

DIRECTOR OF PUBLIC PROSECUTIONS

v

RICHARD PAUL PUSEY

JUDGE: HIS HONOUR JUDGE WRAIGHT
WHERE HELD: Melbourne
DATE OF HEARING: 31 March, 27 April 2021
DATE OF SENTENCE: 28 April 2021
CASE MAY BE CITED AS: DPP v Pusey
MEDIUM NEUTRAL CITATION: [2021] VCC 478

REASONS FOR SENTENCE

Subject: CRIMINAL LAW – Sentencing.
Catchwords: Plea of guilty – Reckless conduct endangering persons – Conduct outraging public decency – Possess drug of dependence – Offender recorded dying and deceased police officers at a collision scene whilst making comments – Plea of guilty where applicability of Charge 2 arguable – Prior criminal history – Remorse – Complex personality disorder – Application of *Verdins* principles – Extra curial punishment – Circumstances surrounding COVID-19 taking into account.
Legislation Cited: *Crimes Act 1958 s 23; Drugs, Poisons and Controlled Substances Act 1981 s 73; Road Safety Rules 2017 r 20(1), Sentencing Act 1991 ss 6AAA, 18, 44.*
Cases Cited: *The Queen v Hamilton* [2008] 1 QB 224; *Mabo v Queensland [No 2]* (1992) 175 CLR 1; *R v Macercine* (1899) 20 LR (NSW) 36; *R v Black* (1921) SR (NSW) 748; *R v Udod* [1951] SASR 176; *R v Towe* [1953] VLR 381; *R v Fonyodi* [1963] VR 86; *R v Reinsch* [1978] 1 NSWLR 483; *The Queen v Anderson* [2008] EWCA Crim 12; *The Queen v Singh* [2021] VSC 182; *Phillips v The Queen* (2012) 37 VR 594; *The Queen v Verdins* (2007) 16 VR 269; *Brown v The Queen* [2020] VSCA 212; *DPP v Pell* [2019] VCC 260; *Boulton v The Queen* (2014) 46 VR 308; *Williams v The Queen* [2018] VSCA 171.
Sentence: Imprisonment for a period of 10 months and an adjourned undertaking with conditions for a period of 2 years.

APPEARANCES:

For the DPP

For the Accused

Counsel

Ms R Harper

Mr D Dann QC
Mr V Peters

Solicitors

Office of Public Prosecutions

Chris McLennan & Co

HIS HONOUR:

Introduction

- 1 Richard Paul Pusey, you have pleaded guilty to one charge of reckless conduct endangering persons contrary to s 23 of the *Crimes Act 1958*, which carries a maximum penalty of 5 years imprisonment (Charge 1), one charge of committing an act that outrages public decency contrary to the common law, penalty at large (Charge 2), and one charge of possession of a drug of dependence contrary to s 73 of the *Drugs, Poisons and Controlled Substances Act 1981*, which carries a maximum penalty of 30 penalty units and/or 1 year imprisonment in this instance, where the court is satisfied that the offence was not committed for any purpose relating to trafficking (Charge 3).
- 2 You have also pleaded guilty to the related summary offence of exceeding the speed limit contrary to Rule 20(1) of the *Road Safety Rules 2017*, which carries a maximum penalty of 20 penalty units.
- 3 You have admitted your Criminal Record.

Circumstances of the offending

- 4 A prosecution opening was tendered on the plea and may be summarised as follows:

Charge 1 – Reckless conduct endangering serious injury

- 5 Between 4.30pm and 5.40pm on 21 March 2020, your 2016 black Porsche 911 Coupé registration LLC001 was captured driving on the Eastern Freeway in Kew at an extremely fast rate of speed. Witness James Tsagros was driving behind your vehicle and captured the driving on his dash cam. Your vehicle can be seen in the second lane from the left, weaving between other vehicles that were travelling at the posted speed limit in moderate traffic. When changing lanes you did not indicate. Your number plate was clearly visible in a still image from the footage.

6 Analysis of your mobile phone seized on 23 April 2020 revealed messages sent to your associates from approximately 5.47pm on 21 March 2020, telling them that you had just travelled along the Eastern Freeway at 300km/h. The speed was not captured on a radar or other speed quantifying device however the prosecution position is that you were driving far in excess of the 100km/h speed limit applicable to the Eastern Freeway, placing the public at risk of serious injury. It is these facts that relate to Charge 1, reckless conduct endangering persons.

Summary speeding charge

7 On 22 April 2020, you were travelling inbound on the Eastern Freeway at Kew East in the same vehicle. Between 4.48pm and 4.51pm you were detected by a calibrated police speedometer fitted to a white 2019 Hyundai Santa Fe wagon, to be travelling at 149km/h in a 100km/h zone. It is these facts that relate to the Summary Charge – Exceed the speed limit.

8 Victoria Police members Leading Senior Constable Lynette Taylor and Constable Glen Humphris were in the Hyundai Santa Fe wagon that detected your speed. They intercepted your vehicle and pulled you over at 4.51pm on the side of the Eastern Freeway just after the Bourke Road onramp. Enquiries of your vehicle registration revealed it had an ‘outstanding whereabouts’ and a call was made to police communications seeking assistance.

9 Leading Senior Constable Taylor activated her body worn camera at 5.06pm while having a discussion with you. You underwent a preliminary breath test which returned a result of 0.042 grams of alcohol in 210 litres of expired air, which is below the limit. You also underwent a preliminary oral fluid test while you sat on the side rail, which later was confirmed to detect MDMA and cannabis in your system.

10 You then provided a saliva sample which Leading Senior Constable Taylor placed into two vials. At 5.35pm Senior Constable Kevin King and Constable

Josh Prestney arrived and parked in the emergency lane behind the first police vehicle. Both vehicles had their blue and red flashing lights activated.

- 11 All four police members were standing outside their respective vehicles in the emergency lane between the passenger side of the police vehicles and the Armco railing.
- 12 While Leading Senior Constable Taylor was placing the saliva samples into the vials you walked away from the intercept location to urinate on the verge of the freeway behind the Armco railing. You were not under arrest and there was discussion concerning the impoundment of your vehicle.

The collision

- 13 Moments later a Volvo Prime Mover towing a double axle trailer driven by Mohinder Singh swerved into the emergency lane and at 5.36.24pm collided with all four police members, the two police vehicles and your vehicle.
- 14 You emerged from the bushes after the collision as seen on Dr Andrew Tsoi's dashcam footage, walking towards your vehicle. At 5.38.21pm you were observed entering the view of Leading Senior Constable Taylor's body worn camera, less than 2 minutes after the collision. At 5.38.28pm you went to your vehicle to retrieve your mobile phones and a lunch bag.

Charge 2 – Committing an act that outrages public decency

- 15 At 5.38.35pm you looked directly at Leading Senior Constable Taylor and said 'there you go'. At 5.38.43pm you took photos of Leading Senior Constable Taylor and commenced an audio-visual recording on your mobile phone of 1 minute and 12 seconds in duration. During the recording you walked slowly and purposefully around the collision scene whilst filming, focusing and zooming in on the dead or dying police members at a close distance.

- 16 You took an image of the driver's side of your vehicle depicting a close up view of Leading Senior Constable Taylor on top of the vehicle, zooming in as she was moaning.
- 17 You then zoomed out depicting the entirety of Leading Senior Constable Taylor's body on top of your vehicle including her legs that had been crushed by the truck. Her arm is observed hanging through the sunroof of your vehicle. You walked backwards and filmed the front of the truck on top of Leading Senior Constable Taylor, depicting the driver's side of the truck and the damaged unmarked police vehicle. You commented 'absolutely amazing'.
- 18 You then walked to the front of your vehicle where Leading Senior Constable Taylor and Constable Humphris can be seen between the truck and your vehicle. Constable Prestney can be observed lying on the ground on the passenger side of the truck. You commented 'look at that, look at that, isn't it amazing'.
- 19 You then walked to the passenger side of the truck. The footage depicts Dr Andrew Tsoi tending to Constable Prestney and Senior Constable King in the distance. You commented 'I think everyone got cleaned up, there's four people. Four people, look at that'.
- 20 The camera then zooms in on the upper body of Constable Humphris lying on the ground and on Constable Humphris' leg injury caused by being wedged between the bull bar of the truck and the Porsche. You commented, 'look at that mate, look at that. Oh he's smashed. Look at that. Look at that. Lucky I went and had a piss'.
- 21 You then filmed Dr Tsoi tending to Constable Prestney on the ground, with a substantial amount of blood surrounding Constable Prestney's head. You walked down the passenger side of the truck and commented 'I was doing 149 k's an hour apparently'.

- 22 You then zoomed in on a Victoria Police device on the ground, stating 'look at that, oh look there, there's your little computer'. You walked towards the rear of the truck and stated 'look at that man, you fucking cunts. You cunts, I guess I'll be getting a fucking Uber home, huh'.
- 23 You approached Senior Constable King who was lying off the road underneath the guard rail and said 'look at that'. You zoomed in on Senior Constable King's head injuries, before then zooming out and stating 'look at that'. You filmed Senior Constable King's leg injuries and said 'amazing, absolutely amazing'.
- 24 You then filmed behind the truck which depicts debris and papers scattered on the road. You walked along the driver's side of the vehicle towards the damaged unmarked police vehicle and stated 'look at that, look at that'. You zoomed in on a Victoria Police bag and said 'it's amazing man'. You filmed the damaged unmarked police vehicle and stated 'that is fucking justice, absolutely amazing. That is fucking amazing'.
- 25 At 5.42.20pm Giuseppe Colaci asked you for assistance in holding up a blanket to cover Leading Senior Constable Taylor and said 'hey mate, come here, come here, come here, hold that up'. You did not offer assistance but rather began a second recording from 5.42.30pm to 5.44.26pm which first depicted Leading Senior Constable Taylor on top of the vehicle while Mr Colaci was trying to cover her body with a blanket.
- 26 You walked towards the driver's side of the truck and the damaged unmarked police vehicle is observed. You then walked towards the rear of the truck. Witness Bradley Kent-Robinson, who was on the phone, pointed at you, shook your hand and said to you 'mate um, don't...'
- 27 You walked past Mr Kent-Robinson and focused the camera on Senior Constable King on the ground, zoomed in on his leg injuries, zoomed out and said 'look at that', before then zooming in on his head injuries and saying 'wow,

look at that'. You then took a sweeping view of Senior Constable King's body before then moving to the passenger side of the truck. Dr Tsoi can be observed tending to Constable Prestney whilst Mr Singh is observed leaning against the guardrail, wailing and saying 'oh no, oh no'. You stated 'it's amazing' and 'where's the ambulance, where is the ambulance, where is the emergency services?'

- 28 You then walked up to Constable Prestney and zoomed in on his head injury and name tag. A male can be heard saying 'you taking a photo? Oi'. You walked up to Constable Humphris, who was being assisted by civilian witnesses and zoomed in on his leg injury. Andre DiCioccio can be heard saying 'please' as he pushed past you in an effort to assist Constable Humphris. You said 'don't have to hit me mate', to which Mr DiCioccio replied 'I'm not hitting you, but come on, help me, let's help these guys ok'. You said 'they're dead' and zoomed out, showing an overall view of those rendering assistance. There were approximately five civilian witness rendering assistance to Leading Senior Constable Taylor and Constable Humphris.
- 29 You then turned the camera to the damaged marked Highway Patrol car on the centre median strip and said 'look at that, that's fucking beautiful'. You zoomed in on the police car and said 'bang, bang, bang. They got thrown all the way over there'.
- 30 You then filmed the truck and your vehicle and said 'and lucky I said excuse me a moment I'm just taking a piss, amazing'. You zoomed in on your vehicle, depicting Leading Senior Constable Taylor on your vehicle, partially covered by the blanket.
- 31 It is these facts that relate to Charge 2, committing an act that outrages public decency.

- 32 Various witnesses noticed your behaviour at the scene. Dr Tsoi stated that you were still filming as they were trying to treat the victims and asked someone to tell you to stop filming and get off your phone.
- 33 Mr DiCioccio stated that he pushed you out of the way. Mr Colaci stated that he asked you to help protect one of the police officers by holding up a blanket and that you shrugged him off. James Cotter saw you recording on your phone, getting within a foot of one of the police officers and then filming each of the others.
- 34 Antoni Jancic, a passing motorist, stated that you asked him for a lift and he dropped you at the corner of Alexandra Parade and Smith Street.
- 35 You then went to your General Practitioner's office and showed the video footage from the collision scene to the receptionist. You also showed the footage to two staff members in the adjoining chemist.
- 36 At 6.31pm you forwarded four photographs of the collision scene to Lynda-Elouise Hewitt. At 8.28pm you forwarded a photograph of the scene to Matthew Hanrahan. At 8.42pm you forwarded a photograph of the scene to Hans Fan.

Charge 3 – possess drug of dependence

- 37 On 23 April 2020 at 9.40am, you attended the Spencer Street Police Station and provided a statement to police. You were arrested at your home later that day. Police located 0.3g of ketamine and 0.4g of MDMA in your lunch bag which you had removed from your vehicle immediately after the collision. It is these facts that relate to Charge 3, possess drug of dependence. The prosecution does not contend that the possession was for the purpose of trafficking.
- 38 In a recorded interview with police at the Richmond Police Station, you confirmed your earlier statement and further stated that:

- you were pulled over for speeding and believed the allegation was that you were driving at 149km/h;
- you were in the bushes urinating when you heard a 'bang';
- you were ashamed of the video, it was 'not nice' and you said 'horrible things'; and
- the recordings 'shouldn't be seen as – as – as being derogatory and horrible, it's – it – it – it sounds like and it is but that's how shit comes out of my head, I'm highly offensive'.

The offence of outraging public decency

39 While this matter has had a relatively short procedural history, there have nonetheless been a number of hearings in this Court and in the Magistrates' Court at the committal stage, where the focus has been on what is now Charge 2 on the indictment, committing an act that outrages public decency, and whether that charge is the most appropriate to reflect your conduct in the aftermath of the collision.

40 The initial argument submitted on your behalf was put on two bases. First, that the charge does not validly exist in Australia and secondly, that if the charge does exist in Australia, the facts in this instance simply do not fit the charge.

41 In written submissions presented at the Magistrates' Court, the prosecution provided a brief history of the common law in Australia and its organic development from the law of England.¹ I will not repeat those submissions in detail in these sentencing reasons, however having reviewed the relevant authorities and legal commentaries,² I accept for the purpose of your plea of guilty to the charge, that the offence continues to exist in Australia.

¹ *Mabo v Queensland [No 2]* (1992) 175 CLR 1, Brennan J (at p 29).

² Ross on Crime, Common Law [3.3335].

42 The second argument put on your behalf was that the facts in this instance simply do not fit the charge. As outlined in both prosecution and defence submissions, traditionally, in England and Wales the most recent examples of the offence relate to sexual indecency or public exposure. In Australia there have only been six reported examples of an offence that includes the concept of outraging public decency, between 1899 and 1978.³ The most recent Victorian example was reported in 1963. In each of those examples the behaviour relates to the offender exposing themselves to others and the offence referred to as either 'wilful exposure' or 'indecent exposure' rather than outraging public decency. However the cases support the position that an element of the offence in those examples includes the concept of outraging public decency.⁴ The submissions made on your behalf continue to rely on the fact that this is the first time the offence has been formally charged in Australia.

43 In *The Queen v Hamilton*⁵ which sets out the elements of the offence, Thompson LJ said:

The first element is one that constitutes the nature of the act which has to be proved. It has to be proved both that the act is of such a lewd, obscene or disgusting character that it outrages public decency.

i) An obscene act is an act which offends against recognised standards of propriety and which is at a higher level of impropriety than indecency. A disgusting act is one "which fills the onlooker with loathing or extreme distaste or causes annoyance"...

ii) It is not enough that the act is lewd, obscene or disgusting and that it might shock people; it must, be of such a character that it outrages minimum standards of public decency as judged by the jury in contemporary society. As was pointed out, "outrages" is a strong word. It is not necessary to establish that any particular member of the public is outraged and it must follow that this requirement does not mean that anyone has to see the act whilst it is being carried out.⁶

³ *R v Macercine* (1899) 20 LR (NSW) 36; *R v Black* (1921) SR (NSW) 748; *R v Udod* [1951] SASR 176; *R v Towe* [1953] VLR 381; *R v Fonyodi* [1963] VR 86; *R v Reinsch* [1978] 1 NSWLR 483.

⁴ As to the elements of the offence generally see *R v Hamilton* [2008] 1 QB 224 at [30].

⁵ *Ibid* at [30].

⁶ References omitted.

- 44 The persons who are identified as the public for the purpose of the charge in this instance, are the witnesses present at the scene and possibly passing motorists. I note however that this element of the charge does not require that the act be actually seen by any person, but rather be capable of being seen by two or more persons.⁷ In this instance, the prosecution case relies on the combination of the filming together with your commentary, therefore in my view your conduct must have been capable of being seen *and heard* by two or more people. As such, a passing motorist simply seeing you filming would not be capable of satisfying the element. I accept however your conduct would have been capable of being seen and heard by two or more people who were present at the scene.
- 45 The only example of the offence that was able to be found that is not an indecent exposure case and has some relevance to the facts in this instance, is the English decision of *The Queen v Anderson*⁸. In *Anderson* the appellant came upon a woman helpless and dying on the street. He was unable to rouse her and believed that she was drunk. He then proceeded to throw water over her and urinated on her body as his friend filmed the event. He also sprayed a can of shaving cream over her and covered her with a pack of flooring. He then took a photo of her. The conduct occurred over a 30 minute period.
- 46 Thus it was submitted on your behalf that while the offence may exist in Australia, a review of the relevant authorities demonstrates that those cases involved very different conduct and that the reference to the conduct in those cases as being lewd, obscene or disgusting does not describe the conduct here.
- 47 In my view the argument put on your behalf does have some merit, however by your plea of guilty, you have accepted that the charge is also capable of incorporating your conduct. As such it was put, and I accept, that your plea of guilty to this charge has brought to a conclusion a very difficult case. I also acknowledge that had this matter run to trial the legal arguments in relation to the

⁷ *R v Hamilton* [2008] 1 QB 224 at [31].

⁸ [2008] EWCA Crim 12.

charge may have continued for a significant period of time, undoubtedly in higher jurisdictions adding considerable delay, possibly years, to the ultimate conclusion of this matter. It was put therefore that your facilitation of the course of justice carries considerable weight in this instance. I accept that submission and the benefit of the plea, which I will discuss further below.

Nature and gravity of the offending

- 48 What must be made clear at the outset is that you are not being sentenced for causing or contributing to the death of the four police officers. While that may be a trite statement to those present, given the nature of the publicity as a result of your conduct, as was discussed at the plea, there are some reports in the community that suggest you somehow caused the death of the police officers.
- 49 The events that preceded the conduct that constitutes Charge 2 were routine and unremarkable to begin with. You had been intercepted for allegedly speeding on the Eastern Freeway. The body worn camera of Leading Senior Constable Taylor depicts what occurred after you were intercepted including communicating with you and the other officers present, together with the filling out of forms. In an instant however, the scene was transformed into something that can only be described as horrific. A truck driven by Mohinder Singh struck the police vehicles and the four police officers as they were simply continuing going about their duties. Leading Senior Constable Taylor was still conscious and very seriously injured when you came back to the scene after leaving temporarily in order to urinate. In the moments that followed, you began filming in the way described above.
- 50 A normal human reaction of a person coming upon a scene like this, would likely be to immediately telephone 000, or simply to run to the side of the deceased or seriously injured police officers to offer whatever assistance they could – which was clearly what other motorists were doing as they stopped.

- 51 What you did however was film the scene with a running commentary which on one view may be described simply as bizarre behaviour in the circumstances. It can also be described as extremely insensitive and heartless. Your focus was entirely on yourself. You were upset that your car had been destroyed and seemed to take pleasure in seeing the destruction of the police vehicles. The words you used and the tone of your comments are undoubtedly what makes your conduct offensive and cause outrage. You, yourself later described your behaviour in your record of interview as 'derogatory and horrible'.
- 52 The prosecution accept however that you did not directly goad the dead or dying police officers as you walked around the scene filming (despite media articles saying that you did). I also acknowledge that you did not upload any of the footage to social media while another witness who also filmed the scene, did in fact upload the footage to a social media platform, but was not charged with any offence.
- 53 Having reviewed the footage from Leading Senior Constable Taylor's body worn camera depicting where you were sitting during the initial interview, there can be no doubt that had you not left the scene temporarily, you would also have been killed or very seriously injured as a result of the collision. Further, I accept that in all the circumstances when you arrived back at the scene and viewed the carnage that had taken place moments before, you were in some form of shock which you convey in your record of interview.⁹ I also note that the witness that gave you a lift from the scene observed you to be 'very distressed and shocked'.¹⁰ While there is no evidence of a formal diagnosis of shock at the time of the incident, I accept that when you observed the scene, realising that you too could have been killed, it would have had a significant impact on you at the time.
- 54 The difficult task in this case is how to categorise the seriousness of your conduct. The fact is that as a result of the vast media coverage of this matter that

⁹ Q 255.

¹⁰ Antoni Jancic at p134.

has described your behaviour and comments, with various degrees of accuracy, the public has demonised you. While the 'public' element of the charge is satisfied by the presence of persons at the scene, the community in general have formed an extremely negative opinion about you and your conduct has had a wider effect on the public generally. You have been given a number of titles by the media including 'The Devil driving a Porsche' and a 'Vile fiend'.

- 55 Mr Dann who appeared with Mr Peters on your behalf, accepted that your conduct was morally repugnant however highlighted the fact that your conduct did not involve intentional indignities directed to the police officers. As to your moral culpability, Mr Dann submits that this cannot be assessed without consideration of your complex psychological conditions which I will address further below.
- 56 Ms Harper, who appeared on behalf of the Director of Public Prosecutions submitted that in relation to the outraging public decency charge, your moral culpability is high. She submitted that you knew your conduct was wrong and that it deprived the police officers of the dignity they deserved in their final moments. In summary, Ms Harper submitted that your conduct is a serious example of offensive behaviour. As to Charge 1, Ms Harper also submitted that the offending is serious as it involved driving at speeds far in excess of 100km/h while weaving between other motor vehicles.
- 57 In my view, your conduct in recording the police officers in their dying moments together with the words you used as you were recording, was not only 'derogatory and horrible' as you describe in your record of interview, but was also callous and reprehensible conduct. While your complex personality disorder may go some way in explaining your behaviour, it is nonetheless behaviour correctly identified as conduct that outrages public decency, and in my view, represents a serious example.

58 As to Charge 1, it too is serious conduct however while your driving necessarily placed, or may have placed, others in danger of serious injury, the evidence does not disclose additional aggravating features such as a police chase, a collision or a near miss. Nor is there evidence that you were affected by drugs or alcohol.

The families of the police victims

59 I wish to acknowledge the families of the police officers that lost their lives as a result of the conduct of Mohinder Singh. As His Honour Justice Coghlan noted in his sentencing remarks: 'There are events which shock the public consciousness. This has been such an event' and that: 'The unnecessary loss of four serving police officers going about their duties is a matter of huge community sorrow and regret'.¹¹ I respectfully agree with His Honour's comments. While the collision causing the death of the police officers is indeed shocking, it is clear that your conduct only added to the shock and grief the families and the wider community have had to endure.

60 A number of family members and colleagues of the police officers attended the plea hearings and I acknowledge their dignity, respect and patience in relation to this matter as it has moved through the criminal justice process.

Personal circumstances

61 You were born on 6 July 1978 and are 42 years of age.

62 Your mother worked as a nurse and your father worked as a tiler. You had two brothers, one younger and one older than you. Sadly your younger brother died of lung cancer in 2008 and tragically, your older brother suicided in February this year while you were in custody. You requested to attend the funeral which was refused and you viewed the funeral via a live stream.

¹¹ *The Queen v Singh* [2021] VSC 182 at [1].

- 63 You grew up in the Bayside area, predominantly in Frankston. You attended six primary schools before attending Mt Eliza Secondary College. You began year 10 for the first two weeks essentially being asked to leave as you faced the risk of being expelled after being accused of stealing computers. You describe your behaviour through your school years as 'shocking'. You would react in relation to being teased about your name, you were consistently disruptive and you frequently engaged in fights. You responded poorly to disciplinary measures. You state that you and your siblings developed a reputation amongst parents in the community as the children with whom to avoid social contact.
- 64 You worked as a paper boy when you were around 10 years of age. You worked at takeaway shops in your teens before being employed as a train station assistant. You worked as a tram driver for two to three years however you were dismissed in relation to a traffic accident. You then completed a TAFE course in Division II Nursing followed by working as a nurse for two years.
- 65 You completed a Certificate III in Financial Management and ultimately worked as a finance broker for 16 years. Following a period of imprisonment in 2018, you lost your finance licence. You then commenced a property development business in 2018 and you have since purchased and sold properties.
- 66 You have been married since 2009. You conveyed to your psychiatrist that your wife has put up with a lot in relation to your complex and volatile personality characteristics. Despite some recent conflict that has resulted in an intervention order being imposed, it was submitted that the relationship is ongoing and your wife continues to support you. She attended the plea hearings and I also note that the intervention order allows you to live with your wife upon your release.
- 67 You have a prior criminal history including a number of driving offences. Your criminal history consists of a number of injury related offences and also includes a stalking offence. More recently, your criminal history records contravening a personal safety intervention order and using a carriage service to menace.

Relevantly, in 2018 you have a prior conviction for reckless conduct endangering serious injury. Your counsel provided some detail of these matters at the plea which I have taken into account.

68 Two reports prepared by Dr Adam Deacon, psychiatrist, were tendered on the plea dated 13 October 2020 (the first report) and 29 March 2021 (the second report). Dr Deacon initially conducted three interviews before preparing the first report which provides an extensive personal and psychiatric history. I have taken the content of both reports into account.

69 In the first report, Dr Deacon provides his opinion as to your psychological state as follows:

Mr Pusey has prominent features of personality-based psychopathology. He has a history consistent with an enduring disturbance in functioning of aspects of his identity, self worth, self view, and interpersonal dysfunction manifesting in multiple settings and contexts. These underlying personality vulnerabilities have manifest in the form of various emotional, cognitive and behavioural problems. His personality disorder can be considered to be moderate in severity based on the level of functional impairment he has consistently experienced. Whilst he has an enduring pattern of interpersonal problems, he has a contrasting pattern of being able to function well in some workplace settings and environments he finds less challenging and overwhelming.¹²

Mr Pusey's personality vulnerabilities fit within multiple core traits domains, including dissociation, emotional instability and disinhibition. He has a complex mixture of core antisocial, borderline, narcissistic and paranoid personality subtypes.¹³

Mr Pusey has a history of mood disturbance that likely mostly relates to personality variables, but it is possible that he has an underlying but difficult to characterise mood disorder...It is possible that he has been afflicted with a dysthymic disorder; a chronic low grade depressive disorder that doesn't necessarily reach clinical levels consistent with major depression. His mood problems also include problems with self regulation. He has a history of being hot-headed, impulsive and volatile. While he admits to such traits, he is prone to rationalising his emotional reactions, even when it is self-evident that it is excessive and unreasonable.¹⁴

Mr Pusey is a complex character who requires psychological and psychiatric follow up in the community. The focus of psychological therapy should include

¹² First report p12 at [4].

¹³ First report p12 at [5].

¹⁴ First report p13 at [8].

addressing his underlying personality based vulnerabilities in the form of mentalisation, social skill development, self regulation and empathy building.¹⁵

70 The second report prepared by Dr Deacon followed a period of scheduled appointments with Dr Deacon and his colleague Dr Annabel Chan after you were bailed in October 2020. In the second report, Dr Deacon states that you continue to present with features of mood disorder with marked depressive elements combined with post traumatic stress disorder symptoms stemming from the incident involving the death of the four police officers.¹⁶ He also states that at the time of seeing you, you were experiencing a grief reaction in response to the recent suicide of your brother. In conclusion, Dr Deacon expresses the opinion that your personality difficulties are relatively engrained and that you require long term psychological work. That said, he also notes that you have demonstrated a level of intellectual insight and open mindedness to personally develop.¹⁷

71 Seven references were tendered on your behalf from a combination of family, friends and professional colleagues. Because of the notoriety of your case and the vitriol against you in the community, the writers of the references did not wish to be publicly acknowledged. The prosecution did not take issue with the Court receiving the references and taking them into account without naming the writers. What can be generally said from reading the testimonials is that there is another side to you. Your business colleagues speak of your diligence and hard work you demonstrated towards your clients when working as a mortgage broker. Previous clients speak of your commitment and personal attention to their needs. Your family and friends state that you have expressed empathy towards the families of the police officers and that you become visibly upset when you speak of the grief they are suffering. Your family also acknowledge the stressors in your life including the enormous impact the death of your only two siblings has had on you.

¹⁵ First report p14 at [15].

¹⁶ Second report p1.

¹⁷ Second report p2.

Relevant sentencing considerations

Plea of guilty and remorse

72 Mr Dann relied upon a number of matters in mitigation. First and foremost is your plea of guilty. You formally pleaded guilty in this Court on 10 March 2021 following a case conference before me. Given the uniqueness of the issues that have arisen in this case I regard your plea of guilty as a plea at the earliest reasonable opportunity. Your plea has facilitated the course of justice in a number of important ways. No witnesses were cross examined at the committal and your plea has avoided witnesses having to be cross examined at trial necessarily reliving an extremely traumatic event. Your plea has also spared the time and expense of a trial which, as a result of the backlog arising from the COVID-19 pandemic, would mean that this matter may not be heard before a jury until well into next year.

73 More specifically, your plea of guilty in relation to Charge 2 is of some significance. As discussed, this is the first time the offence of outraging public decency has been charged in Australia in relation to the type of conduct you engaged in. There were reasonable arguments as to whether the facts are capable of satisfying the elements of the charge. Further, Mr Dann submitted that an argument would have been mounted as to the validity of the charge. In those circumstances, there can be no doubt that had those matters remained contested, the case would have taken a slow course possibly over some years, through the interlocutory and appeal processes further delaying its ultimate resolution. Your acceptance of the charge has prevented that course and most significantly, will bring the matter to a conclusion for the families of the police officers that lost their lives. In the circumstances, in my view your plea of guilty to Charge 2 carries considerable weight in the sentencing discretion.¹⁸

74 Over and above your plea of guilty I accept that there is evidence of genuine remorse. As outlined above, in your record of interview you express that what

¹⁸ *Phillips v The Queen* (2012) 37 VR 594 at [36] (particularly point 8).

you said was 'horrible' and that others would view what you did as offensive. You also say that you are ashamed of the video. I note also your expressions of remorse that are conveyed through some of the references tendered and I accept that the apology you expressed through your counsel at the plea to the families of the police officers is genuine. Mr Dann also referred to an email you sent to the police during the course of the investigation where you stated in relation to your conduct at the scene, that you were 'sorry for what happened'.

Verdins considerations

- 75 Mr Dann submitted that your complex psychiatric diagnosis is a matter to be taken into account as it is a longitudinal condition that was extant at the time of the offending. Thus he submits that *Verdins*¹⁹ principles are enlivened. Ms Harper accepted that *Verdins* has application but to a limited extent. *Verdins* principles apply to personality disorders of various labels and as such, the evidence relied on must show how the condition affected your functioning at the time of the offending and how it will affect you in the future.²⁰ It is clear from the opinion of Dr Deacon that your complex core antisocial, borderline, narcissistic and paranoid personality subtypes have been a feature of your personality for many years and seem to have developed from an early age. As such I accept that your mental condition at the time of the offending has some bearing on your behaviour and impaired your ability to exercise appropriate judgement.²¹
- 76 While I accept that your moral culpability is able to be reduced to some extent, the nature of your condition is such that it is very difficult to treat and as noted by Dr Deacon, you will require ongoing psychological and psychiatric treatment in the community. In the second report, Dr Deacon recommends weekly psychotherapy. As such, while your condition is relevant to a proper assessment of your moral culpability, it is also relevant for different reasons when considering

¹⁹ *The Queen v Verdins* (2007) 16 VR 269.

²⁰ *Brown v The Queen* [2020] VSCA 212 at [5].

²¹ *The Queen v Verdins* (2007) 16 VR 269 at [26].

other sentencing principles such as protection of the community and your prospects of rehabilitation.

Extra curial punishment

77 The impact of negative publicity and the consequent public reaction is a matter that is relied on as a form of extra curial punishment. Mr Dann summarised a number of matters that have arisen since the incident including that you have received death threats, your house has been subjected to criminal damage, your garage door was painted with the word 'vermin' and you have had eggs thrown at your home. The impact of the publicity has extended to your conditions in prison. You are held in a protection unit, there have been incidents with prison staff and as a result of the deterioration of your mental health, you have been under observation on occasions because of a suicidal ideation. This is in addition to the many negative headlines where you have, for example, been labelled with words such as 'vile' and 'the devil'. The impact has also extended to your family and friends and is the reason why some were reluctant to provide testimonials and those that did, asked that their details not be made public.

78 As was pointed out by His Honour Chief Judge Kidd in *DPP v Pell*,²² while the manner and extent to which extra curial punishment should be taken into account is not settled, it is a matter that is able to be considered in mitigation. Your conduct has attracted an enormous amount of public antipathy with the consequences that I have outlined above and as such, in my view you are entitled to have that taken into account.

Custody difficulties – COVID-19 restrictions

79 In addition to the difficulties you have faced in custody as a result of your conduct, you have also been in custody during the COVID-19 restrictions. You have experienced three periods of quarantine lockdown as a result of entering prison on two occasions and being moved between prisons. Further, like all

²² [2019] VCC 260 at [140]–[148].

prisoners and remandees who have been in the prison system over the past year, you have had visits and services restricted as a result of the pandemic. I take these matters into account.

General and specific deterrence, denunciation and protection of the community

80 Ms Harper submitted that general deterrence is 'of paramount importance' in relation to Charges 1 and 2. While I accept that general deterrence does take prominence in relation to Charge 1, the concept is more difficult in relation to Charge 2.

81 The purpose of general deterrence is to impose a sentence that will deter others that are tempted to offend in the same way. As the offence of outraging public decency has not been framed in this way before in Victoria (or Australia), there is clearly no prevalence of this type of offending. Nonetheless, the element of the charge is that your conduct outraged the minimum standards of public decency and some weight must be given to general deterrence in order to convey that conduct such as yours that outrages public decency will not be tolerated.

82 Specific deterrence clearly has a role to play in relation to Charge 1. You have a number of driving offences and a prior conviction for the same charge in your history. Dr Deacon observed that your attitude in relation to speeding is that you believe that speeds of 150km/h are safe on some roads and you clearly have a generally poor attitude toward the police. As to Charge 2, in my view you have developed insight into your offending and appreciate that your conduct was appalling. You also accept that you require ongoing treatment and you are open to that course. That said, you have prior convictions that demonstrate that you can behave erratically in certain situations. As such, in my view specific deterrence while able to be moderated to some extent in relation to Charge 2, must still carry weight. As to the summary speeding charge, the period of licence suspension that I will impose is also designed to deter you from speeding in the future.

83 Denunciation of your conduct is in my view a paramount sentencing consideration. Your conduct in relation to Charge 2 was heartless, cruel and disgraceful. Further, your complex and volatile personality which played some part in your behaviour is such that it will require ongoing treatment and monitoring in the community. Therefore protection of the community is also a relevant sentencing consideration in this instance.

Prospects of rehabilitation

84 As Dr Deacon observed, your personality difficulties are relatively engrained. That said he also noted that you have developed insight and an open mindedness to confront the issues that led to the type of behaviour you engaged in at the collision scene. You committed to counselling while you were on bail and have shown a willingness to continue on that path. Despite the difficulties you have recently experienced in relation to your wife, she continues to support you. You also have the full support of your parents who have attended your various court hearings. In all the circumstances, in my view your prospects, while uncertain, are able to be assessed positively if you continue to confront your complex personality disorder.

85 Mr Dann submitted that in relation to Charge 1 you have served sufficient time in custody. Further he submitted that Charge 2 in all the circumstances does not require a term of imprisonment. Ms Harper submitted that a further period of imprisonment is warranted in relation to both charges and that some cumulation is warranted between Charges 1 and 2 given the different nature of the offending and different occasions on which they occurred.

86 I had you assessed for a community correction order. The report received by the Court found you to be unsuitable for such an order. At the further plea hearing I expressed my concerns as to the reasons why you were assessed as unsuitable and I will not repeat those concerns in these sentencing remarks.

- 87 Nonetheless, Dr Deacon's unchallenged opinion is that you require ongoing psychological treatment in the community with the objective of assisting in your rehabilitation and thereby providing a greater degree of community protection. A straight period of imprisonment followed by immediate release into the community without supports does not provide that option.
- 88 At the further plea hearing Mr Dann repeated his submission that when taking into account the matters in mitigation and the nature and gravity of the offending, Charge 2 does not require a term of imprisonment and that an adjourned undertaking with conditions would be an appropriate disposition in the circumstances.
- 89 In my view a term of imprisonment is warranted on both Charges 1 and 2. I am also of the view that as part of the sentencing structure I impose in relation to the indictable charges, you will be required to continue your psychological treatment in the community which will enable you to continue to address the core personality issues that manifest in the form of your emotional, cognitive and behavioural problems.²³

Sentence

- 90 Mr Pusey please stand.
- 91 Richard Paul Pusey, on Charge 1, reckless conduct endangering serious injury you are convicted and sentenced to 8 months imprisonment. On Charge 2, committing an act that outrages public decency, you are convicted and sentenced to 3 months imprisonment. I direct that 2 months of the sentence on Charge 2 be cumulative on the sentence imposed on Charge 1 making for a total effective sentence of 10 months imprisonment.
- 92 On Charge 3, possession of a drug of dependence, pursuant to s 72 of the *Sentencing Act 1991* you are convicted and will be placed on an adjourned

²³ First report p12 at [4].

undertaking with conditions for a period of 2 years. The undertaking will contain a condition that you continue to undergo treatment with Dr Adam Deacon and/or his nominee and that you provide progress reports prepared by Dr Deacon to the Court at 6 month intervals for the first year of the undertaking.

- 93 On Summary Charge 1, exceeding the speed limit, you are convicted and fined \$1000. Further, on Summary Charge 1 your licence is suspended for a period of 2 years which will be backdated to 16 October 2020, the day you were bailed with a condition that you not drive.
- 94 Pursuant to s 18 of the *Sentencing Act 1991*, I declare that 296 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.
- 95 Pursuant to s 6AAA of the *Sentencing Act 1991*, in relation to Charges 1 and 2, if not for your pleas of guilty I would have sentenced you to a period of 16 months imprisonment with a non parole period of 12 months.
