise worked better for him to manage his symptoms. He reported suffering from occasional bouts of depression during adulthood. He advised that his depression was at its worst at the time of this offence when he was feeling suicidal and moody, whilst withdrawing from antidepressant medication. He reported depression has not been a problem for him during the past 12 months. He has recently obtained a mental health plan to access psychological therapy in relation to anxiety and anger management.

The defendant admitted to the author of the report a history of problem substance use which was intertwined with past offending. He stated that he was introduced to alcohol by a cousin at around 12 years of age. He said he engaged in regular binge drinking throughout most of his early adulthood. He claims to have reduced his alcohol consumption during the past 5 years, and now no longer consumes more than a six-pack of beer on the infrequent occasions he drinks in a social context. In relation to substance use, he recalled a history of heavy cannabis use coupled with recreational ecstasy use. He said he ceased using illicit drugs also around 5 years ago, aside from a "slip up" using cannabis after his sister's partner died early last year, and he

has ceased associating with drug using social contacts. He also advised he is regularly drug tested by his employer and has passed all drug tests at work.

The defendant told the report author that his recollection of events was different than that which was captured on the video footage and said that he found watching the video very confronting due to his abhorrent behaviour. He said that he was withdrawing from antidepressants and cannabis at the time of the offence, and had not been sleeping well. He claims he committed the offence on impulse and regretted his behaviour "almost immediately". He said he rides bicycles himself, and said his actions were not indicative of a dislike of cyclists in general. He acknowledged that he potentially could have killed the victim, and said he was remorseful in relation to his offence.

In order to address his offending behaviour, the report author states the defendant has since ceased taking antidepressant medication and addressed his problematic cannabis use. And, as I have said, he has a mental health plan in place to commence psychological counselling in relation to his anger management and treatment of anxiety.

I have also had the benefit of submissions for the defendant's counsel, Mr Slicer. I accept Mr Slicer's submission that the dangerous driving was not prolonged or egregious, although the fact of the matter is that it resulted in injury to the complainant. As to the wounding, the Crown does not demur from Mr Slicer's submission that the crime was reckless and not intentional.

It goes without saying however that the crimes of wounding and dangerous driving are serious crimes requiring a substantial penalty. The second assault was violent and vicious, given the injury already caused by the defendant to the complainant. However, given the defendant's good record of employment in which he is well regarded, his remorse and the steps he is taking to address his offending behaviour, I see this as an appropriate case for him to be punished in the community and not sent to prison, at least unless he re-offends.

I convict the defendant on all counts.

For the crime of wounding I order that he serve 18 months' home detention.

My order includes all of the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act 1997*, including s 42AD(1)(g) as to electronic monitoring.

In addition to those core conditions I impose the following conditions be included in the order:

- the defendant must, during the operational period of the order, remain at [address] at all times unless approved by a probation officer;
- the defendant must immediately upon his release from Court today, attend the Community Corrections office at Highfield House, Bathurst St in Hobart for induction onto this order;
- the defendant 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;
- the defendant must submit to the supervision of a Community Corrections officer as required by that officer;
- the defendant must not take any illicit or prohibited substances. Illicit and prohibited substances include:

- (a) Any controlled drug as defined by the *Misuse of Drugs Act* 2001.
- (b) Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless he provides written evidence from a medical professional that he has been prescribed the relevant medication.
- (c) The defendant must not, during the operational period of the order, consume alcohol, and 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.

I also make a Community Correction order with an operational period of two years from today, that contains, in addition to the statutory core conditions, a special condition that the defendant must within the next two years satisfactorily perform community service as directed by a probation officer or a supervisor for a period of 210 hours.

It is a further condition of that order that the defendant be subject to community supervision for a period two years and that the defendant during the operational period of the order:

- (a) submit to the supervision of a probation officer as required by that officer;
- (b) submit to medical, psychological and psychiatric assessment and treatment as directed by a probation officer.

For the crime of dangerous driving the defendant is sentenced to 9 months' imprisonment, which sentence I wholly suspend on condition that the defendant commit no offence punishable by imprisonment for a period of two years.

Pursuant to s 55 of the *Sentencing Act*, the defendant is disqualified for holding or obtaining a driver's licence for a period of two years from today.

For the two charges of destroying property and the two charges of assault, the defendant is sentenced to 9 months' imprisonment, which sentence I wholly suspend on condition that the defendant commit no offence punishable by imprisonment for a period of two years.

That sentence is cumulative to the first period of 9 months just imposed.

The overall effect of those sentences is a sentence of 18 months' home detention and 210 hours of community service plus 18 months' suspended imprisonment and two years' licence disqualification.

Finally, pursuant to s 68 (1) of the *Sentencing Act* 1997, I make a compensation order in favour of Damian Charles Sharpe in the sum of \$2,700.