



SENTENCING WORKSHOP

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Scenario 2

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SENTENCING WORKSHOP - TIMETABLE

It is proposed that the workshop will run along the following general lines:

20 mins	Brief introduction and overview of court system
10 mins	Welcome by Judge
30 mins	Summary of sentencing law and purposes, including sentencing principles and factors considered in sentencing
30 mins	Judge sits in court; indictment read; Crown facts stated, plea in mitigation; Judge adjourns
15 mins	Morning/Afternoon Tea
45 mins	Group workshops to discuss sentence within small groups and present to whole group upon resumption
10 mins	Judge's decision re sentence
10 mins	Summary, comments, questions
10 mins	Brief tour of court building and cells (optional)

SENTENCING LAW

Sentencing Law - Sources

- *Sentencing Act 1997* (Tas)
- *Youth Justice Act 1997* (Tas)
- *Criminal Code* (Tas)
- *Crimes Act 1914* (Cth)
- Common law (case law; previous judgments of Courts)
- Acts creating particular offences and crimes (e.g. drink-driving penalties)

PURPOSES OF SENTENCING

- punishment and retribution
- rehabilitation of offenders
- deterrence of offenders and other persons from committing offences (individual deterrence; and general deterrence)
- denunciation of the conduct of offenders
- incapacitation

The purposes of the Sentencing Act 1997 are set out in section 3 of the Act as follows:

The purpose of this Act is to –

- (a) amend and consolidate the State's sentencing law; and
- (b) promote the protection of the community as a primary consideration in sentencing offenders; and
- (c) promote consistency in the sentencing of offenders; and
- (d) establish fair procedures for –
 - (i) imposing sentences on offenders generally; and
 - (ii) imposing sentences on offenders in special cases; and
 - (iii) dealing with offenders who breach the conditions of sentences; and
- (e) help prevent crime and promote respect for the law by allowing courts to –
 - (i) impose sentences aimed at deterring offenders and other persons from committing offences; and
 - (ii) impose sentences aimed at the rehabilitation of offenders; and

- (iii) impose sentences that denounce the conduct of offenders; and
- (f) promote public understanding of sentencing practices and procedures;
and
- (g) set out the objectives of sentencing and related orders; and
- (h) recognise the interests of victims of offences.

GENERAL SENTENCING PRINCIPLES

- ensure that “the punishment fits the crime”
- discretion by Judges and Magistrates within a range of possible sentences
- maximum penalties
- mandatory minimum penalties eg. drink-driving offences
- aggravating factors
- mitigating factors
- conviction or non-conviction
- proportionality of sentence to offence committed
- totality of sentences on multiple charges for single defendant
- comparable ("parity of") sentences for co-offenders
- changing ("commuting") sentences e.g. life sentence commuted to a fixed term sentence

FACTORS CONSIDERED

Circumstances of the Offence

- Seriousness of the offence
- Prevalence of the type of offence
- Impact on victim – taking into account age/circumstances of victim
- Premeditation
- Degree of participation – leader, minor role?
- Aggravating or mitigating factors:
 - e.g. - any damage or injury caused
 - use of weapons
 - breach of trust
 - age; youth
 - coercion;
 - principal or secondary offender eg.accessory

Circumstances of the Offender

- Prior Convictions, including response to previous orders
- Plea of guilty
- Remorse, demonstrated for example by:
- Reparation for any injury, loss or damage made prior to sentencing
- Co-operation with the Police
- Character
- Background, including cultural background
- Age
- Means
- Physical condition/ mental capacity
- Prospects for rehabilitation
- Deterrent effect that any sentence may have on the person
- Alcohol/drugs but only to show out of normal character
- Parity with like offenders
- Special hardship

RANGE OF SENTENCING OPTIONS

- Imprisonment
- Drug Treatment Order
- Suspended term of imprisonment (partially or wholly)
- Home Detention Order (with electronic monitoring)
- Community Correction Order
- Probation Order (young offenders)
- Fine, Compensation Order, or Restitution Order
- Rehabilitation program order (family violence)
- Deferred sentencing order
- Adjournment with Undertakings (with or without a conviction)
- Record a conviction and discharge the offender
- Dismiss the charge without conviction

The range of sentencing orders set out by the Sentencing Act 1997 are found in section 7 of the Act as follows:

7. A court that finds a person guilty of an offence may, in accordance with this Act and subject to any enactment relating specifically to the offence –
- (a) record a conviction and order that the offender serve a term of imprisonment; or
 - (ab) if the court is constituted by a magistrate or is the Supreme Court or the Court of Criminal Appeal,, record a conviction and make a drug treatment order under [Part 3A](#) in respect of the offender; or
 - (b) record a conviction and order that the offender serve a term of imprisonment that is wholly or partly suspended; or
 - (c) record a conviction and make a home detention order under [section 42AC](#) in respect of the offender, if the offender has attained the age of 18 years; or

- (d) with or without recording a conviction, make a community correction order under [section 42AN](#) in respect of the offender, if the offender has attained the age of 18 years; or
- (e) with or without recording a conviction, order the offender to pay a fine; or
- (ea) in the case of a family violence offence, with or without recording a conviction, make a rehabilitation program order; or
- (eb) adjourn the proceedings, grant bail under the [Bail Act 1994](#) and, by order, defer, in accordance with [Division 1](#) of [Part 8](#) , sentencing the offender until a date specified in the order; or
- (f) with or without recording a conviction, adjourn the proceedings for a period not exceeding 60 months and, on the offender giving an undertaking with conditions attached, order the release of the offender; or
- (g) record a conviction and order the discharge of the offender; or
- (h) without recording a conviction, order the dismissal of the charge for the offence; or
- (i) impose any other sentence or make any order, or any combination of orders, that the court is authorised to impose or make by this Act or any other enactment.

DRIVING-RELATED SENTENCING OPTIONS

Driving-related orders include orders available under the *Road Safety (Alcohol and Drugs) Act 1970* , the *Vehicle and Traffic Act 1999* , and the *Police Offences Act 1935*. Such orders may result in:

- mandatory (compulsory) driving licence disqualification for drink driving offences and the offence of driving with prescribed illicit drug in the blood under the *Road Safety (Alcohol and Drugs) Act 1970* or excessive speeding under the *Vehicle and Traffic Act 1999*
- discretionary driving licence disqualification under the *Vehicle and Traffic Act 1999* in appropriate cases, the *Police Offences Act 1935* for a person convicted of the summary offence of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud
- • a person's motor vehicle being confiscated permanently under the *Police Offences Act 1935*

PAROLE

- Legislation and administration (Parole Board)
- Purpose
- Conditions
- Breach

SUPREME COURT - CASE SCENARIO

The factual scenario set out below is a fictional case study to be used in an exercise to apply sentencing principles and procedure to a fictional case.

STATE OF TASMANIA v. RILEY JAMES WILLIAMS

DOB 15/05/2000

CHARGE: Causing death by dangerous driving

Background

1. The accused in this matter is Riley James Williams. At the time the offences were committed he was 19 years old. His birth date is 15 May 2000.
2. The deceased is Rose Sarah Adams. At the time of her death she was 17 years old. Her parents are Ruth and Terry Adams. She is survived by a younger brother and sister.

Pre-crash events

3. On the afternoon of 4 October 2019 at about 3pm the accused went to several hotels in the greater Hobart area and at each one, consumed several alcoholic drinks including beer, cider and pre-mixed rum and cola.
4. Between 9pm and 10pm he drove to a house in Glebe where he had arranged to meet Miss Adams. Leaving that address, he was observed by two witnesses to be driving in a careless fashion. The accused then drove to the Blue Star Hotel, purchased a carton of 24 cans of pre-mixed rum and cola and spent the next several hours consuming those with Miss Adams.
5. The accused and Miss Adams then met another friend at a park at approximately 2am and consumed more alcohol. The accused repeatedly asked his friend to race him in his car. The friend declined.

6. The accused continued to drive around the suburbs of Hobart for several hours. He was observed to be driving erratically on several occasions. A witness Miss Watkins saw him speeding and crossing the centre line on Smith Street at approximately 3:40am. She estimated his speed at 100 kilometres per hour in a 70 km zone. Another witness Mr Parker saw him drive straight across a roundabout on Hurley Street whilst speeding. Mr Parker estimated his speed at 80 kilometres per hour in a 50 km zone. This was at approximately 5:30am.

Crash events

7. By 6am the accused was driving on Redgrave Road. Miss Adams was not wearing her seatbelt and the accused was aware of this. Redgrave Road has a speed limit of 70 kilometres per hour. That is clearly signposted and the accused was aware of this. The accused had lived in the area for 5 years from the ages of 13-to 18.
8. While attempting to negotiate a sweeping left hand corner turn the accused lost control of the vehicle which skidded across the road, down an embankment and through a wire fence.
9. At the location of the crash two distinct black scuff tyre marks were present on the road and continued in a westerly direction on the bitumen section of the road. This indicated to the accident investigator that all four tyres were on maximum braking, that there was sufficient contact for a mark to be made which indicated the road was not icy at the time. The tyre marks continued down the grass embankment. Speed calculation investigations have concluded that the vehicle was travelling at a minimum of 89 kilometres per hour at the time. It was dark at the time of the crash but the weather was fine.
10. The accused removed himself from the car but was not able to get access to Miss Adams. Emergency services attended the crash scene. The Tasmanian police were first to the scene. The attending officers observed the accused sitting on the grass near the vehicle. They checked the car and saw a female lying motionless in the front seat. It was not possible to remove her from the car. Fire department personnel cut the door of the vehicle to gain access to Miss Adams and ambulance paramedics declared her dead at the scene.
11. The accused was taken to Royal Hobart Hospital where he underwent a blood test to check for the presence of alcohol and illicit substances. He returned a blood alcohol reading of 0.135 grams of alcohol per 100 millilitres of blood. No other illicit substances were detected.

12. The accused was interviewed by police under caution. He admitted to being the driver of the car, speeding several times over the course of the evening and drinking alcohol over the course of the evening. The accused admitted that he realised while he was driving on Redgrave Road that he should return home as soon as possible to avoid being pulled over by the police and that is what he was doing when the accident occurred. He also admitted that he did not think the amount of alcohol he had consumed had any influence on the crash and that nothing was distracting him while he attempted to negotiate the corner where the crash occurred. The accused said he felt terrible about what had happened.

Background

Riley was 19 years old at the time of the offences. He had a learner's driver licence. Miss Adams was 17 years old.

He has two prior convictions:

1. Use of an unregistered motor vehicle: 3 May 2018
2. Taking part in an unlawful assembly: 28 June 2018

INDICTMENT

TASMANIA)
HOBART)
TO WIT)

IN THE SUPREME COURT OF TASMANIA

THE STATE OF TASMANIA against Riley James WILLIAMS

This 23rd day of May 2020.

MICHAEL TERRENCE PHIBBS Crown Law Officer on behalf of the State of Tasmania
charges Riley James WILLIAMS with -

STATEMENT OF CRIME

Causing death by dangerous driving – Contrary to Section 167A of the Criminal Code.

PARTICULARS

RILEY JAMES WILLIAMS at Hobart in Tasmania on or about the 5th day of October 2019 caused the death of ROSE SARAH ADAMS by driving a motor vehicle on a public street, namely Redgrave Road in a manner that was dangerous to the public having regard to all the circumstances of the case.

Michael Terrence Phibbs
CROWN LAW OFFICER

Filed in the Supreme Court of Tasmania
this 23rd day of May 2020.

John Smith
CLERK OF THE COURT

LEGISLATION - CRIME

Criminal Code Act 1924 ("Criminal Code")

167A. Causing death by dangerous driving

Any person who causes the death of another person by the driving of a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including in the case of the driving of a motor vehicle on a public street, the nature, condition and use of the street, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the street, is guilty of a crime.

Charge: Causing death by dangerous driving.

Alternative Verdicts:

334C. Causing death by dangerous driving

Upon an indictment for causing death by dangerous driving, the accused person may be convicted of –

- (a) dangerous driving; or
- (b) an offence under section 32(1) or (2A) of the Traffic Act 1925

341 Part of charge proved

Every count in an indictment shall be deemed to be divisible, and if the commission of the crime charged, as described in the enactment creating that crime or as charged in the count, involves the commission of any other crime, the person accused may, on that indictment, be convicted of that other crime.

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(3) Subject to the provisions of the *Sentencing Act 1997* or of any other statute, and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years, or by fine, or by both such punishments, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case.

***Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations
2021***

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- (3) A person must not drive a motor vehicle, other than a motor cycle, on a public street under the authority of a learner licence unless –
- (a) the driver is accompanied by –
 - (i) a person who holds a full licence, other than a restricted driver licence, of a class that would authorise the person to drive the vehicle, has held such a licence continuously for the previous 12-month period, and is instructing the driver to drive; or
 - (ii) a driving assessment officer who is testing or assessing the driver for the purposes of these regulations; and
 - (b) the person instructing the driver, or the driving assessment officer submitting the driver to a test or an assessment, is –
 - (i) in the case of a car or truck, seated next to the driver on a seat in the same general transverse plane as the driver's seat; or
 - (ii) in the case of a bus, seated directly behind the front door of the bus or seated or standing in some other appropriate position close to the driver; and
 - (c) there is no-one between the driver and the person instructing the driver, or the driving assessment officer submitting the driver to the test or assessment.

Penalty: Fine not exceeding 20 penalty units.

VICTIM IMPACT STATEMENT

Ruth Adams, mother of Rose Sarah Adams

I am devastated over the loss of Rose. I still cry every day. I haven't been able to go into her bedroom since the police officers came to tell me she had died.

It's been hard to focus on what I need to do on a daily basis. I know that I have been neglecting my other children and that has just made me feel worse. Some days I haven't been able to brush my hair or have a shower. My extended family and friends have been really worried about me.

My sister took me to see my GP to ask for some help. He prescribed anti-depressants, sleeping tablets and anxiety mediation to help me to function. I don't think the pain of losing my child will ever go away. I am able to function enough to take care of my other children now and have returned to work but I still need to take at least one day a week off because I just can't cope.

This has had a massive financial impact on me and my children and I constantly worry that I will lose my job and not be able to pay my bills. Christmas was really hard, being without Rose and not having the money to spend on my other children. I wanted to make it a good Christmas for them but what with lack of money and my emotional state I just couldn't do it. I worry that they will look back on their childhoods and not be able to think of any happy memories.

Rose's death has affected them too. They used to be happy go lucky active kids. Now they just want to stay at home with me all the time. My 10 year old son is often being sent home from school in tears. He gets scared by loud noises and panics if he sees an ambulance.

Neither of the kids can sleep well. They often both end up in bed with me at night time. I have organised for them to see counsellors but it doesn't feel like it's making much difference. I worry when the kids are at school whether I will see them again. If my phone rings while they are there I start to panic.

I worry that we will never be a happy family again and that their childhoods are gone. It's a huge burden for kids to bear, losing their sister and seeing their mum like this. I want to stop crying every day but I can't, no matter how hard I try.

Ruth Adams

.....

WORKSHEET

1. What crime has been committed?

See Indictment.

2. What is the penalty range for the crime?

See relevant legislation.

3. What should the sentence be?

PART 1 (FOR DISCUSSION WITHIN YOUR GROUP)

A. FACTORS TO TAKE INTO ACCOUNT :

- Issues listed in scenario
- Circumstances of the crime
- Victim impact
- Personal Circumstances of the Defendant
- Character of the Defendant
- Remorse (if any) shown by Defendant
- Financial Circumstances of the Defendant (relevant to capacity to pay fine)
- Prior convictions

B. SENTENCING OPTIONS :

- Sentence of imprisonment – with or without provision for parole?
- Suspended sentence – wholly or partly ?
- Drug Treatment Order – period?
- Home Detention – conditions ?
- Community Correction Order - up to 240 hours
- Fine ?
- Adjourn for up to 5 years & release on undertaking to be of good behaviour with conditions
- Record a conviction and discharge offender ?
- Dismiss charge ?
- Compensation Order?

PART 2 - YOUR SENTENCING DECISION (FOR PRESENTATION):

Group Colour:

A. Sentencing Decision (only write final decision on paper):

- *Imprisonment formonths/ years
- Wholly / partly suspended formonths/ years
- Drug Treatment Order. Conditions:
- Home Detention Order. Conditions:
- Community Corrections Order forhours
- Driving disqualification for.....months/ years
- Probation order formonths/ years
Specify any special conditions -
.....
.....
- Fine for \$..... at the rate of \$.....per fortnight
- Adjourn for months & release on undertaking to be of good behaviour with conditions
-
Specify.....
.....
- Discharge offender
- Dismiss charge

B. Why (3 main reasons)

-
-
-

C. *Non-Parole Period (only relevant to imprisonment)

Yes, formonths/years

OR

No . Why?