

Mr Browning has been found guilty by a jury of the crime of causing grievous bodily harm. On 18 October 2021, he was driving a Mazda 3 sedan on Jamieson Street, New Norfolk when, for reasons that I do not fully understand, he suddenly drove the vehicle towards two pedestrians on the nature strip, hitting one of them. The man that he hit was Joshua Burnett. The first impact was with his two shins. His body was flung up over the bonnet. He struck the windscreen, which shattered, causing wounds to his chest. His body was flung into the air above the car. He landed on his wrists, and as a result suffered fractures to both of them.

Mr Browning was charged under s 170 of the *Criminal Code* with committing an unlawful act intended to cause bodily harm. The jury found him not guilty of that crime, but guilty of the less serious crime of causing grievous bodily harm. The particulars of the crime charged asserted that Mr Browning had an intent to maim, disfigure, disable or cause grievous bodily harm. The verdict of the jury indicates that they were not satisfied beyond reasonable doubt that he had any such intent. The crime of causing grievous bodily harm is committed when an offender either intends to cause grievous bodily harm, or is recklessly indifferent to the possibility of causing grievous bodily harm, having foreseen that that is a probable consequence of a voluntary and intentional act on his part. Because the jury found Mr Browning not guilty of the crime charged, the only appropriate course is for me to sentence him on the basis that his conduct in driving into Mr Burnett was reckless. That is to say, I will sentence him on the basis that he deliberately drove at Mr Burnett, having foreseen that causing really serious injury was a probable consequence, and not caring whether he caused really serious injury to Mr Burnett or not.

Ms Baumeler—who appeared for Mr Browning, submitted that I should make certain findings of fact for sentencing purposes. She made a submission to the effect that I should sentence her client on the basis that Mr Burnett went to the home of a man in Jamieson Street accompanied by two other men; that the three men entered the property and destroyed some windows; that Mr Browning was at the residence, ran to his vehicle, and started to drive away; and that Mr Burnett ran towards the moving vehicle in an aggressive manner before being struck by it. However, there was no evidence upon which to base any of the suggested findings. The assertions made by Ms Baumeler were put to Mr Burnett and other prosecution witnesses, but all of those assertions were denied. Mr Browning did not give evidence. There was evidence of a police interview in which he participated a few hours after the incident, but he told the police he knew nothing about the incident. He did not say anything about any aspect of the version of events suggested by Ms Baumeler.

I am satisfied that Mr Browning was angry with Mr Burnett about something. There was evidence of tension between them in relation to a \$300 drug debt. I have no reason to infer that Mr Burnett provoked Mr Browning in any way. I am not in a position to make any findings as to what led Mr Browning to drive his vehicle towards Mr Burnett as he did.

Mr Burnett was taken to hospital by ambulance. He was found to have suffered multiple fractures to each wrist, a fracture to his left big toe, a laceration to his chest, and abrasions, bruising and swelling affecting both legs. He also had abrasions to his chin and the front of his chest. His wrist fractures required surgery. I have not been told how long he spent in hospital before he was discharged.

Counsel for Mr Browning has told me that Mr Burnett did not return for corrective surgery to improve the range of movement of his wrists. That has not been disputed by the Crown, so I will accept that assertion for sentencing purposes.

Mr Burnett provided a victim impact statement. He has had work in the past as a painter and plasterer and enjoyed that work. He has had various other qualifications that involve working with his hands. As a result of his injuries it appears that he lost his job and suffered financially, and that he has lost his car and his home as a result of financial problems. He has also apparently suffered a range of psychological symptoms which I do not need to go into detail about. He has stated that he was in extreme pain for a long time and that because of the injuries to his wrists he was substantially incapacitated for months. He said that it took him three months before he could even go to the toilet by himself.

Mr Browning was 28 years old on the day in question and is now 30. He has prior convictions for a variety of offences, including drug, firearms, driving and property damage offences. In 2012, he was placed on probation, without a conviction, for an assault committed when he was 17. He has no other convictions for offences involving violence, though he was convicted in 2022 of possessing some knuckledusters in January 2021. He has convictions for breaching the conditions of some family violence orders, but none of those breaches involved actual violence. He has never been to prison. However, he was given a wholly suspended sentence of one month's imprisonment on some drug charges in December 2019. He breached the conditions of that suspended sentence by committing more drug offences in 2020. Causing grievous bodily harm to Mr Burnett also amounted to a breach of the conditions of that suspended sentence. He was on bail in relation to the drug offences of 2020 when he committed this crime. In June 2022, a magistrate sentenced him to three months' home detention on those charges and, on an application in relation to the suspended sentence, did not activate that sentence but instead imposed a cumulative sentence of one month's detention.

There does not appear to have been any further unpleasantness between Mr Browning and Mr Burnett, even though both of them live in New Norfolk in a very small community. Mr Browning has apparently had to put up with a lot from people associated with Mr Burnett for the last two years, but I do not regard that as a significant mitigating factor. Mr Browning has two young children from a former relationship. He shares custody of them with their mother. Whilst he has been awaiting sentence, his brother has died as a result of an unfortunate road accident. There is a risk that he will not be allowed to attend his brother's funeral. He has a good employment record, having worked as a tree feller, worked on the NBN project and subsequently worked as a labourer. I accept that his violent act on the day in question was out of character.

However, this was a very cowardly attack on an apparently innocent pedestrian, who was walking along a public street. Mr Browning used his car as a weapon, with reckless indifference to the possibility that it could cause very serious injury, or even death. The victim's injuries were serious, it is fortunate for both men that he was not more seriously injured. A number of common mitigating factors are absent in this case. Mr Browning did not confess to the police. He did not plead guilty, although he did not dispute at trial that he had driven the vehicle that hit Mr Burnett. He is not a youthful offender, nor is he a first offender. He has shown no remorse.

The only appropriate penalty in this case is a substantial sentence of imprisonment. I will backdate it to take into account the fact that Mr Browning has been in custody since 29

September, and that he had previously spent 77 days in custody in relation to this matter. I will impose the shortest possible non-parole period because Mr Browning has not previously been sentenced to imprisonment.

Gage Timothy Browning, I convict you and sentence you to three years, six months' imprisonment with effect from 14 July 2023. You will not be eligible for parole until you have served 21 months of this sentence. I disqualify you from driving for four years from today.