

Police Officer Imprisoned for Avoiding RBT

A Sydney police sergeant has felt the full force of the law for using her rank and authority against a junior officer to avoid a random breath test.

Downing Centre District Court judge Christopher Hoy sentenced 50-year old Sarah Johnston to [16 months in prison](#) with a non-parole period of 12 months for [attempting to pervert the course of justice](#).

Ms Johnston, who was off duty at the time she was pulled over for a random breath test, drove away from the RBT without being tested after a short conversation with a rookie officer.

She avoided the breath test by using her authority over the junior officer. During the jury trial, probationary constable Tugcan Sackesen testified that he felt 'intimated' when Johnston directed him not to breath test her as it would be a 'conflict of interest'.

The court heard that the Senior Officer told the rookie: "Imagine if I blew over, which I won't because I'm not. But imagine if I did, the awkward situation it would put you in. Do you get what I mean?"

Having only been in the force for a year, the junior officer allowed Johnston to leave. Later that night, the senior officer bragged in a text message to a colleague: "I declined and gave the pro a lesson on RBT and in the job etiquette."

Ms Johnston had been drinking with other officers earlier in the evening, before she was pulled over for the RBT. She was not prosecuted for [driving under the influence](#), which is a charge that may be brought in the absence of a breath test.

But after complaints from others within the force and an internal investigation, a criminal prosecution was commenced for intent to pervert the course of justice – which is an offence under section [319 of the Crimes Act 1900](#) (NSW) carrying a maximum penalty of 14 years' imprisonment.

Bullying 'rife' in the force

Bullying, intimidation, 'pulling rank' and coercing other officers into 'cover ups' are certainly nothing new in police forces across Australia.

Recently we reported on the case of NSW police officer [Lucie Litchfield](#), who says she was pressured to lie in court about an incident involving two other officers who responded to an urgent call that a green Holden Commodore had escaped the scene of a violent home invasion, but inadvertently pulled over the wrong car.

When one of the male officers asked the occupants if they had any weapons, a passenger in the back seat produced a plastic toy dinosaur. The man was then forcibly pulled from the vehicle, kicked in the legs, and had his face shoved into the ground before being handcuffed. A second passenger was thrown into a retaining wall, where he hit his head and lost consciousness. The man 'came to' handcuffed with his face in the dirt.

Charges brought against the men were thrown out of court after officer Litchfield testified against her fellow officers despite being told to support their version of the events. Both passengers are now suing the NSW Police Force, and Ms Litchfield says she left the force after being shunned and bullied for telling the truth and refusing to cover up the [NSW police misconduct](#).

National problem

It seems that not a week goes by without reports of brutality,

intimidation and cover-ups by police officers across the country, including Ballarat in Victoria, several cases in the Gold Coast – and notably that of former Queensland Police Officer [Rick Flori](#) whose battle to clear his name is still ongoing.

The Australian Federal Police is also reported to be rife with bullying and intimidation. Internal investigations last year suggested that 62% of men and 66% of women reported being bullied in the workplace within the past five years.

Many officers said they felt it was against their interests to formally complain, and several of those who did complain went on to regret it.

Police policing themselves

Complaints against police officers are normally handled by internal investigators, which means that police are essentially left to ‘police themselves’ – a practice criticised as ineffective in dealing with mounting evidence to suggest that our police forces are collectively suffering from a lack of accountability and a toxic culture.

It is not often that an officer is tried and convicted in a court of law. In sentencing Ms Johnston, the judge described her behaviour as ‘disgraceful.’

Corrupt Federal Police Officer Sent to Prison

By Zeb Holmes and Ugur Nedim

A former Australian Federal Police (AFP) officer has been

[sentenced to twenty-two months in prison](#) after selling confidential information contained on an AFP database.

Forty-six year old Benjamin Hampton pleaded guilty to dishonestly receiving \$7000 after leaking secret intelligence to a friend, who is suspected of having links to known drug suppliers.

Judge Williams of [Sydney District Court](#), Downing Centre ordered that Hampton serve a minimum of eleven months in prison.

Joint investigation

[A joint investigation](#) was commenced in 2013 by the AFP, the Australian Commission for Law Enforcement Integrity (ACLEI), the NSW Police Force and the NSW Crime Commission into alleged leaks of sensitive information.

Part of the investigation was into Nathan Rodgers, an associate of the Bra Boys and suspected member of a drug dealing syndicate.

On Christmas Eve that year, false entries were made into the AFP's computer intelligence system 'PROMIS', regarding a fictitious crime figure, Tiago Vasquez, who was said to be importing border-controlled drugs from South America.

A police informant then approached Mr Rodgers for information about this fictitious Mr Vasquez and his drug supposed supply operations.

Mr Hampton was later contacted by boxing trainer and wharfie, Jayson Laing, for that information.

The officer accessed the confidential database, retrieved the entries relating to Vasquez and met Laing for a training session at a gym. During that session, Laing placed \$7,000 into Hampton's gym bag.

“There is something in your bag for ya from Nathan”, Laing told the officer.

Mr Hampton did not disclose the receipt of the funds.

Arrested, suspended and charged

Hampton was arrested six weeks later and suspended from his employment.

He was charged in July 2014 with corruptly receiving a benefit as a Commonwealth public official [under section 142.1 of the Criminal Code Act 1995](#).

That section makes it an offence to dishonestly:

- provide a benefit to another person; or
- cause a benefit to be provided to another person; or
- offer to provide, or promise to provide, a benefit to another person; or
- cause an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person;

in circumstances where:

- the receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official in the exercise of his or her duties as a public official.

The maximum penalty for the offence is 5 years' imprisonment.

Mr Hampton was re-arrested two months later when it was found he was planning to fly to Slovenia – a country that does not have an [extradition treaty](#) with Australia.

Submissions on sentencing

In an attempt to keep his client out of prison, Mr Hampton's criminal defence barrister submitted there was never any

expectation of payment for the information.

He said his client had "citations as long as your arm", and was "heroic", having previously protected former Prime Minister Julia Gillard and the Pope.

The Crown prosecutor countered by making submissions that the officer had grossly abused his position of trust and that his action represented an "undermining the integrity of AFP, striking at the heart of the administration of justice".

He tendered a statement from the AFP which read in part, "Our members are trusted to hold sensitive information, and the public expects and deserves that police information is never leaked to outside sources."

The Crown submitted that the only appropriate sentence was full time imprisonment.

The sentence

The judge agreed with the prosecution's submissions, finding that, "The seriousness of corruption in the course of police work cannot be over-emphasised".

"Reputation and trust in the police force is far easier to lose, than to rebuild."

His Honour agreed with the defence that the offender had shown remorse and was unlikely to reoffend, and that "His fall from grace has been considerable", but nevertheless found that nothing other than a full time prison sentence was appropriate in the circumstances.

Court Justice, 10: Sentencing Decisions

In the final episode of this groundbreaking series, magistrates in Downing Centre Local Court heard the case of a 25-year old charged with [drug possession](#), a repeat offender charged with [weapons possession](#), and a Sydney cabbie appearing in court for his first ever traffic offence.

Drug possession

In the first case, Deputy Chief Magistrate Jane Mottley heard the case of 25-year old Dylan Fricker, who pleaded guilty to possessing a small quantity of cocaine.

Mr Ficker was seen by a security office in a hotel cubicle holding a small plastic container of white paper and a rolled up five dollar note. Police were called and Fricker was arrested and charged with drug possession, an offence punishable by a maximum penalty of two years' imprisonment and/or a fine of \$2,200.

But it wasn't the young man's first time before the court – he previously pleaded guilty to drug possession less than a year earlier. Fricker's defence lawyer submitted material to the court demonstrating that a snowboarding accident had left her client seriously injured, which caused him to become unable to work, fall into debt and spiral into depression, ultimately leading to the use of drugs.

The lawyer handed-up material showing that her client had attended a treatment programme for defendants with drug problems, ultimately persuading the magistrate to exercise her discretion under [section 10\(1\)\(b\)](#) of the [Crimes \(Sentencing Procedure\) Act 1999](#) to impose a two-year good behaviour bond without a criminal conviction.

Her Honour made it clear this was Fricker's final opportunity to get his life back on track – that such leniency would not be extended by the court again “in any circumstance”.

Prohibited weapon

54-year old disability pensioner Gary Hussey pleaded guilty before Magistrate Greg Grogan to possessing a prohibited weapon.

Police were called to a domestic situation on Mr Hussey's property and found a home-made cross-bow.

Hussey's defence lawyer submitted that his client was not using the weapon, nor intending to use it, and that it was wrapped in a sheet in a spare room, not on display.

But his lawyer had a harder time explaining Mr Hussey's previous record – a pre-existing offence of possession of a dangerous weapon (a knife) and one of possessing explosives.

Mr Hussey says outside the court that both offences can be explained – he needed explosives to get rid of some tree stumps on his brother's property, and the 'weapon' was not a sharp knife, but a pair of scissors on his key chain.

The magistrate carefully considers the matter and ultimately refers the defendant to be assessed for a Community Service Order. But as Community Corrections finds that Hussey is unsuitable for community service work, His Honour instead refers him to undertake the Salvation Army's Positive Lifestyles Programme; a 10-week course which helps offenders to move away from crime.

If Gary fails to complete the court, he may end up with a full time custodial sentence.

[Parking fine NSW](#)

In the third and final case, a 53-year old taxi driver with a

perfect traffic record for 27 years pleaded guilty before Magistrate Wahlquist to disobeying a no-stopping sign.

Sydney cabbie John Lloyd submitted he was dropping off a passenger at the Sydney Opera House when he found the entrance blocked by a bus. His passenger put her money on the console of the taxi and got out. A parking officer caught the incident on camera.

The cabbie submitted there are “extenuating circumstances”- the young lady jumped out of the cab and Mr Lloyd could not stop this, nor move while she was getting out. The Magistrate ultimately dismissed the charge under the provisions of section 10(1)(a), which means the cabbie avoids a conviction, a bond and the initial \$253 ticket.

So there it is – the fly-on-the-wall series gave viewers some insight into the goings-on inside Australia’s busiest local courthouse.

Court Justice, 9: Self-Represented Defendants

In the latest episode of Court Justice, Sydney, a young driver, a homeless man and a pensioner represented themselves in court.

“Self-representation is an important part of the justice system,” says Chief Magistrate, [Judge Graeme Henson](#). “And it is the court’s role to make sure that someone who [represents themselves in court](#) gets exactly the same consideration as someone who has a lawyer.”

Almost half of all defendants who come before the local courts in NSW represent themselves.

[People choose to do this for a range of reasons](#) – some find themselves in the ‘justice gap, where they can’t afford a lawyer but are not eligible for legal aid. Others feel they can do a good job without a lawyer, and still others just want to the experience of going it alone.

The young driver

In the first case, 19-year old barista, Deborah Sheedy elected to go to court in order to dispute a \$1200 fine issued by police for driving an unregistered and uninsured motor vehicle.

Ms Sheedy pleaded guilty to the offence of unregistered driving and not guilty to driving without insurance.

Magistrate Milledge then talked her through what would occur during the hearing, explaining that the police officer who pulled her over would give evidence, and that Ms Sheedy could then take the witness stand if she wished to do so.

After police provided their version of the events, Ms Sheedy took the witness stand.

She testified that the car was owned by her sister, and that when she got in to drive it, she believed it was both registered and insured.

She said she had evidence that the car insurance was paid, but when she produced the paperwork, there was no receipt. Without a receipt, the court could not accept her assertion regarding the payment. Fortunately for Ms Sheedy, her mother was in court and produced a receipt.

But there remained a problem – car insurance is not valid if a car is not registered.

The Magistrate believed that Ms Sheedy made an honest mistake regarding the state of the insurance, but found that the mistake was not reasonable as required by the law.

Her Honour found the insurance offence proved, but disposed of both charges under [section 10\(1\)\(a\) of the Crimes \(Sentencing Procedure\) Act](#) – which means there was no conviction and no fine.

The homeless man

The second case involved 53-year old Gary Reid, who represented himself before Magistrate Megan Greenwood.

Mr Reid was charged with unlawful possession of goods – a Mastercard, Visa card, two Woolworths cards and driver licence, which did not belong to him.

Police alleged the cards were unlawfully obtained, but when Mr Reid took the stand, the story became more complex.

He testified that he found the driver licence and did not take it to police immediately because he wanted to get to work – which was relying on the goodwill of members of the public in his preferred spot on the streets of Sydney.

He said the Mastercard, Visa card and Woolworths voucher were all dropped into his begging hat sequentially, and within minutes of each other on the same day.

He also testified that the person who gave him the Woolworths Card “could have been the CEO of Woolworths, I don’t know.”

Magistrate Greenwood found him guilty and fined him \$550.

Her Honour found that his version of events was “not believable” and did not accept it.

She also found there was a “clear” and “reasonable suspicion” that the cards were unlawfully obtained.

Mr Reid has a history of [drug offences](#) and the Magistrate cautioned that if he is caught on the wrong side of the law again, he could go to prison.

The pensioner

The third case involved 83-year old grandmother Valerie Harris, who fought a \$531 fine for [failing to display a disabled parking permit](#).

Having failed to appear in court the first time, she was found guilty in her absence. She appeared before Magistrate Greg Grogan and pleaded guilty to the offence, with an explanation.

Ms Harris told the court that she did not attend her first court date because she was in hospital.

She explained that her disabled parking permit was attached to her windscreen when she left her car, but it had fallen off and onto the car seat.

Given her “unblemished driving record since 1972”, the Magistrate accepted her story. He found the offence proven, but dismissed the charge under a [section 10 dismissal](#) or [conditional release order](#).

“this was a big thing to do on my own,” Ms Harris stated. “But I have a clean driving record, and I’d like to keep it. Until the day I die.”

Magistrate Chris O’Brien says members of the judiciary need to be patient with [those who represent themselves in court](#), adding that unrepresented defendants often become frustrated because they don’t understand the processes and the formalities of the courtroom.

Court Justice, 8: Drink Driving and the Law

The most recent episode of Court Justice: Sydney dealt with drink driving and the law.

An average of over 20,000 people come before the NSW local courts each year for [drink driving offences](#), and in this episode, a young man has a great deal to lose as a result of his decision to drink and then drive.

In the first case, Magistrate McIntyre stood in judgment of 22-year old delivery driver Joseph Walker, who pleaded guilty to mid range drink driving while on his P-plates. Joseph is the sole breadwinner in his family, and his job relies entirely on having a driver licence.

But it wasn't Joseph's first offence – he previously pleaded guilty to low range drink driving and received the benefit of a 'non conviction order' – which means the magistrate on that occasion did not record a criminal conviction or disqualify him from driving.

However, Joseph would not be so fortunate on this occasion – in fact, magistrates are prohibited from giving a second non conviction order where a person is guilty of a further drink driving offence within 5 years.

Zero tolerance for P-platers

“Zero means zero means zero,” said the magistrate. She convicted him, fined him \$500 and disqualified him from driving for 9 months – hoping to deter him from reoffending.

The magistrate's decision cost Joseph an enormous amount. He lost his licence and his job. Given he is the only person in his household earning an income, his future and that of his

family are in jeopardy.

Joseph appeared remorseful as he left the courtroom. "The last six years, of me working hard to get ahead in this company ... it's over. It's gone. I should have left my car at home."

90% of drink drivers are men

One in five deaths on Australian roads are caused by drink drivers.

Young men are the most likely to put others' lives at risk, but men of all ages are more likely to drink and drive than women. Indeed, statistics suggest that 90% of drink drivers are men.

Magistrate O'Brien heard the case of 63-year old retired businessman Colin Grey, who got into his car after a tiff with his wife, having had a few glasses of wine over dinner.

Colin was stopped by a road side RBT, and may have appeared more drunk than he actually was due to his problems with balance. He was charge with mid range drink driving, and like most people, he pleaded guilty before the court.

Colin's clean criminal history and excellent driving record worked heavily in his favour, but the magistrate made it clear there is no excuse for drink driving – as it puts the lives of innocent people at risk.

On this occasion, His Honour gave Colin the benefit of a 'section 10 bond' (now [conditional release order](#) without conviction).

'You have to understand Mr Grey," cautioned the magistrate, "this is a once in a lifetime opportunity."

A serious crime

Appearing next was 20-year old Ali Hassan, who came before

Magistrate Richardson.

Ali failed to appear at his previous court date and was convicted in his absence of two offences – [driving while disqualified](#) and mid-range drink driving. He had been disqualified three months earlier for driving under the influence of an illicit drug.

Ali represented himself and received a further two-year disqualification period, a \$600 fine and an 18-month good behaviour bond under [section 9 of the Crimes \(Sentencing Procedure\) Act](#).

The magistrate warned Ali that, if he offends a third time, the court will have little option but to send him to prison.

Indeed, if a person offends during the period of a good behaviour bond the court will normally revoke his or her bond, resentence them for the original offence and the bond will be an aggravating factor during sentencing for the fresh offence.

People of all backgrounds

People of all socioeconomic and cultural backgrounds find themselves before the court for drink driving.

[Chief Magistrate, Judge Graeme Henson](#), says many people think drink driving is a social issue, but it is actually a very serious criminal offence and people are sent to prison for it.

“A [low-range drink driving offence](#) is sometimes an error of judgement, but when you get into mid-range territory – you know that when those people come before you in court, you know they should not have been behind the wheel. Sadly, some of them end up dead, or some of them end up killing someone else. A small percentage of them, end up in gaol.”

Court Justice, Sydney 7: Repeat Offenders

The seventh instalment of Court Justice, Sydney advised that “fifty-six percent of defendant who appear at the Downing Centre will reoffend within ten years”.

Downing Centre Local Court Magistrate Chris O’Brien believes there are two primary reasons for this: either they are undeterred by the previous penalty, or they are so disadvantaged that they do not have the capacity to change.

The latest episode of Court Justice, Sydney took a look at matters involving repeat offenders.

Revolving door

Appearing before Magistrate McIntyre was thirty-two year old Michael Bullivant.

Just a week out of prison, Michael was back before the court on a charge of possessing stolen goods, after trying to sell a stolen iPad to fellow residents of a homeless shelter.

As Michael was already on good behaviour bonds, his defence lawyer asked for him to be assessed for an [Intensive Corrections Order](#) (ICO), informing the court he has been “ten weeks clean” and in the process of arranging permanent accommodation for himself.

An ICO is an alternative to a prison sentence, and would require Michael to undertake mandatory [community service punishment](#) work and regular drug testing as a way of helping him to rehabilitate.

The magistrate commended Michael for his efforts towards rehabilitation and acceded to the defence lawyer's request, revoking Michael's previous bonds and referring him for an ICO assessment.

But several days later, Michael appeared in court via video link from Surry Hills Police Station having been arrested the previous day for shoplifting.

His lawyer applied for Michael's release on bail, but faced an uphill battle due to the fact Michael was already on conditional liberty – meaning it became a [‘show cause’](#) matter requiring the lawyer to demonstrate why Michael's detention was not justified.

Bail was ultimately refused and Michael was later sentenced to a minimum of four months in prison.

Convicted in his absence

Fifty-six year old Donald Cormier missed his previous court date and was sentenced in his absence for stealing a wheelchair worth \$200, and intimidating police.

During his arrest, Donald became highly agitated and was detained under the [Mental Health Act](#) in hospital for several hours as a result. He said outside the courtroom that he obtained permission from the owner of the wheelchair to take it, with a view to giving it to a friend in need.

Despite the fact Michael had prior convictions, Chief Magistrate Judge Graeme Henson described the present offences as on the lower end of the scale.

His Honour recorded convictions but exercised discretion under [section 10A](#) of the Crimes (Sentencing Procedure) Act 1999 to impose no further penalty.

Donald appeared grateful as he left the courtroom.

Traffic record

Twenty-eight year old father of three Rory Jones appeared before Magistrate Chris O'Brien and pleaded guilty to [driving whilst suspended](#).

He had three prior matters of a similar nature on his record which had been disposed of without a criminal conviction.

His Honour remarked, "You've had a lot of good fortune in these matters, Mr Jones and it is about to run out."

The magistrate recorded a conviction for the offence, imposed a fine of \$500 and disqualified him from driving for twelve months.

Bail variation

Forty-three year old Alexander Cruishank came before Deputy Chief Magistrate Mottley seeking to vary his [bail conditions](#), over a charge of possessing stolen goods.

He requested a change of address, change of reporting police station and to reduce his reporting once per week.

Alexander has been in and out of prison for twenty years, but Her Honour granted his request and ordered that he report to police every Sunday.

[Despite crime rates being on the decline overall](#), Australia's prison population has increased due to a range of factors including: longer prison terms being imposed, tougher bail laws and continuing high rates of [recidivism](#)

In New South Wales, almost half of inmates leaving prison will be back within two years, which means that in many ways, [simply sending people to gaol is not working](#) and Australia's justice system could benefit from a greater emphasis on prevention and diversion.

Court Justice, Sydney 6: Drugs and the Law

This week's episode of Court Justice, Sydney dealt with drug-related crimes.

While drug use is nothing new in Australia, the magistrates in Downing Centre Local Court say they are dealing with more ice-related crimes than ever before.

Of the four cases before the court this week, two relate to ice, the third to possession of cocaine, and the fourth demonstrated just how hard it can be to put a life back together after it's been affected by addiction.

Case one:

Paul Farah, a 24-year old plumber, was caught [driving under the influence of an illicit substance](#). When pulled over, police also found 0.7grams of ice hidden in a bag of grapes, resulting in an additional charge of [drug possession](#).

Paul pleaded guilty to both charges and came before Magistrate Wahlquist in Downing Centre Local Court.

Paul has had a drug addiction for about three years. His problem is so severe that his employer deposits his salary into his parents' bank account, who give him a small living allowance.

Paul lives at home with his parents and his concerned father, Michael, has turned up to support his son in court.

Paul was already on a Section 9 good behavior bond at the time of the offences, for being in possession of ecstasy. The latest

offences are therefore a breach of that bond.

Paul's defence encouraged his client to find a rehabilitation facility and begin to deal with his addiction, and he ensures that Paul undertakes urine testing weekly to prove he has remained clean.

In the result, the Magistrate records convictions against Paul for the offences. He is fined \$700 and disqualified from driving for 7 months for the drug driving offence, and fined \$300 for drug possession.

Case two:

54-year old tradesman Dean Matthews pleaded guilty before Judge Henson to possession of 0.2 grams of cocaine, and represented himself.

Police pulled up behind his car and found a small quantity of cocaine within. Matthews admitted that his decision to purchase the drug was out of 'stupidity'.

Judge Henson exercised his discretion under a non conviction order of the Crimes (Sentencing Procedure) Act not to record a conviction against Matthews' name – instead placing him on an 18-month good behaviour bond.

Case three:

Adam Reynolds a long-term drug user with an equally long history of court appearances.

Police attended Reynolds' home after claims of a burglary. On arrival, they saw Reynolds injecting himself with drugs. When told by police to stop, Reynolds responded "I'm allowed to drugs in my own house."

Reynolds pleaded guilty to drug possession before Magistrate Grogan who pointed out that it is not legal to use illicit drugs anywhere.

His Honour recorded a conviction and fined Reynolds \$800.

Case four:

Magistrate Milledge heard the case of Anastacia Downes, a former drug user who is trying to turn her life around.

Downes has an extensive criminal history including fraud and property offences, and pleaded guilty to five traffic offences including [driving whilst suspended](#), driving an unregistered motor vehicle, driving with incorrect number plates and driving an uninsured motor vehicle, each of which carry a maximum penalty of \$2,200.

Downes' drug addiction cost her a great deal – her marriage, her children, her livelihood. However, the Magistrate showed compassion after hearing that Downes has remained conviction-free since 2007 and is trying to get her life back together.

Downes' is fined \$50 for each of three traffic offences, and disqualified from driving for 3 months for driving whilst suspended.

Anastacia was grateful for the outcome. "I really felt that the Magistrate showed a lot of empathy... she showed genuine interest in what she had in front of her. She has given me an out."

**Court Justice Episode 5:
Family Support During**

Sentencing

Two men and a woman pleaded guilty and faced the music in [Downing Centre Local Court](#) in episode 5 of Court Justice, Sydney.

All of them were fortunate to have their family members in court to support them through the frightening and potentially life-changing sentencing process.

Drink driving

First up was Nicholas Rundall, who tested positive to having twice the legal limit of alcohol in his bloodstream while driving home after work drinks one Friday evening.

Supported by his parents in court, Nicholas pleaded guilty to [mid-range drink driving](#) and came before Magistrate Chris O'Brien for sentencing.

Nicholas' defence lawyer submitted to the court that her client started his car and began driving, but after a short time decided that he would get a cab instead.

Rather than pull over at the nearest safe place, Nicholas turned his car around and began driving it back to where his journey began – and that's when he was stopped by police.

Nicholas had pleaded guilty to another drink driving offence just three years earlier, which increased the applicable penalties and forced the magistrate to consider the possibility of a prison sentence.

His latest disqualification from driving would have a significant impact on his entire family, as Nicholas often drove his father, a disabled war veteran, to medical appointments.

And while personal circumstances can certainly influence the

ultimate penalty, in this instance Magistrate O'Brien's message was clear:

"I am not going to gaol you today, but you need to understand that you're right on the edge. You are very close. If you come back here to court again, that's exactly what will happen to you."

Instead, Nicholas was convicted and fined \$900 and disqualified from driving for 7 months.

He was also placed on an 18-month good behaviour bond under [section 9 of the Crimes \(Sentencing Procedure\) Act](#).

If he breaches that bond by committing another offence, he will be brought back to court and re-sentenced for his drink driving offence, and the fact he was on a bond will be considered an aggravating feature of the new offence.

When he is allowed to resume driving, Nicholas will be placed on the [alcohol interlock program](#) – which (for mid-range drink driving) means he will need to have an alcohol testing device fitted to his car for a further 2 years.

Drug possession

As her anxious mother sat beside her in court, 22-year old Ebony Bagnall pleaded guilty to single count of possessing 0.2 of a grams of 'ice'. The offence carries a maximum penalty of 2 years' imprisonment.

"We [could never have seen this coming](#)", her mother said. "As a parent, you have all these hopes and dreams for your child and then they choose to go down this road. It's heartbreaking."

Despite having been dependent on ice for 2 years, it was the first time Ebony was before a court.

Ebony's lawyer told the court her client's habit has not only put her on the wrong side of the law, but has seriously

jeopardised her health. As a diabetic, the drug has affected Ebony so badly she has had stints in intensive care.

Her mother, who remained staunchly by her side, believes that residential rehabilitation is the only answer. Ebony was on a waiting list for professional residential help. In the meantime, she is tackling her addiction head on and says she had been clean for 24 days by the time she faced court.

Around a quarter of a million Australians are regular ice users. Unlike other so-called party drugs, like cocaine and ecstasy which tend to be consumed over the weekend, [research suggests that ice use is prevalent](#) throughout the week.

Ebony is young, has taken proactive steps to deal with her addiction and has strong family support.

Despite these factors, and the fact it is her first offence and the quantity of the drug was small, Magistrate Price saw fit to impose a 12-month good behaviour bond under section 9 – which means she will have a criminal conviction (contrary to what was posted on the TV screen during the show). In other words, His Honour did not exercise his discretion to deal with the matter without recording a criminal conviction, which he could have done under '[section 10](#)' (now [section 10 dismissal](#) or [conditional release order](#)).

Ebony and her mother appeared relieved as they left court – hoping the ordeal would be the impetus for Ebony to beat her addiction.

Offences against police

[Resisting arrest](#), [escaping lawful custody](#) and [assaulting a police officer](#) were the charges accepted by young Bradley Price after a night of heavy drinking at the Mardi Gras with his partner Jai.

The couple argued during the evening and Jai called police to

complain that Bradley was harassing him. When police arrived, Bradley swore and became violent – leading to the trio of criminal charges.

Bradley's partner Jai was with him in court, and so was Bradley's mother. She said Bradley is otherwise a good kid, and what happened at Mardi Gras was well out of character.

After pointing out that offences against police carry harsh penalties, Magistrate Greenwood convicted Bradley of all three and imposed a total of \$1,210 in fines.

Court Justice 4: Prison is the Last Resort

Episode 4 of Court Justice, Sydney took a look at the difficult decisions magistrates have to make when sentencing offenders.

The three cases illustrated just how tough these decisions can be, when all factors are taken into account.

Before Downing Centre Local Court this week were a 20-year old French man who pleaded guilty to a 'king hit' that fractured his victim's face, an unemployed father of five in breach of a community service order, and a drug and alcohol addicted man who breached his suspended sentences.

The king hit

French national Julian Giueridos pleaded guilty to [assault occasioning actual bodily harm](#) after administering a 'king hit' to the back of his victim's head outside a Sydney casino. The victim suffered multiple fractures to the face.

The case presented a tough decision for Magistrate Greg Grogan, who was responsible for upholding the community's expectation of tough punishments for offences involving alcohol-fuelled violence.

Mr Guieridos appeared genuinely remorseful and presented evidence to prove his good character to the court. The defendant had his whole life ahead of him and the magistrate was tasked with deciding whether he should be sent to prison.

In making that determination, the magistrate had to consider a whole range of factors, including the seriousness of the offence, the need to deter others and also to deter Mr Guieridos, the defendant's prior good character, his plea of guilty and expressions of remorse and so on.

His Honour decided that the appropriate [penalty](#) was three months in prison, which was ultimately reduced on appeal to two-year good behaviour bond.

Those who feel their penalties in the Local Court are too severe have the right to lodge a '[severity appeal](#)' to the District Court (which, incidentally, is located in the same building as the Local Court).

A District Court judge cannot impose a more severe penalty than the Local Court magistrate unless he or she issues a warning to the defendant to the effect that if he or she proceeds with the appeal, a harsher sentence may be imposed. This is known as a '[Parker warning](#)'.

For this reason, it is extremely common for those who are sent to prison by a Local Court magistrate choose to appeal their sentences to the District Court.

The revoked community service order

During the second case of the week, Deputy Chief Magistrate Chris O'Brien remarked:

“Courts take no pleasure in sending people to gaol. Gaol is a horrible place. It is the ultimate punishment, the ultimate consequence ... but sometimes there is no alternative.”

Before the court was unemployed father of five, Phillip Rusianos who, 12 months prior to his current appearance, had pleaded guilty to disposing of stolen goods.

As an alternative to prison, Mr Rusianos had been ordered to undertake [community service as punishment](#), but he failed to complete it, which brought him back before the court.

Rusianos’ criminal defence lawyer asked the magistrate to consider a range of factors, including a relationship breakdown and other life struggles.

However, His Honour was unimpressed by the defendant’s failure to comply with the community service order and sentenced him to four months in prison.

That penalty was ultimately quashed on appeal and replaced by a six month ‘suspended sentence’ – meaning the defendant avoided going to prison despite the breach.

The blackout

Magistrate Jane Mottley looked pained as she read through defendant James Stewart’s lengthy criminal history, who was before the court for urinating on a train, resisting an officer and offensive language.

Mr Stewart did not actually remember the day in question. He remembered collecting his niece and nephew from Sydney airport, but consumed so much alcohol that he could not recall what else happened on their journey home, except that he woke up in Surry Hills Police station facing criminal charges.

Mr Stewart said his problems with drugs and alcohol started when he was just 12 years old. He acknowledged it was the primary reason behind his brushes with the law.

But as Her Honour waded through the defendant's detailed history, it became evident he had already been given multiple good behaviour bonds across a range of offences including: resisting officers, assault occasionally actual bodily harm and driving whilst disqualified.

Moreover, the current offences breached existing section 12 bonds, also known as a suspended sentence.

"The facts of the resist officer in execution of duty don't portray that as being the most grave example of an offence of resisting an officer – but it's resisting officers in execution of duty nonetheless, and it places him in breach of those section 12 good behaviour bonds" the magistrate remarked.

"I can't take no action. That would be, that would be manifestly inadequate. Yet another suspended sentence is just not an option".

Her Honour then took an adjournment to consider the matter further, before noting that Mr Stewart had spent several months in custody as a result of the present offences and had undertaken court-ordered rehabilitation, achieving "remarkable" results.

She ultimately decided not to send him to prison.

Court Justice 3: The Protesters, the Stolen Car

and the Airtasker

Those who appear before our courts come from all walks of life.

The third episode of Court Justice Sydney took a look at the trials and tribulations of a group of Christian protesters, two young men in a stolen car, and a man whose drug addiction has led to a downward spiral.

First up in front of Judge Henson were five Christian protesters arrested in front of [Malcolm Turnbull's](#) office, where they were demonstrating against Australia's treatment of refugees.

The police 'fact sheet' outlined that although their protest was peaceful and respectful, their crime was refusing to leave. It was the first offence for four of the group, and the third for one of them.

After hearing the reasons for the demonstration – which was Australia's treatment of refugees, and detained children in particular – Judge Henson reminded the group that protesting is not a right in Australia, but a privilege, and that those who break the law put themselves at the mercy of the courts.

All five members of the group pleaded guilty. Taking all factors into account, His Honour exercised his discretion under [section 10 dismissal](#) or [conditional release order](#) of the Crimes (Sentencing Procedure) Act 1999 not to record a criminal conviction against their names.

In another courtroom, Jake Mann and Stuart Moat faced charges relating to driving a stolen car.

The two men were visiting Sydney from Melbourne, when they were detected in a stolen vehicle. During the ensuing search, police found a balaclava, gloves and a cash register till in

the boot of the car. They also found \$400 in cash on the men.

Both men pleaded not guilty to the charges, informing the court that they were in Sydney to make a video clip and didn't know the car was stolen.

After hearing the evidence, the [NSW magistrate](#) found the men guilty of being in a stolen conveyance.

In the third case, Jake Henderson, a habitual drug user, faced court for what he said was possibly the twentieth time.

He represented himself before magistrate Keogh, accused of possessing house-breaking implements, after police arrested him in the early hours of the morning during a routine patrol through an industrial estate.

Jake pleaded not guilty, contending that he never intended to do anything unlawful and informing police that the tools in his possession – including a socket set, a pair of pliers and a driver – were used for an 'Airtasker' job earlier that day.

The magistrate explained that it was unnecessary for police to prove that Jake broke into a property or even intended to break into a property – it was enough for them to establish that the tools could be used to do so. Under the relevant section of the law, the onus then shifts to the defendant who must prove on the balance of probabilities that the items were possessed for a lawful purpose.

Jake nervously took the stand and began to give his version of the events. But in doing so, he naïvely disclosed to the court that he purchased drugs earlier that day.

The magistrate, concerned that Jake was incriminating himself for a charge of drug possession, stopped the proceedings in order for Jack to obtain legal advice. When the case resumed, Jake requested a certificate under [section 128](#) of the Evidence Act in order to protect against being prosecuted as a result

of his admission.

The application was granted without opposition, and Jake proceeded to testify that he was at the location to buy drugs. However, he was unable to discharge his onus of proving that he the tools were in his possession for a lawful purpose.

This was because police had confiscated Jake's phone which allegedly contained evidence of the Airtasker job, and Jake did not request access to the phone or its contents in the lead-up to the hearing.

Unable to discharge his onus, Jake was found guilty and received an 18 month good behaviour bond.