

Matter of: Mr Tomas Targownik

HH: The material has been provided to me overnight, thank you. This is an application for bail in respect to an accused person who is charged with one charge of culpable driving causing death on 18 November 2017. Circumstances surrounding this matter for those who are new in court accuses a 33 year old who resided at an address in Mt Waverley. The accused is currently unemployed. At approximately 1.48am on Saturday 18 November last year, the accused left his home at Henry Street. The accused drove east along Waverley Road, towards Springvale Road. The accused drove well in excess of the 60kmph speed limit as he travelled along Waverley Road, where Waverley Road is a four lane road divided by a solid white line and some traffic islands. Waverley Road runs in a general east/west direction, two lanes for east bound traffic and two lanes for west bound traffic. At the intersection of Blackburn Road, Mt Waverley, approximately 2.4km from Henry Street, the accused drove through a red light and activated the fixed speed camera. The posted speed limit is 60km per hour on Waverley Road, the accused proceeded to pass the Blackburn Road intersection. The accused continued to head towards Springvale Road, at approximately 150m prior to the intersection the accused collided with a Mercedes hatch back driven by the deceased. The force of the impact caused the Mercedes to rotate and strike a light pole and burst into flames

The driver of the car, a sole male occupant, died at the scene. The accused was conveyed to the Alfred Hospital for treatment. At the hospital a blood sample was obtained, the result of this blood sample show levels of methamphetamine. The accused remained in the care of the Alfred Hospital until 10 January 2018 for some physical and other injuries not related to this collision. A reconstruction of the collision by Detective Jenelle Megan, an expert giving evidence in this case, calculated the speed of impact into the rear of the Mercedes to be in the order of 180km per hour. The accused was arrested at his home address on 3 January 2018 and conveyed to Glen Waverley Police Station for a record of interview. The accused stated he could not recollect the collision. The police are seeking to remand the accused and to have the application for bail refused, as they allege he is a significant risk to the danger and the safety and wellbeing of the public due to his driving and alleged drug use. Police believe that due to the nature of how the collision occurred and the accused has no recollection of his actions that he could do both those things again.

This has been a complex bail application for many reasons. One that I have thought long and thoughtfully about and taken time to consider the various competing interests and the concern of the community represented by the police informant and also the accused position clearly expressed in the current Bail Act as it applies to this present application in February 2018. Of course where loss of life is involved, the consideration and intensity of the outcome is heightened by all involved in the proceeding including the court's consideration. I will commence by outlining the matters that may need clarification prior to me delivering this judgement in the actual application between the accused and the Crown and in order to give some context and proper appreciation of the law that I am obliged to apply in this case.

There have been some amendments to the Bail Act. Stage One of the Bail Act Amendment is to commence on or before but not later than 1 July 2018. As Parliament has not gazetted

the operation for it commence to prior to 1 July 2018, which it has in its power and capacity to do so, I am obliged to apply the law as it read February 2018. Stage One of the Bail Act incorporates some significant changes, particularly for this offence. Section 318 subsection 1, namely culpable driving causing death, to become what is known as a schedule two offence. As a judicial officer of the state of Victoria as I said I am required to apply the law as at today's date of the application for bail. The application was made on 30 January 2018. The accused has now been in custody for 3 days while this bail application has been considered by me. Under the proposed legislation which I said commences in Stage One on 1 July 2018, the offence would become what it is known as a "compelling reason offence", some may even say going back to the show cause days but a compelling reason is a different test. I note that the Parliament passed this legislation on 27 June 2017. Currently the accused is charged under that Act and the current Bail Act makes the accused particulars involved entitled under the section of the current Bail Act is a prima facie or a presumptive grant of bail. The change from show cause to compelling reason came out of the recommendations made by His Honour Justice Coghlan's Bail Review, which Justice Coghlan conducted in early 2017. The change to compelling reason is to set the threshold for bail at a higher level and focus the court's attention on the onus of the applicant for bail and to refuse bail unless compelling reasons are shown by the applicant. Obviously Parliament intends by virtue of this Bail Amendment Act to effect a change to the offence making it, in effect, a serious offence requiring a court to have compelling reasons, but as I say that is only from 1 July 2018 and I refer to Section 34 subsection 1 of the Bail Amendment Act 2017. The amendments only apply from the day of the commencement of the amending provision regardless of when the offence is committed, I refer therefore to Section 34 subsection 8 of relevant Bail Act. If Parliament had thought or considered that the change needed to be made sooner or urgently it was up to Parliament to commence these laws at an earlier date or sooner by operation.

The reason I have referred to the amending pending legislation is because as a judicial officer I am very conscious of anxiety of the community surrounding persons accused of serious offending and the operation of the Bail Act of Victoria. Parliament have proposed to address this issue in part in respect to this particular offence by scheduling as an offence requiring more serious consideration by a court with a review to reverse the onus on the accused in order to secure bail, but not yet, not until 1 July 2018 or one may even say with some curious question whether or not it only applies until the operation of Stage Two on 1 October 2018, that much is unclear. Until this time occurs that this Bail Amendment comes into place I must apply the law that the accused has a presumption to bail unless the Crown has satisfied me and the onus is on the Crown to prove on evidence the accused is an unacceptable risk to the community, that he, as alleged, will endanger the safety and welfare of members of the public. This endangering of the safety and welfare of the public was the only risk the Crown asserted in this application which amounted to an unacceptable risk pursuant to Section 4 subsection 2 subsection D of the Bail Act. There was no assertion that the accused would fail to surrender himself to answer bail or interfere with witnesses or obstruct justice.

The Crown additionally conceded in this application many of the cases of culpable driving causing death proceed on summons to trial and the Bail Act is not enlivened in those cases. The Crown submitted by its solicitor Ms Maguire that the unacceptable risk was constituted by the nature and seriousness of the offence, she relied on Section 4, subsection 3A of the Bail Act. The strength of the evidence against the accused pursuant to subsection 3D, the attitude of the victim's wife to the grant of bail, subsection 3D and any limitations on bail which may not be affective in granting bail, subsection 3F. The evidence of the Crown in respect to the unacceptable risk was relying on the facts in the case before me, yet all still untested, namely the accused vehicle was driven at a high speed, that the accused had a level of drugs, namely methamphetamine, in his blood thereby making the act of driving particularly dangerous. Further the actual driving allegedly put at risk more than one person, namely a witness. I note the later allegation of this witness does not yet form any part of the charge but is said to go to the nature of the entire offence.

Upon reading the decision of Queen and Brayshaw of 2011 in the Supreme Court Appeal cases at 233, the Court of Criminal Appeal has restated that in an appeal from a trial judge that culpable driving is a very serious offence and usually requires a term of sentence of imprisonment to reflect general deterrence. Further, the case of Withers and MacQueen 2003, Victoria Supreme Court of Appeal, 176, stating that culpable driving equates to involuntary manslaughter. Mr Halphen, solicitor advocate for the accused, did not derogate from the Crown's submission as to the seriousness of the offence. The Crown also submitted at this early stage of the proceeding the strength of the case is very high against the accused in regard to the methamphetamine use and the speed having regard to the camera detection and the CCCTV footage that is available, although Mr Halphen reminded me of submission that his evidence is yet to be tested. The Crown's submission as to risk relied on submission primarily from the bar table, namely, that the accused may relapse from his current abstinence from drugs of addiction, particularly as the accused is not employed and is likely to have little or no income. The relapse, it was said, was stated from the bar table by Ms Maguire, was to come from the various medical incidents the accused had suffered since July 2017. This medical material was tendered in the defence case, in effect by virtue of their application for court integrated services program bail which would include interaction with public hospital system reports available to the CISP officers on request. I authorised a CISP assessment. This material indeed showed that the accused had contact with The Alfred Psychiatric Service on 21 July 2017 as a mental behaviour disturbance associated with the use of methamphetamine and cannabis use. He was assessed under the Mental Health Act at 3.00pm that day, discharged the next day, 21 July 2017 at 4.00pm. This was the occasion that his own father drove him to the Alfred Hospital because of his father's concerns. Later on 2 October 2017 some weeks before the collision he has further contact with the Box Hill Hospital in the evening again after his father called a crisis assessment team. He was then taken to the Box Hill Hospital and assessed under the Mental Health Act where he remained until the evening of 5 October 2017.

Appointments were then made by treating psychiatrists to follow-up his treatment but regrettably that follow-up appointment was made for a time only some weeks and post 17 November accident date of the alleged criminal offence.

The accused was encouraged to bring the appointment forward, but did not happen regrettably. No further medical contact was had despite these two interventions between July and October by the accused or his family. No contact was had with a general practitioner for a mental health plan by the accused or his father. This is despite the accused having significant intelligence and his father's considerable experience and training in (?) medical world, namely pharmacy, which he is now retired from. I also note that the accused has long use of some drugs, sporadically, since 20 years of age.

Importantly, the accused has no prior convictions for drug use and no contact at all with Victoria Police in respect of any criminal activity whatsoever other than minor speed camera infractions at a mature age of driving.

Since the death and the alleged offence the accused has suffered some serious injuries, including a broken leg, broken arm and other significant physical injuries which require further outpatient treatment in a public hospital. What is also clear is that two days after the incident the accused was admitted to the Alfred Psychiatric Services yet again, this time on a temporary treatment order which was made under the Mental Health Act for his mental care.

The order was then made on 14 December for an involuntary treatment order by the Mental Health Tribunal. He was held at the Alfred hospital and the Caulfield centre for psychiatric care under that order.

On 10 January 2018 he was discharged from the Alfred Hospital to what is known as Upton House an adjunct of the Box Hill Eastern Health Group Medical Services. He was inpatient of this service until 17 January 2018 when psychiatrist Dr Rebecca Fraser, released him to the community to continue his mental health treatment in the community.

His next appointment made by the psychiatrist was made for 30 January 2018 for review. No report from her is available to me for analysis as to his future prognosis or the accused progress on treatment, nor the medication given or how they will suppress or deal with any addictions he may have.

Of course this material is available by subpoena by the parties including the Crown to further clarify the position of his stability, but it is not before me. The Crown asserts that the current mental health treatment is ineffective to address the risk if he was to be released into the community.

The Crown refers to 13 days between the release and the scheduled appointments of the accused namely 30 January 2018 release, sorry 17 January release for 30 January appointment. His next proposed scheduled visit with a case manager not a psychiatrist is now 5 February 2018.

It was also suggested that his medication should be prescribed intravenously by Ms Maguire and not orally so the accused is not the one to control the medication, however, in my view, to require this and from a submission from only the bar table, a lawyer without proper medical evidence is to take the step too far as the intervention of the law as to how it

pertains to the best medical management of a particular patient and the interaction of law with proper medical practice comes at a collision.

The Crown points out that the medical management of the accused is not intensive enough to manage the risk, the Crown also made comment to me, as I did in the running of the application, that there is serious limitations in the public mental health system regarding the quote "churn" unquote factor that has become public knowledge in the community relating to responsible and proper treatment of acutely mentally unwell people.

The Crown referred to the pressures of modern living and stresses on a person facing a trial on the charge of culpable driving. Further, it is noted that the community treatment order is only lasting until 7 March 2018, however, this order can be extended by the psychiatrist. Mr Halphen, for the accused, stated that in support of his client not being an unacceptable risk as the Crown alleged, he said that the Crown has not proven the risk to be unacceptable given the accused had no prior history or involvement with police, this is the first time in custody, the accused has physical injuries requiring outpatient treatment and is the subject of a community treatment order.

He has family support and is now to reside with his mother and father and not as previously proposed in the first bail application, to live on his own. Further Mr Halphen has regard to his past employment albeit showing some suggestions of unreliability in 2016/2017 and his father's active involvement in his medical care taking him to the Alfred Hospital in July and the Box Hill Hospital in October, this going to show that the risk is acceptable.

The accused also has proposed a supervision by a court officer whilst on bail via a case manager by way of court services. His ongoing outpatient care for his substantial leg injuries and plastic surgery requires treatment in hospital, he said, and lastly the conditions I can impose on bail to reduce the risk to the community negates any unacceptable risk.

In conclusion, having regard to all the matters I referred to in the opening reasons of this judgement the accused is given a statutory presumption to bail, but Parliament, currently have not negated via the Bail Act subject to unacceptable risk. This means the Crown has a weighty task of satisfying this court as they are legally required to do that an unacceptable risk is asserted and is proven before the court.

Taking into account the combination of factors the Crown has alleged against this particular accused, where the accused has no police prior convictions, or history or contact, has support of his mother and father, and to live with them at their address and to be treated in the community by public health officials and to be under the supervision of this court by the way of the Court Integrated Services Program bail and various conditions I can impose, I am satisfied that prima facie entitlement to bail is made out and the Crown has not in this application been able to prove that the accused is an unacceptable risk taking into account the conditions that I can impose to deal with the risk.

The accused will be granted bail on these conditions; there will be surety of the father of \$25,000 required, he will live at the address known to authorities in Mt Waverley, he will report twice a week to police, he will not leave Australia nor Victoria, he will surrender any

passports and not make application for any, he will not attend any international departure points, he will provide regular urine screen analysis testing for any unlawful drugs in his system of addiction every week to the informant commencing 5 February 2018 and weekly thereafter, he will comply with the Court Integrated Services Program Bail Officer and all reasonable requests, he will comply with all directions of his community treatment order under the Mental Health Act. Further, in respect to this condition, the accused is consenting in this bail application to the continuation of such an order until the trial of this proceeding.

Further, the CSIP reports to be monitored where practicable by myself until CISP reporting has completed. Therefore, I take responsibility for the grant of bail. He is not to drive any motor vehicle or motor cycle or any other apparatus. He will be curfewed at home from 9.00pm to 7.00am unless strictly in the company of his father or mother. He will report to police at that front door if required at any time. He will not use drugs of dependence, or possess any without proper medical authority. The accused and his legal representative will provide separate reports from his treating GP, his treating psychiatrist and psychologist as to his progress on bail prior to his final release from the Court Integrated Services Program and where practicable the last report to be received by me and considered by me before further release. The accused is also to obtain before the next Court Integrates Services review a report from his local general practitioner Dr Chin, outlining the agreed psychological plan in addition to the psychiatric plan that is being proposed. Finally, there will be strict compliance with all conditions for bail to continue. His father agrees that a condition of this bail that he will report any breach to Victoria Police.

HH: Can you stand up please Sir. I am now adjourning your matter to 27 February 2018. You will be released on your undertaking of bail with surety of \$25,000. The conditions of your bail are, listen carefully, that you will report to Glen Waverley Police Station Sunday and Thursday.

Accused: Yes, Your Honour.

HH: You will do that between 6.00am and 9.00pm. You will reside at the address which is your parents address in Mt Waverley.

Accused: Yes, Your Honour.

HH: No other address, I know you've got a premises not far away, a kilometre or so, forget that you need to make some new plans for that address, plan it out, do it, whatever, rent it out but you are not living there, do you understand?

Accused: Yes, Your Honour.

HH: If you are found living there you are in breach of your bail, do you understand that?

Accused: Yes, Your Honour.

HH: You will surrender valid passports or any other valid travel documents, held prior to release and not apply for any other.

Accused: Yes, Your Honour.

HH: You will not attend any points of international departure, you will not leave Australia nor the State of Victoria.

Accused: Yes, Your Honour.

HH: You will comply with all requirements of the Court Integrated Services Program Bail.

Accused: Yes, I will your Honour.

HH: You will not leave the place of residence between the hours of 9.00pm and 7.00am unless in the accompaniment of your mother or father.

Accused: Yes, Your Honour.

HH: Nobody else.

HH: You will present at the front door of the residence during curfew hours upon request to any member of the Victoria Police.

Accused: Yes, Your Honour.

HH: You won't drive any motor vehicle or any other type of vehicle that is motorised. Do you understand?

Accused: Yes, Your Honour.

HH: You won't use a drug of dependence within the meaning of the Drugs, Poisonous, and Controlled Substances Act without lawful authorisation, in other words, only on prescription.

Accused: Yes, Your Honour.

HH: You will provide regular drug screen analysis and testing for any drugs of addiction every week and provide these results to the informant.

Accused: Yes, Your Honour.

HH: Commencing 5 February 2018 and weekly thereafter. You will comply with all directions of your current community order under the Mental Health Act.

Accused: Yes, Your Honour.

HH: You will consent to the extending of the operation of that community treatment order until the trial of this proceeding.

Accused: Yes, Your Honour.

HH: CISP reports are to be monitored by myself where practicable until your CISP reporting is at an end, do you understand? So you will be before me where practicable. Your legal advisor or yourself are to provide separate report from your treating GP and treating

psychiatrist as to your progress on bail prior to your release from the Court Integrated Services Program Bail.

Accused: Yes, Your Honour.

HH: The accused is to obtain by 27 February 2018 a report from Dr Chin as to your psychological plan for treatment.

Accused: Yes, Your Honour.

HH: A further condition of this bail is strict compliance with all conditions as required for bail to continue. I have made it a condition...anything unclear...breach any of them...finished. Do you understand?

Accused: Thank you.

HH: Your father agrees before me to report any breach of the bail to Victoria Police. Mr Halphen your client his father understands that Mr Targownik Snr is now the eyes and ears of the court?

Mr Halphen: Yes, Your Honour.

HH: As surety

Mr Halphen: Yes, Your Honour.

HH: Take a seat.

Accused: Thank you, Your Honour.

Unknown: Your Honour.

HH: Just announce yourself for the benefit of everyone in court

Sharon (?) from Channel 7 News: I am hoping it is possible to obtain a copy of your decision remarks just quoting you if I can, not wanting to be misquoted and just for fair and accurate reporting if possible.

HH: Well my notes are in for a form for me to deliver an (?) decision which is not for publication, my notes, I did them last night and this morning, so you can imagine that it is not easy to do that by type. So, I can't release the notes, are you making application for the transcript?

Sharon (?) Yes.

HH: Well you need to make an application and it will be considered by myself or the Chief Magistrate and he can release it, I can't do any more than that at this stage.

Sharon (?) Thank you.

HH: It should be able to be released if you require it, it is a public tape, but it is a matter for the Chief Magistrate, not myself.

Sharon (?) Thank you.

HH: Ms Moores do you also seek that?

Ms Moores: Yes, Your Honour.

HH: From The Age?

Ms Moores: Yes, Your Honour. We are seeking exactly the same thing.

HH: I ask the parties does anyone, Ms Maguire do you have comment about this?

Ms Maguire: No, Your Honour.

HH: Mr Halphen?

Mr Halphen: No, Your Honour.

HH: You will just have to make the appropriate application.

Sharon and Ms Moores: Thank you, Your Honour.

HH: Just finally do you understand everything and that we will be seeing each other pretty regularly.

Accused: Yes, Your Honour.

HH: And the onus is on you to comply with every condition of that bail.

Accused: Yes, Your Honour.

HH: And your father will assist me in that task. Do you understand?

Accused: Yes, Your Honour, I understand, thank you.