

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
(Not) Restricted
Suitable for Publication

Case No. CR-19-02162

DIRECTOR OF PUBLIC PROSECUTIONS

v

ANDREW HUTCHISON

JUDGE: Mullaly
WHERE HELD: Melbourne
DATE OF HEARING: 30 April 2020
DATE OF SENTENCE: 29 May 2020
CASE MAY BE CITED AS: DPP v Hutchison
MEDIUM NEUTRAL CITATION: [2020] VCC 708

REASONS FOR SENTENCE

Subject:
Catchwords:
Legislation Cited:
Cases Cited:
Sentence:

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr Andrew Moore	Office of Public Prosecutions
For the Accused	Ms Jo Swiney	Victoria Legal Aid

HIS HONOUR:

- 1 Andrew Hutchison, on 20 November 2018 you were at home at your parent's house in Melton. You lived there with your cousin. You and she had been in a relationship though at the time the relationship was in truth over. You were not coping well and were displaying signs of mental fragility. You awoke and commenced to pack clothes and bedding into your car. You were speaking of not wanting to "be here anymore." Your cousin was concerned about whether you were suicidal. She sent a message to your brother who in turn rang the police.
- 2 You got into your car and so did your cousin. You drove to a petrol station and filled a jerry can with petrol again and you spoke to your cousin in suicidal terms giving the impression you were going to somehow set the car alight while you were in it.
- 3 You were driving when the police rang you and tried to reason with you. You would not speak to them saying that there was nothing they could do. You were driving erratically, eventually getting to the Altona cemetery. Your cousin got out of the car at one point. The police had come to the area and tried to get you to stop by activating sirens and lights. You ignored this and drove off at high speed. The police followed but due to your high speeds they terminated the pursuit.
- 4 You had by this point got onto the Westgate Freeway heading towards Geelong. You drove at extreme speeds down the freeway. You were detected by police in the suburbs of Geelong and then on the Great Ocean Road heading towards Anglesea. The police were following you as best they could using technology. Then you did a u-turn and headed back towards Geelong.
- 5 You were observed to be driving at excessive speeds and on the wrong side

- of the road as you drove back along the Anglesea Road and the Surf Coast highway. The police Air Wing had been deployed and was tracking your driving and filming what you were doing.
- 6 As you drove out of Torquay heading towards Geelong, police stationed themselves at an intersection to deploy throw sticks to damage your tyres and bring you to a stop. The throw sticks were deployed and did cause damage to your front tyres, slowly deflating them. You continued to drive on at excessive speeds.
- 7 The victim, a Sergeant of police, was further up the road. He too was intent on deploying a throw stick to bring your dangerous driving behaviour to an end.
- 8 The use of throw sticks is dangerous work undertaken by police only if needed. There are many inherent risks and it takes courage for a police officer to stand on the side of the road near a car driving at high speeds and in a dangerous manner. I will elaborate on this when discussing the gravity of your offending.
- 9 The victim stood about a metre from the front of his car. He could see you approaching at a far faster speed than the other cars nearby. Later investigations revealed you were travelling about 134 kph as you approached where the victim was standing. You were overtaking cars notwithstanding the damage to your front tyres.
- 10 As the victim was about to deploy the throw sticks, he saw your speeding vehicle change direction and head directly towards him. He had to act quickly and decisively. He discarded the throw sticks and ran to the front of his car to protect himself from the imminent danger. You did deploy your brakes but nonetheless hit the victim's police car at a frighteningly high speed, estimated at 98 kph.

11 Your car hit the victim's car at such high speed that his stationery police car was forced into the victim causing him to be thrown a significant distance into the air. Your car came to a stop perilously close to running over the victim as he lay on the ground. The vision of all this was captured by the police Air Wing and I have viewed it. In blunt terms it was truly horrific. How the victim was not killed or very much more seriously injured is astonishing and a fortunate blessing, for the victim primarily but also for you.

12 The victim was taken to the Geelong Hospital where it was discovered he had a fracture to his foot and a finger as well as extensive bruising and abrasions. I will speak more of the impact on the victim shortly.

13 After investigations and negotiations at a committal you have pleaded guilty to the following charges:

- Recklessly exposing an emergency worker to risk by driving
- Damaging an emergency vehicle
- Recklessly causing injury
- Dangerous driving

14 On any analysis your conduct amounted to serious examples of the offences and as previously mentioned the physical injuries were miraculously contained to the broken foot and finger. Nonetheless, this offence of recklessly causing injury to an emergency worker is now a category one offence requiring a sentence of imprisonment and one of at least of 6 months, unless special reasons exist. It is not said they do in this case.

15 The first two offences mentioned above are recent additions to our statute book as Parliament reacted to the growing concern that offenders were using cars to avoid apprehension by driving at police and damaging police cars.

- Parliament has expressed an intention that sentences of imprisonment imposed for these two crimes are to be cumulative unless I otherwise direct.
- 16 I am required to assess the gravity of your offending. As noted, these were serious examples of these crimes. The speeds you drove at with the knowledge that you had a jerry can of petrol in your car were especially dangerous. You drove at cars on the wrong side of the road along the Great Ocean Road. You kept speeding after the first throw sticks were deployed. You must have seen and known the police were intent on trying to stop you. As you said after the collision, "I told you all to fuck off and leave me alone". Plainly you wanted to keep going and were willing to take high risks to do so. Your recklessness in exposing a police officer to danger by your driving is self-evidently grave. This was not a momentary period of poor driving or a spontaneous reaction to an unexpected set of circumstances.
- 17 Right thinking members of our community know that there are many things police do as part of their job that puts them at risk and they do these dangerous tasks so as to prevent the public from facing greater risks and dangers. Endeavouring to stop or slow drivers who present as a danger to other road users by deploying throw sticks is a task that is acutely dangerous. As I have said it takes courage. In my view, the Courts must be firm when an offender recklessly puts a police officer who is deploying throw sticks in danger. This example of this offence is particularly serious.
- 18 As to your moral culpability that is tied up in your mental state at the time. As I have said there were concerns from your family and your partner as to your apparent suicidal state. The police likewise had concerns for you. All efforts to speak to you and calm you or reassure you were unsuccessful as you would not engage and expressed right to the end a worrying attitude that you should just be left alone to do as you were doing. A profile of your mental health was

provided in two reports by the forensic psychologist Jeffrey Cummins. I will elaborate on those matters but for present purposes as to your moral culpability Mr Cummins, noted that although you denied it to him, at the outset you said things and acted in a way that indicated you had some suicidal thoughts at the time.

19 It is always difficult to be precise as to the level of moral culpability where a person has a history of some mental illness and acts in dangerous and unpredictable ways. In this case given the efforts of your partner and others including police to speak to you and the efforts to pull you up and the fact that your conduct involved such obvious danger to all in your vicinity, I am of the view that your moral culpability remains high notwithstanding your fragile and unstable mental health at the time.

20 Before moving to other aspects of your personal circumstances, I need to make clear how deeply these crimes affected the victim. I am aware that the victim finds it traumatic to relive this incident, so I do not want to cause him more difficulties by dwelling on his thoughts and fears as he saw your car coming at him. Suffice to say he understandably firmly believed he was about to die. Those frightening scenes have haunted him. It has affected his sleep, his emotional stability, his enjoyment of every aspect of his life, especially his work and his sport. His social life was tied up in those endeavours and as a consequence he finds himself keeping to himself, unable to have the life he had. He has been diagnosed with post-traumatic stress disorder, no small disability in the circumstances. His career has been curtailed or put on hold as he cannot do all that he was able to as a fully operational, motivated police officer. There have been and are likely to be in the future adverse financial implications. He finds himself on edge, hyper vigilant and easily becomes emotional, much to his embarrassment. He cannot talk to others as he once did and feels isolated. I do not overlook the physical injuries sustained but

fortunately those broken bones have healed. Obviously, the deeper impact is the ongoing psychological harm.

21 He was a valuable, dedicated, enthusiastic police officer whose life has been changed for the worse simply because, without question, he was bravely doing his duty to keep his community safe in the face of your dangerous driving. He is to be commended.

22 My sentence must take into account all aspects of this case and that includes the impact on the victim. I have not allowed the impact on the victim to overwhelm other important matters.

23 As to your personal circumstances, an important matter in terms of sentencing is that you are still quite young. You turned 23 just recently. You were 21 at the time of your offending. Also important is that you have no prior convictions. You were raised in a stable loving family. Your parents remain hard working decent folk who are troubled by your spiral into serious offending. You are the youngest of 5. All of your siblings have done well. Your parents considered you to be different to your siblings. You were seen by a child psychologist in primary school and then a paediatrician who considered the earlier diagnosis of ADHD to be inaccurate. His view was that you were on the autism spectrum. Your treatment regime thereafter was more beneficial.

24 However, your schooling was only to the age 14 or so. You have worked in the logistics company managed by your father. You were involved in a serious motorcycle accident in late 2017. You sustained bone fractures and difficulties with your back. As I understand it you have not worked since.

25 Your mental health has been more problematic. You reported serious sexual abuse in your early teenage years at the hands of a number of older teenagers. This has left you with unresolved trauma. You have made multiple

- attempts on your life. You have chronic depression that can be acute at different times and due to different stresses. That was the case at the time of the offending. You were depressed and not coping with the end of your relationship. It was a relationship you had been in for some time. Your partner was much older than you.
- 26 You were seen twice by Mr Cummins, psychologist for the purpose bail and then the plea. I have read both reports carefully and have considered the contents.
- 27 With respect to your mental state at the time Mr Cummins referred to what you had told him and he wrote
- '... he stated that his best recollection of his mental state at that time was that he was feeling severely depressed and had formulated a plan to take his life by driving his vehicle and setting himself alight in his vehicle. At interview on 12/3/2020 he spoke about his recollection of his mental state leading up to 20/11/2018 in a manner which indicated he as then likely to be feeling very severely depressed; and genuinely suicidal, he stated over several days prior to the incident of 20/11/2018 he and Ms Rowe had been arguing concerning their relationship and whether or not she would agree to marry him. '
- 28 Mr Cummins when he first saw you thought you were suffering from major depression. After the second interview he added that you were suffering a complex post-traumatic stress disorder. He also was of the view that you have limited insight into your mental health problems. In the end, Mr Cummins was of the view that on the 20 November 2018 you had got to the point of contemplating suicide and had taken the steps of getting the petrol and then driving in a way that could well bring about the end of your life.
- 29 Mr Cummins did offer the opinion that in his view there was a realistic connection between your mental state and your offending. While it is clear that you were in a general state of turmoil it is not as clear that this was a state that the courts have described as an impaired mental function. But putting aside any diagnosis, it is not clear to me that the way you drove towards the

police car on that stretch of the Surf Coast Highway was such that a realistic causal connection is established. Of great significance in this regard is that your very capable, experienced counsel did not make a submission that your moral culpability was lowered by any impaired mental functioning.

30 All that said, it is plain that you were and still are a young man with a degree of fragility in your mental health. I do not ignore that what you did was ill considered, and reckless and that, generally, you were depressed and angry at the end of your relationship. In addition, you have been assessed with a low level of intelligence, at the borderline for intellectual disability.

31 Your time in prison has been an anxious time for you as you are fearful of other prisoners and there have been incidents where you have been stood over and assaulted physically and sexually. Your mood and your capacity to manage the sharp fluctuations in your moods has been a problem. However, you are now appropriately medicated in prison on an anti-psychotic and anti-depressant. You remain mildly depressed and anxious but are relatively stable.

32 You were originally remanded for these offences, then granted bail on 29 October 2019 at the conclusion of your committal. You then reoffended committing offences against your ex-partner. Your bail was revoked on 11 December 2019 and you have remained in custody since. Your pre-sentence detention is 513 days.

33 Your Counsel emphasised your youth, your lack of prior offending, your family support and in combination that these matters additionally gave you good prospects for rehabilitation. She submitted that these mitigatory matters when combined with what is a valuable plea of guilty, evidencing remorse, and the delay in the matters getting to Court and finally the impact of the Covid-19 pandemic meant that a sentence that meant you were eligible for release now

- or soon was the most appropriate sentence.
- 34 The prosecution maintained that the seriousness of the offending meant that notwithstanding your youth and lack of prior matters that a significant term of imprisonment with a non-parole period had to be imposed.
- 35 In my view the only appropriate sentence is one of imprisonment. As grave as it always is to sentence a young first offender to jail, there is no other sentence that can adequately meet the important sentencing purposes of denunciation, deterrence, especially to others, just punishment and protection of the community. Your rehabilitation is not overlooked but it is a consideration that must yield to the weight to be given to the other sentencing purposes. You have prospects to rehabilitate, and your family support is a very significant consideration in this regard. I will allow for the potential for parole which is all that I have to establish conditions that may facilitate your rehabilitation.
- 36 However, I must express the community's grave concern and intolerance for putting police officers at risk by driving in dangerous ways. My denunciation must be more than words but in a practical way involving stern punishment. Likewise, I must send a clear message to others that if you drive as you did on that day, putting police at risk, and other road users you will face certain imprisonment.
- 37 Parliament has made it clear that those who drive in a way that puts emergency workers at risk and also damage police cars must then be sentenced differently to other offenders. The presumption of concurrency is reversed unless I otherwise order. This does not entirely remove the operation of the principal of totality, but I cannot simply ignore Parliament's intent. I will not order complete cumulation as that would create a sentence that would be an outlier and would not be just.

38 Your plea of guilty is important and your sentence will be less. You have taken responsibility and you are remorseful. I have added into the equation that prison is onerous for you and you have moved into protection. In addition, prison is different as a consequence of the restrictions imposed due to Covid-19. I have allowed for that in my sentence.

39 The sentences I impose on this matter are as follows:

40 Charge 1, 3 years imprisonment,

41 Charge 2, 1 year imprisonment,

42 Charge 3, 20 months imprisonment and

43 The summary offence of dangerous driving 6 months imprisonment.

44 I order that 7 months of charge 2, 12 months of charge 3 and 2 months of the summary charge be served cumulatively on each other and on charge 1. The total sentence is therefore 4 years 9 months. I order you serve 3 years before being eligible for parole.

45 The time you have spent in prison on remand is 513 days, and I declare this period as part of the sentence I have just fixed. I will ensure this declaration is entered into the records of the court so that the prison authorities know that you have served 513 days of your sentence.

46 Your licence is cancelled, and you are disqualified from driving for a period of 3 years.