

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

Revised  
Not Restricted  
Suitable for Publication

Case No. CR-19-02502 / CR-19-02503

DIRECTOR OF PUBLIC PROSECUTIONS

v

GARRY TAYLOR AND MALCOLM TAYLOR

---

JUDGE: Cahill  
WHERE HELD: Melbourne  
DATE OF HEARING: 5 July 2021, 9 July 2021  
DATE OF SENTENCE: 9 July 2021  
CASE MAY BE CITED AS: DPP v Taylor & Anor  
MEDIUM NEUTRAL CITATION: [2021] VCC 911

**REASONS FOR SENTENCE**

---

Subject: Theft – Damaging Property – Possession of a drug of dependence – Theft  
Catchwords: Guilty plea – two brothers' dispute with sister over administration of mother's estate – destruction of family home – brothers two-thirds beneficial owners – senseless offending – middle-aged offenders – poor health – excellent rehabilitation prospects  
Legislation Cited: *Crimes Act 1958 (Vic); Drugs, Poisons and Controlled Substances Act 1981 (Vic)*  
Cases Cited: *Tyler Worboyes [2021] VSCA 169; R v Van Boxtel (2005) 11 VV 258; Smith v the Queen [2018] VSCA 208*  
Sentence: Garry Taylor – \$10,000 fine with conviction  
Malcolm Taylor - \$10,000 fine with conviction, \$1,000 fine with conviction

---

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr S. Devlin	Ms A. Hogan Solicitor for Public Prosecutions
For the Accused	Mr M. Anderson	

HIS HONOUR:

- 1 Malcolm John Taylor, you have pleaded guilty to:
  - (a) two charges of theft (**Charge 1 – rolled up**) (**Charge 3**);
  - (b) one charge of damaging property (**Charge 2**); and
  - (c) one charge of possession of a drug dependence, namely cannabis L (**Charge 4**).
- 2 You have also pleaded guilty to the related summary offence of contravening a conduct condition of your bail (**Summary Charge 7**).
- 3 Garry Steven Taylor you have pleaded guilty to:
  - (a) one charge of damaging property (**Charge 2**); and
  - (b) one charge of theft (**Charge 3**).

### **Circumstances of offending**

- 4 You are brothers.
- 5 Your offending arises out of a dispute with your sister in relation to the administration of your late mother's estate.
- 6 The circumstances are set out in the Summary of Prosecution Opening Upon Plea dated 2 March 2021. They are agreed facts.
- 7 On 21 December 2013, your mother died. She left a will which left her estate, after the payment of certain bequests, to your sister and the two of you in equal shares. Your sister was appointed the Executor of the Will.
- 8 You challenged her appointment in court. Eventually, in August 2015, this court made consent orders which confirmed your sister as the Executor and she obtained probate of the Will.

- 9 In December 2017, your sister engaged a Horsham real estate agent to sell your mother's house at Murtoa. The sale price was \$124,000.
- 10 Around 29 August 2018 you, Malcolm Taylor, removed the hot water service from the house and sent your brother, Garry Taylor, a photo of it loaded on to a Ute.
- 11 On 16 November 2018, you, Malcolm Taylor, told the real estate agent that you had taken the hot water service from the property (**part of Charge 1 – Theft (rolled up) – Malcolm Taylor**). You said that your sister would not profit from any sale, and you would continue to take things from the property until there was nothing left.
- 12 On 12 December 2018, the property sold for \$99,000.
- 13 In January 2018, the purchaser withdrew from the sale when the house was damaged by water incursion. It was estimated that the property, at this time, was worth between \$70,000 and \$75,000.
- 14 An auction was set for 29 March 2019.
- 15 Before the auction, the two of you arranged the hire of an excavator and, on 27 March 2019, you travelled together from Queensland, where you lived, to Melbourne.
- 16 The next morning, you arrived at the property in a hire car. You graffitied the walls in two bedrooms (**part of Charge 2 – Criminal Damage – Garry Taylor and Malcolm Taylor**)
- 17 You, Malcolm Taylor, removed the stove from the kitchen and left it at neighbouring property. You told the neighbour he could use it, sell it or do whatever he liked with it. Police later recovered the stove (**part of Charge 1 – Theft (rolled up) – Malcolm Taylor**)

- 18 You, Malcolm Taylor, filmed yourself walking through the house. The film shows the graffiti and a hole in the plasterboard wall from where the stove had been removed.
- 19 The two of you removed the rainwater tank from the yard. You, Garry, filmed Malcolm rolling the tank from the property down the street (**Charge 3 – Theft – Garry Taylor and Malcolm Taylor**)
- 20 The excavator arrived at 9:30AM. You filmed each other, in turn, over a period of about half an hour using the excavator to wreck the eastern wall and rear veranda of the house, a tank stand and the front fence (**Charge 2 – Criminal Damage – Garry Taylor and Malcolm Taylor**).
- 21 At 10:21AM, one of you sent a text message to the excavator supplier to tell him to pick up the machine.
- 22 Someone called the police. A local policeman arrived as you were driving away. When he stopped you, you gave him your details and said you were going to Bunnings to buy a toilet. You, Malcolm Taylor, had broken the existing toilet with the excavator when you smashed a hole through the exterior bathroom wall.
- 23 You, Garry Taylor, told the policeman, “we had to make sure the renovations were right before tomorrow”. The two of you told the policeman about the family dispute and said you had done “renovations” to the house which was the “last remaining asset” to “get top dollar” before the sale.
- 24 You, Malcolm then sent your sister a text message stating “[r]enovations have begun.”
- 25 The two of you then went to the Melbourne Cricket Ground to watch a football match. You, Garry Taylor, posted to Facebook an image of the two of you with the caption “[f]ew beers at the footy, after a hard days renovating.”

- 26 You had booked into a hotel near Tullamarine airport overnight to take a return flight to Queensland on 29 March 2019.
- 27 Police arrested you at the hotel on the morning of 29 March 2019.
- 28 You, Malcolm Taylor, had a Ziploc bag containing 8 grams of cannabis L (**Charge 4 – Possession of a Drug of Dependence – Malcolm Taylor**).
- 29 Police interviewed both of you.
- 30 You both told police you were beneficiaries of the intended sale and you gave them the story you were renovating the property and got in an excavator to “clean [it] up”.
- 31 You, Malcolm, told the police the cannabis was yours and you had “a little puff every now and again to [help you] sleep.”
- 32 You were both charged and spent three days in police cells until 1 April 2019 when you were released on bail.
- 33 The cost to reinstate the damaged property is estimated to be \$130,000.
- 34 The cost to replace the hot water heater, which you, Malcolm Taylor, have removed from the house was quoted at \$5,175.
- 35 I have viewed the film from your phone, Garry Taylor, which shows you filming your brother rolling a water tank out of the property and down the road, while you follow him in a motor car.<sup>1</sup>
- 36 I have also viewed the film from your phone, Malcolm Taylor, which shows you, Garry Taylor, filming your brother as he smashed up the eastern wall and rear of the house with the excavator, and which shows you, Malcolm Taylor, filming your brother as he knocked down part of the front fence with the excavator.<sup>2</sup>

---

<sup>1</sup> Exhibit B.

<sup>2</sup> Exhibit C.

- 37 I have also read your sister's victim impact statement.<sup>3</sup> She lives in Brisbane. It is clear there are bad feelings between the two of you and her, and the dispute between you has caused her considerable anxiety and upset.
- 38 On 22 June 2019, a local policeman saw you, Malcolm Taylor, at the Minyip-Murtoa Football Ball and Reunion. You should not have been there as it was a condition of your bail you only come to Victoria for the purpose of court (**Related Summary Charge 7 – Contravention of a Conduct Condition of Bail**).

### **Criminal record**

- 39 Each of you has admitted a criminal record.
- 40 You, Malcolm Taylor, were fined \$100 for offensive behaviour at Stawell Magistrate's Court on 7 March 1983. On 20 June 1990, at Murtoa Magistrate's Court, you were sentenced to 3 months' imprisonment, wholly suspended, for wilful damage.
- 41 You, Garry Taylor, were fined \$50 on 29 August 1981, at Gladstone Magistrate's Court in Queensland for using obscene language.

### **Personal circumstances**

- 42 You, Malcolm Taylor, were born on 10 June 1964. You were 54 years old when you offended and are now aged 57 years.
- 43 You, Garry Taylor, were born on 20 December 1961. You were 57 when you offended and you are now aged 59.
- 44 The two of you grew up at Murtoa. Your father ran a plumbing business and your family was well respected in your community.
- 45 You went to local schools and, when you finished school, you both went into the family plumbing business.

---

<sup>3</sup> Exhibit D.

- 46 You, Malcolm Taylor, married and have three children who are now aged 27, 24 and 22 years. In 1994, you left Murtoa and moved to Hervey Bay, Queensland, where you set up your own plumbing business. In 2000, to you returned to Murtoa and then, in 2009, you went back to Hervey Bay. You re-partnered in 2016. Your partner is a hairdresser.
- 47 In April 2020, you suffered a stroke and, four months later, you suffered another which, according to your treating specialist, left you with significant disabilities including a permanent limp and ongoing sensory changes in your fingers and toes and on the left side of your face.<sup>4</sup> You have not worked since.
- 48 In your specialist's opinion, there is a serious risk imprisonment will have a materially adverse effect on your health.
- 49 Your partner and you own your home at Hervey Bay. Apart from her interest in a small hairdressing salon, which has not traded profitably during the global pandemic, and a utility, you have modest retirement funds in the bank. You live on \$750 a week which you draw from your savings.
- 50 Your partner wrote that she has had to cut back her work hours to care for you at home.<sup>5</sup> You suffer from memory problems, depression and sleep disturbance and she worries daily that you might suffer another stroke.
- 51 A schoolfriend from Murtoa has known you most of your life.<sup>6</sup> He wrote that you spent many years actively participating in, and supporting, local sporting clubs and service clubs, as well as the fire brigade.
- 52 You, Garry Taylor, left Murtoa to work at a uranium mine in the Northern Territory when you were 18 years old. Two years later, you moved to Mackay where you met and married your wife. You have two children, aged 30 and 27. For 30 years, you operated an earthmoving excavations business. In 2019, you sold the

---

<sup>4</sup> Exhibit MT3, MT4 and MT5.

<sup>5</sup> Exhibit MT7.

<sup>6</sup> Exhibit MT6.

business due to ill health. You suffer from heart disease which is managed with medications by a cardiologist. In your cardiologist's opinion, you also are at serious risk of imprisonment having a materially adverse effect on your health.<sup>7</sup>

- 53 In 2015, your wife suffered a serious shoulder injury after a fall. Her GP wrote that she has had several unsuccessful surgeries and relies on you for daily care.<sup>8</sup> She is waiting on further surgery in the hope of pain reduction and improvement in function. You have been married for 39 years. You have been a loving partner and father. Your wife described you as "a loyal, caring giving, generous good person" who would give help to anyone who needed it. She wrote you are respected in your community for your "experience, commitment, attitude, competence and good character".<sup>9</sup>
- 54 A friend who has known you for more than 13 years met you through your excavation business.<sup>10</sup> He wrote that you have a very good reputation and work ethic and are a generous friend. He confirmed that you need to care for your wife and he knows you to be greatly distressed about her continuing suffering. That was evident during the plea hearing when you spontaneously burst into tears at the time your counsel was addressing me in relation to your wife's poor health.<sup>11</sup>
- 55 Earlier this year, your son unfortunately suffered a serious spinal injury in an accident and, after lengthy hospitalisation, he returned to Mackay where you help him get to his medical and physio appointments.
- 56 After you retired, you invested \$420,000 with someone who has since defrauded you. These retirement savings are lost to your wife and you.

---

<sup>7</sup> Exhibit GT3 and GT4.

<sup>8</sup> Exhibit GT5.

<sup>9</sup> Exhibit GT7.

<sup>10</sup> Exhibit GT6.

<sup>11</sup> Exhibit GT6.

- 57 Your wife and you own a modest home at Seaforth and a block of land at Balnagowan. You have three early model motor cars and three fishing boats. You are living off depleted savings.
- 58 After your mother died, the two of you brought proceedings in the County Court to have your sister removed as the executor of the Estate because she had failed to pay legacies due to your children. Under the Terms of Settlement, dated 18 August 2015, it was agreed that your sister would remain the Executor and pay your children the amounts due to them. For your part, you agreed to cooperate with her and to assist to collect the estate's assets, pay its liabilities and distribute the bequests to the beneficiaries.
- 59 As I said, your sister and each of you were entitled to a one third share of the proceeds of the sale of the house. In May 2019, shortly after your offending, you offered to pay your sister a reasonable sum to compensate her for what would have been her share of the house sale proceeds.

### **Defence submissions**

- 60 Mr Anderson of counsel appeared on behalf of both of you. The two of you accept that you are equally culpable for the offending.
- 61 He submitted that, while you accept that your offending was serious, the financial consequence was relatively modest. In his submission, the loss to the Estate was around \$60,000 and, to your sister, around \$20,000.
- 62 He relied on the following factors in mitigation of penalty:
- (a) your guilty plea;
  - (b) your poor health; and
  - (c) your otherwise prior good character.

- 63 He submitted your guilty plea, and your offer to your sister to compensate her for your wrongdoing, demonstrates your remorse.
- 64 He submitted that, given your good history of solid employment, stable family and community contributions, you are very unlikely to reoffend and have excellent prospects of rehabilitation.
- 65 He submitted that I should impose a substantial fine as the penalty for both of you.

### **Prosecution submissions**

- 66 Mr Devlin, who appeared for the Director of Public Prosecutions, submitted, as your offending was premeditated and involved significant planning, and the damage you caused was substantial, your offending was a serious example of a criminal damage offence.
- 67 He submitted that there was an arrogance to your offending and your dealings with police which displays a lack of contrition.
- 68 While your guilty plea was not early, he acknowledged that it, together with your offer to compensate your sister, is evidence of some limited remorse. He also accepted that your guilty plea has additional utilitarian value during the global pandemic.
- 69 He submitted, but for your personal factors, which include your poor health and the high likelihood that you will not reoffend, a prison sentence is warranted for your crimes.
- 70 He submitted, in all the circumstances, I should impose a fine in a sum which should be “a kick in the pants” for you.

### **Consideration**

- 71 The vice of the crime of criminal damage is intentionally damaging property belonging to another. There is no law against a person damaging their own

property. You were entitled to two-thirds of the value of the property you destroyed.

Nevertheless, you damaged property which, in part, belonged to your sister.

- 72 In financial terms, the loss you caused was relatively modest; in the order of between \$20,000 to \$30,000 to your sister.
- 73 Your offending was more than a spontaneous prank; it was planned and calculated.
- 74 As a result, you are to be convicted of serious criminal offences.
- 75 Your senseless rampage has drawn national and international press coverage.
- 76 You were laughing while you destroyed your, and your sister's, inheritance. Now, the world is laughing at you for your stupidity.
- 77 There are mitigating factors which I must also take into account.
- 78 You are entitled to a sentencing discount for your guilty plea. While the courts continue to deal with the adverse effects of the COVID-19 pandemic, your guilty plea has greater utilitarian benefit than in normal times, because it alleviates the current strain on the system of justice.<sup>12</sup>
- 79 Your guilty plea, and offer of restitution, is also evidence of some remorse.
- 80 You, Malcolm Taylor, have a relevant prior conviction for wilful damage. As it is more than 30 years old, it has little relevance in the sentencing synthesis.
- 81 You, Garry Taylor, have no relevant criminal record.
- 82 You are otherwise both middle-aged men of good character who ran your own businesses, raised and supported your own families and otherwise led blameless lives. I accept that your prospects of rehabilitation are excellent.

---

<sup>12</sup> See *Tyler Worboyes* [2021] VSCA 169 [35], [39].

- 83 I also accept that, because of your poor health, imprisonment, which is a possible sentencing option, will be significantly more burdensome for you than for a person in normal health.<sup>13</sup>
- 84 Overall, I am satisfied that a substantial fine can achieve all sentencing purposes in your case.
- 85 In assessing the amount of the fine, I have had regard to the gravity of your offending, the property damage you caused and your financial circumstances.
- 86 Your assets are modest and your earning capacity is extremely limited.
- 87 I also take into account that you have already been punished by your time in police cells.
- 88 Although you, Malcolm Taylor, face the additional charge of theft of the hot water service and oven, I am satisfied that, in relation to your wrongdoing against your sister, your criminality, and your brother's, is the same. Accordingly, I will impose the same penalty on each of you for that offending.
- 89 And, because the offences of criminal damage and theft form a series of offences of similar character, I will impose an aggregate fine for them.
- 90 You, Malcolm Taylor, face additional charges. Your possession of a small quantity of cannabis will not attract any penalty, apart from conviction. Your breach of a conduct condition of your bail indicates an unacceptable disregard for the law for which further monetary penalty will be imposed.
- 91 Please stand, both of you.
- 92 By the sentence I impose, I must denounce your conduct, punish you, and deter you, and others, from committing crimes of the same or similar kind. I must also look to your rehabilitation.

---

<sup>13</sup> *R v Van Boxtel* (2005) 11 VV 258, 268 [33] applied in *Smith v the Queen* [2018] VSCA 208 [32]-[33].

93 Considering the circumstances of your offending, your personal circumstances and antecedents, and endeavouring to produce a sentence which reflects and promotes the purposes of sentencing in a manner to you, Malcolm Taylor:

(a) on the two charges of Theft and the charge of Criminal Damage you are convicted and fined an aggregate sum of \$10,000.

94 On the charge of Possession of a Drug of Dependence you are convicted and discharged.

95 On the summary charge of Contravention of a Conduct Condition of Bail you are convicted and fined \$1,000.

96 While there is some artificiality in the process, I declare, but for your plea of guilty, I would have imposed a term of imprisonment of 8 months for the Criminal Damage and Theft offences, a fine for Possession of a Drug of Dependence and a larger fine for Contravention of a Conduct Condition of Bail.

97 And, you, Garry Taylor:

(a) on the charge of Theft and the charge of Criminal Damage you are convicted and fined \$10,000.

98 Again, while there is some artificiality in the process, but for your plea of guilty, I would have imposed a term of imprisonment of 8 months.

99 I make an order for forfeiture and disposal of the cannabis seized from you, Malcolm Taylor.

-----