

The defendant is Peter Roy Furminger, aged 61 at the time of the offence, he has pleaded guilty to one count of wounding.

The complainant, Derek Gosper, was aged 60 at the time of the offence.

At the time the defendant resided in the same street as the complainant, in St Helens.

On Wednesday 1 January 2020, the complainant was at home when he noticed the defendant had parked his vehicle outside his house. The vehicle had a caravan attached to it and was positioned in a way that blocked the complainant being able to drive his vehicle out of his driveway.

Between approximately 2.45pm and 3.00pm on 1 January 2020, the complainant approached the defendant at his house. He rang the doorbell and the defendant answered. He asked the defendant when he was going to move his car and the caravan. The defendant advised the complainant that he would move it *“at about 7.”*

At approximately 9.00pm the complainant again approached the defendant at his house. The defendant answered the door and the complainant said words to the effect of *“are you going to move the van as it is blocking access to my property?”*

The defendant said to the complainant, words to the effect of *“I don’t give a fuck who you are.”* and kicked him, causing him to lose balance and fall over.

The complainant stood up and the defendant struck at him with a small knife. with a blade approximately 60mm long. The complainant put his right hand up to protect himself and the knife hit his index finger. The defendant struck him to his face with the knife, making contact with his chin.

The defendant appeared to be in a rage, which is a fact which has its own significance. As the complainant retreated, the defendant struck him with the knife to the left side of his back.

The complainant walked to his house and police were called. Police attended and photographed the scene and seized three knives believed to be used in the offence. The complainant's clothing was also seized.

An ambulance attended and the complainant was taken to the Launceston General Hospital. He was diagnosed with:

- a wound to his right index finger,
- a 3 – 4cm full thickness wound to his left thoracic cage and
- a 5cm wound to his left submandibular region.

The complainant underwent general surgery whereby his wounds were washed and sutured.

I have read a victim impact statement from the complainant. He and his partner have been very uncomfortable living in their home for over sixteen months at the time of writing these comments and there will always be a scar there as the defendant returned to his property which is just 3 doors down from them about once every fortnight for 3 or 4 days at a time and was always a period of great anxiety and stress for both him and his partner. As will be seen, this no longer occurs as the defendant has moved.

There remains a lump in the complainant's jaw where he was stabbed in the upper neck and a scar on his hand. He was also stabbed in the back but that appears not to be problematic.

The defendant is now 64 years of age; he has been married to his wife for 20 years. He has two daughters by a previous marriage. He has no prior convictions. His record shows only minor traffic infringements, and only a handful of those and a summary offence of destroying property almost 48 years ago.

His upbringing was difficult. At age 13 he left home because of the physical violence and abuse of his father which were a product of his father's alcohol abuse. He lived on the streets and at times with extended family members. Despite this disruption in his formative years he went on to complete year 12.

His working life began at around age 13 when he obtained work at C.C. Boag and Associate as a storeman, and later became a driver.

In 1977 he left that employment and joined the Australian Army. Initially he was employed in the Engineers Corps which involved a range of work including building bridges, demolition, infrastructure projects, and laying mines. He was later engaged in clerical work which involved preparation of personnel document, management and investigations.

In his time in investigations, he was involved in a major investigation relating to missing explosives and missing monies. His inquiries discovered that two officers were involved. They learned of this, discovered his home address, and threatened him at gun point at his home, and in the presence of his young daughter. The threat was to kill him.

This was a significantly traumatic event and the aftermath is documented in court records. As a result of this incident the defendant suffered Post-Traumatic Stress Disorder.

He left the army and retired from the workforce at age 55. He is in receipt of a Veterans Affairs Total and Permanent Invalidity pension.

In relation to his health, he suffers with a back injury including fusion of the discs in his back. He has required multiple surgical operations. His wife is his carer, and she receives a carer's allowance.

He has also had his both knee replaced. He has had both thumbs reconstructed as a result of his time in the Army operating machine guns and jackhammers.

In relation to his mental health, he sees his psychiatrist every three months. He is currently managed for post-traumatic stress disorder, depression and anxiety. Since the offence was committed, his medication has been changed, and he has noted a marked improvement in his symptoms.

He has sold his St Helens property in February 2021 and he has not returned to St. Helens since that time. That should allay some of the complainant's understandable concerns expressed in the victim impact statement.

As to the objective seriousness of the offending, it is submitted that it is a wounding that may fall towards the lower end of the spectrum. The defendant was at his home, he was alone, and he was not seeking out the complainant. He was not anticipating the complainant to attend to his property. The injuries are at the lesser end of the spectrum in that they did not involve injury to an organ, significant disability, or major blood loss. The complainant did not require more than basic surgery to wash and suture his wounds.

I have a number reports from a psychiatrist, Dr Reid. Those reports confirm that the defendant has a diagnosis of Post-Traumatic Stress Disorder from which he was suffering at the time of the offence, and subsequently.

The State's position is that the Court can find that a causal connection exists between the accused's mental impairment and his offending. As such it is accepted that the principles in *Verdins* are engaged. However, the weight that can be placed on these reports for the purpose of relying on any of the limbs in *Verdins* is marginal, the State submits. The State does not accept some of the factual propositions contained in the reports. The State accepts that the defendant's response to the complainant's request to move his caravan may be explained by his PTSD. However, based on the State's case, his conduct was a disproportionate response to the complainant's request to move his caravan. Additionally, the State says that the protection of the public vastly outweighs any mitigatory effect of the reports.

The submission that prison would bear more onerously on the defendant is not challenged by the State, however it is submitted that this needs to be balanced against the seriousness of the crime.

I accept the State's submissions.

Nonetheless the defendant's moral culpability is somewhat reduced. That is because his condition heightened stress in the face of perceived threat and deprived or reduced his opportunity to compose himself and be reflective and making it more likely that he would act upon his belief that he was under threat.

Further, because of his mental illness, imprisonment will in fact weigh more heavily upon the defendant. It is noted by Dr Reid that it would worsen his condition.

Finally, it is submitted that the defendant is remorseful for his offending conduct and offered a plea of guilty to the indictment following receipt of psychiatric reports and after some discussions and negotiations with the State.

While it hardly need be said that unprovoked wounding is a serious crime frequently attracting a sentence of imprisonment, the defendant's age and excellent prior record over his lifetime make it clear that his behaviour was aberrant.

The defendant is convicted and sentenced to 18 months imprisonment which sentence I wholly suspend on condition that he commit no offence punishable by imprisonment for a period of two years.