

Bruce Boyer, you plead guilty to causing grievous bodily harm by dangerous driving. The crime was committed at about 2 pm on Saturday 29 July 2017. Jason Rushton was visiting his friend Ashley Bishop at Mr Bishop's home in Goldie Court, in a residential section of Ravenswood. Goldie Court is a cul-de-sac which slopes down to where it meets Faraday Street at a T-junction. Mr Bishop and Mr Rushton were repairing a 4WD utility. They had unsuccessfully tried to backwards roll start it down Goldie Court. The vehicle ended up with its rear wheels near the intersection with Faraday Street, facing back up Goldie Court, on the incorrect side of the road for the way it was facing. Mr Rushton was standing in the middle of the road near the front passenger door getting ready to push the car back up. At that time you were driving your Land Rover Discovery fitted with a bull bar from your home not far away along Faraday Street. As you approached Goldie Court, which was on your left, your vehicle headed in that direction, cut the corner, mounted the footpath and crossed the nature strip before angling across Goldie Court towards the place where Mr Rushton was standing. From the direction of your approach he was between you and Mr Bishop's car. He attempted to get out of the way but failed. He was struck by the bull bar and dragged along the road before being thrown towards the gutter where he struck his head and lost consciousness. On the way your vehicle collided with Mr Bishop's vehicle. After your vehicle came to a halt you reversed and left the scene. You returned home before, a short time later, calling "000" and reporting that you had just driven into someone.

The consequences of your dangerous driving for Mr Rushton have been serious. He suffered abrasions to large sections of his left abdomen and lower chest, large open wounds to his upper and lower back, deep lacerations to both his shins, fractures of four left ribs, a fracture and tendon damage to his right little finger and a large open wound to the back of his head. His injuries were and remain painful and debilitating and he is left with scarring on his back and shoulders. The psychological impact of the crime is also significant.

You are aged 53. You were 50 at the time of the crime. You are an aboriginal man. You are estranged from your immediate family as a result of a bitter divorce. You had a good industrial record as an adult but you have not worked since suffering an injury in 2000. You now receive a disability pension for a frontal lobe disorder and acquired brain injury suffered in a motor vehicle collision in 1984. It has not been suggested that either condition is causally connected to this crime. You also have a multi-level spinal disorder. You have had a heart attack in the past, your general health is poor and you require many different medications. I see no reason to conclude that you would not receive the appropriate treatment if in custody, but I would accept that it may make prison more onerous than would generally be the case.

It is in your favour that you pleaded guilty but it is not an early plea. It is relevant that a trial commenced some time ago but was aborted. Witnesses, including Mr Rushton and an elderly female, were examined and cross-examined. At the time you not only pleaded not guilty to the more serious charge but also to the alternative charge which you now admit. Your plea indicates acceptance of some responsibility, but also avoids the possibility of conviction of a more serious crime. There has been no expression of remorse. You were given a short suspended sentence for common assault in 2005 but you have never been to prison. You have a record for traffic infringements but no convictions for any driving offence as serious as this. You have been the subject of some community opprobrium but it is not a sentencing factor of any material weight. Without wishing to understate the seriousness of the impact on

Mr Rushton, he did not suffer injuries of the same gravity as are commonly seen in cases involving culpable driving.

Your driving was dangerous because it took place in an area which is subject to regular vehicular and pedestrian traffic. Mr Bishop's vehicle and Mr Rushton were in plain view from where you were driving. Even though the entry into Goldie Court is relatively narrow, there was, if that was your destination, plenty of room for you to have driven in on your correct side of the roadway safely. This is an unusual case in that, although describing it as a "momentary lapse", no further explanation has been given on your behalf of the manner of your driving, despite an express invitation from me to do so. You have not offered any explanation about what your destination was or why you drove in the manner you did. You have not suggested that there was any malfunction of your vehicle, that you suffered some physical or mental impairment, or that you lost control through loss of attention, an error of judgment or through some external factor. It has not been suggested that you have no memory of what happened or that you did not see the vehicle and the people near it on the road. The only inference open on the material I have been given is that you steered your vehicle in the direction of its travel. You were charged with committing an unlawful act intended to cause bodily harm. The State accepts your plea to the alternative charge of causing grievous bodily harm by dangerous driving. Thus, you are not to be sentenced for intentionally injuring Mr Rushton, or that you foresaw the likelihood that grievous bodily harm may result from your driving: *Wahl v State of Tasmania* [2012] TASCRA 5 per Evans J at [8] and [14]. A finding of guilt for this crime involves no mental element beyond that the driving was a willed act. Your crime did not involve drugs or alcohol. It is to be distinguished from cases involving prolonged dangerous driving or risk taking, or evading the police. Nevertheless, in the circumstances I have outlined, the only plausible explanation is that, for some unexplained reason, you deliberately drove your vehicle towards Mr Rushton in a manner which was dangerous to him, and which resulted in him being seriously injured. Even though that was not what you intended or foresaw, the manner of your driving represents a very significant abandonment of your responsibility as a driver and involves serious criminal culpability. Over the last twenty years in this State courts have emphasised that, in cases involving death or injury caused by culpable driving, penalties should be imposed that are sufficiently severe to deter both the offender and others who might be similarly minded. I was asked to have you assessed for home detention. In my view, such a sentencing order does not meet those sentencing demands. In my view there is no alternative to a sentence of imprisonment, some of which is to be actually served. I will suspend part of the sentence to allow you the opportunity for reform, which in your case means to address the factors which led you to act in this way. You were in custody for two days and I will take that into account when determining when the sentence is to commence.

Bruce Boyer, you are convicted. You are disqualified from driving for 18 months from your release and any driver licence you have is cancelled. You are sentenced to imprisonment for 18 months from 17 November 2020. I suspend 9 months of that term for 18 months from your release. It is a condition of that order that while it is in force you commit no offence punishable by imprisonment. If you breach that order then you will be required to serve the suspended part of that term unless that is unjust.