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29 November 2017

The Editor
Sunday Herald-Sun
40 City Road, HWT Tower
Southbank Melbourne Vic 3006

The article "Leniency is an insult to us all" published in your newspaper on 19 November 2017 is regrettably another example of the inaccurate reporting of the reasons given by judges in sentencing offenders.

When imposing sentences judicial officers are obliged to provide reasons for their decisions. The provision of reasons facilitates scrutiny of the decision both by appeal courts and by the public. The public reporting and commentary on the reasons for judicial decisions including sentences is to be encouraged. However, commentary such as the article should accurately report the reasons of the judge.

The offender the subject of the article had pleaded guilty to one charge of culpable driving causing death and another charge of negligently causing serious injury. The offender had a blood alcohol reading of 0.156 and drove through a stop sign killing an infant and seriously harming his mother. The sentencing judge described his crime as a "serious example of what is a serious offence" and stated that the offender's "moral culpability [was] high".

Most of the article consisted of rhetorical attacks upon the sentencing judge. However, to the extent that it attempted to describe the sentencing judge's reasons it was inaccurate in at least three respects.

First, the article asserted that in sentencing the offender to seven years imprisonment with a minimum term of four years and eight months for an offence that carried a maximum sentence of 20 years sentence the judge "gave the offender

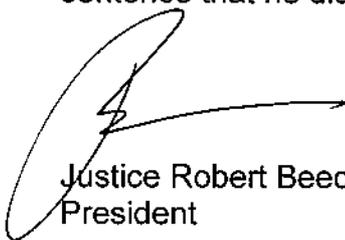
less than 25 percent of that penalty". Seven years is 35 percent of 20 years, not less than 25 per cent.

Second, the column asserts that the "reason for this generosity' is because the offender had written a letter to the victims' family "saying he was sorry". This is blatantly incorrect. The sentencing judge's reasons make clear that the sentence was determined taking into account an assessment of the seriousness of the facts of this offence compared to other offences of the same type (paragraphs 11 to 12), the terrible impact of the offence on the victims and their family (paragraph 13), the fact that the offender pleaded guilty (para 14), that the offender was remorseful (para 16), his age and the likelihood of his reoffending (para 20).

Third, the column asserts that in stating that "these crimes aside, [the offender] lived an unblemished life" the sentencing judge "breezily excis[ed]" the offender's actions in killing a young child while drunk driving. The sentencing judge did no such thing. Instead the judge noted and considered that the offender had not before or after his terrible crime been convicted of any other offence, his work history, and that he was remorseful and that his family circumstance suggested that his prospects of rehabilitation were excellent (paragraph 20). These considerations cut both ways in sentencing. If the offender was not remorseful, had prior convictions and was likely to reoffend then I am sure your readers would expect the sentencing judge to have considered those matters in fixing any sentence.

Nothing in this letter is to be taken as either an endorsement or a criticism of the sentence. Given the severity of the crime there is clearly great scope for legitimate public debate about the appropriate penalty. However, misreporting the reasons provided by the sentencing judge does not promote that debate.

The actual reasons provided by the sentencing judge can be accessed at www.jca.asn.au. I encourage your readers to read them and form their opinion about the sentence. They were not assisted in understanding why the judge imposed the sentence that he did by reading the article in your newspaper.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line extending to the right.

Justice Robert Beech-Jones
President

IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR -17-01132

DIRECTOR OF PUBLIC PROSECUTIONS

v

BLAKE CHADWICK

JUDGE: HIS HONOUR JUDGE LACAVA
WHERE HELD: Melbourne
DATE OF HEARING: 27 October 2017
DATE OF SENTENCE: 15 November 2017
CASE MAY BE CITED AS: DPP v Chadwick
MEDIUM NEUTRAL CITATION: [2017] VCC 1692

REASONS FOR SENTENCE

Subject: Culpable driving causing death.
Catchwords:
Legislation Cited:
Cases Cited:
Sentence: Seven years' imprisonment.
Non-parole period four years and eight months

APPEARANCES: Counsel Solicitors

For the Director of Public Mr J. Hannebery
Prosecutions

For the Accused Mr M. Gibson

HIS HONOUR:

- 1 Blake Chadwick, you have pleaded guilty to one charge of culpable driving causing death, for which the maximum penalty is 20 years' imprisonment; and one charge of negligently causing serious injury, for which the maximum penalty is ten years' imprisonment.
- 2 You also pleaded guilty to a summary driving offence and consented to having that charge dealt with by me in this court. That offence was a charge that you drove a motor vehicle with a blood/alcohol concentration that exceeded .05 per cent. The maximum penalty for this offence is a fine of not more than 20 penalty units and your licence to drive a motor vehicle must be cancelled and you must be disqualified for a minimum period of 15 months.
- 3 The circumstances of your offending are contained in a prosecution summary in writing, dated 25 October 2017. That document was tendered in evidence on your plea and marked as Exhibit "A" and it was read in open court by the prosecutor, Mr Gibson. Your counsel, Mr Hannebery, accepted that the prosecution summary was accurate and forms a proper basis upon which I can proceed to pass sentence upon you. It is therefore not necessary that I here again set out that which is contained in the summary, except in an abbreviated way. These sentencing remarks however should be read in conjunction with what is contained in the summary.
- 4 On 17 December 2016, a collision occurred at Phillip Island between a vehicle driven by you and a vehicle being driven by the father of the principal victim of your offending, whom I shall call "the deceased".
- 5 As a result of the collision, the deceased suffered injuries from which she subsequently died and her mother, also a passenger in the other vehicle, suffered serious injury. She suffered a punctured lung and fractured ribs, for which she was treated at the Monash Medical Centre. I accept that these injuries are towards the lower end of serious injury. The driver of the other

- vehicle and his other daughter were not injured.
- 6 The collision was caused by you. Whilst driving, you failed to observe a “Stop” sign, despite its obvious presence and the fact there were other signs before the intersection at which the “Stop” sign was located, warning approaching drivers of the fact of the stop sign. One of the passengers in your vehicle realised that you were not stopping before the intersection and called to you to “slow down” or “stop”. Your vehicle entered the intersection of Smith’s Beach Road and Back Beach Road without stopping and into the path of the vehicle in which the deceased and her mother were passengers and the collision occurred. Photographs 1 to 4 in a book of photographs of the scene show the view of the intersection as you approached it. It was daylight when the collision occurred.
- 7 There is no suggestion that you were driving, other than within the applicable speed limit. The summary does refer to observations of your driving before the collision that are slightly critical of the way you drove the car before the collision. I do not sentence you having regard to those criticisms.
- 8 The first charge of culpable driving causing death is brought on the basis that your culpable driving was driving whilst under the influence of alcohol, to such an extent as to be incapable of having proper control of your vehicle. That is what you have pleaded guilty to and that is the basis upon which you fall to be sentenced.
- 9 The second charge is based upon the fact you drove your car negligently, causing serious injury. The negligence is the fact you entered an intersection without stopping, having failed to observe and comply with the directions of a “Stop” sign.
- 10 You had been drinking in the afternoon before the collision. A preliminary breath test of you conducted at the scene of the collision returned a positive reading of 0.121 per cent. Analysis of a blood sample later taken from you,

revealed a blood/alcohol content of 0.156 per cent, more than three times the legal limit. The blood/alcohol content reading speaks for itself. It is obvious that your driving skills would have been adversely affected by the amount of alcohol in your system at the time of the collision and this was a major cause of the collision which caused the death of a doubtless beautiful 16 month old girl.

11 Although the collision that results in these charges is not attended with evidence of driving at excessive speed, or driving the vehicle in an otherwise dangerous manner, it is nonetheless a serious example of what is a serious offence. You chose to drive the vehicle when you were obviously impaired by the alcohol you had consumed and your ability to drive the motor vehicle in a proper way was thus adversely affected. That was selfish in the extreme. By driving the vehicle, you endangered all who happened to come into your path. Your moral culpability for this offending is therefore high. The sentence passed by me must appropriately apply the principle of general deterrence, to deter others who might seek to offend in a similar way. Unfortunately, this kind of offending is prevalent and often committed by persons who are otherwise previously of excellent character. Sentences passed by courts for this kind of offending must send a clear message to the community that it will not be tolerated. The sentence must also appropriately denounce your offending. I did not understand Mr Hannebery's submissions to disagree.

12 Mr Hannebery submitted that your offending in Charge 1 should be categorised as a "mid-range example of the offence of culpable driving" and I should regard your offending in Charge 2 as towards the lower range of offending for negligently causing serious injury. I do not disagree with either of those submissions.

13 I admitted into evidence as Exhibit B, a victim impact statement from the father of the deceased and the husband of the injured victim in Charge 2. It was read in court by the prosecutor. It is a moving document which sets out the devastating ways in which your offending has impacted upon the members of

- the deceased's family. Everything that is described in that document is perfectly understandable from the victim's point of view. These crimes have terrible consequences for all concerned and this case is no exception. In passing sentence, I have taken the victim impact statement into account, as I must.
- 14 You pleaded guilty to the first charge at committal on 5 June 2016 and there has never been any suggestion that your disposition would be other than after a plea of guilty. I treat you as having indicated that you would plead guilty at the earliest opportunity. Because you have pleaded guilty, you are entitled to a reduction in sentence. By your pleas, you have saved the time and costs of a committal and trial and you have saved the family of the deceased from having to re-live these events by giving evidence in a trial and be cross-examined. In passing sentence, I have taken your pleas of guilty into account.
- 15 Further, I treat your pleas of guilty as evidencing genuine remorse on your part for your crimes.
- 16 I also received into evidence, a letter written to me by you and another to be provided to the parents of the deceased. In your letters, you express your regret and shame at your offending and your concern for the hurt you have caused to all concerned, including your own family and siblings. Both letters are very moving and I think a genuine expression by you of your remorse. It is to your credit that you have written them in the way that you have. What you have said in the letters, I have no doubt you will regret your conduct that brings you to this criminal court for the rest of your life.
- 17 You were born on 2 November 1992 and you are now 25. You were aged 24 at the time of the collision. You fall to be sentenced as a young man. You do not have prior convictions for driving or other offending and these crimes aside, you have led an unblemished life. From all the material I have read about you, I conclude you come from a very good and loving family, you have been well

- educated and well brought up.
- 18 After leaving school, you completed an apprenticeship as an electrician and you have pursued a career in that field. You were employed by Dezin Electric and a reference from your former employer speaks highly of you as a person and as an employee. You have never been out of work.
- 19 Since offending, you have completed a drink-driving course and I received into evidence, a certificate of you having completed this course. I accept what I was told, that you have not consumed alcohol or driven since the collision.
- 20 I received into evidence a large number of references and testimonials concerning your good character. They were received by me from your parents and siblings, family friends and people who have known you in the community in which you live and work. All speak very highly of you and I have no doubt you have contributed to the community for the better for most of your young life. What comes through from the references is your genuine remorse and empathy for the victims of your crimes, as you have repeatedly expressed it to others since this offending. This offending aside, I have no difficulty concluding you are otherwise a person of good character and you are genuinely remorseful. I conclude your prospects for rehabilitation are excellent and very much doubt you will offend again in this way.
- 21 I accept you have suffered from grief and post-traumatic stress disorder, of moderate severity, since this offending, for which you have received treatment. I was provided with a psychological report from Michael Tomek. In passing sentence, I have taken this into account. It is clear to me that because of your sincere regret for your actions, you have had a great deal of difficulty coping with life since your offending.
- 22 Your counsel conceded that I must sentence you to a term of imprisonment for your offending. Both Mr Hannebery and Mr Gibson referred me to other cases for this kind of offending and to statistics published by the Sentencing Council.

In passing sentence, I have had regard to sentencing practices for this kind of offending.

23 Would you please stand, Mr Chadwick.

24 On Charge 1 of culpable driving causing death, you are convicted and sentenced to a term of imprisonment of six years and any licence that you may hold to drive a vehicle is cancelled and you are disqualified from obtaining a licence for a period of five years from 17 December 2016.

25 On Charge, 2 negligently causing serious injury, you are convicted and sentenced to a term of imprisonment of three years.

26 I direct that one year of the sentence imposed on Charge 2, cumulate upon the sentence imposed on Charge 1, making a total effective sentence of seven years' imprisonment.

27 I direct you serve a minimum term of four years and eight months before being eligible for release on parole.

28 I declare there has been 19 days pre-sentence detention and direct that 19 days be reckoned as having been already served of the sentences passed this day and be entered into the records of the court and deducted administratively.

29 I declare that had it not been for your pleas of guilty to the charges, I would have imposed a total effective sentence of nine years' imprisonment and I would have fixed a non-parole period of six years.

30 On the summary charge, you are convicted and fined the sum of \$500 and your licence to drive a motor vehicle is cancelled for a period of 15 months from 17 December 2016.

31 I have been asked to make a forensic sample order, which was not opposed and for the reasons stated in the order, I have signed it. This means that whilst in custody, a police officer may approach you for the purposes of obtaining

a forensic sample from you, in the form of a swab from your mouth and may use reasonable force to do so should you not consent.

32 Are there any questions arising out of that, Mr Gibson?

33 MR GIBSON: No, Your Honour.

34 Mr Hannebery?

35 MR HANNEBERY: No.

36 HIS HONOUR: Thank you. Would you take Mr Chadwick into custody please.

37 I will just leave the Bench.
