

Tristan Donohue, you plead guilty to causing grievous bodily harm. The sentencing proceedings commenced on 8 September 2023 before Geason J. The Chief Justice determined, in accordance with the *Sentencing Act* 1997, s 91(5), that it appears probable that Geason J will be unable to pass sentence within a reasonable time. Accordingly the matter was referred to me to pass sentence. Your counsel and counsel for the prosecution agreed that I have regard to all of the material put to Geason J and to a transcript of the sentencing proceedings. I heard further submissions today.

At about 4.45 pm on Tuesday 21 June 2022 you were driving your car on the Brooker Highway in Hobart. Your wife and two children were passengers. At the same time, Scott Brown was driving his car in the same direction, initially behind you. There followed a road rage incident which extended over a number of kilometres. You thought he was driving too close to you. There were flashing high beams, he pulled out next to you then in front. He checked his brakes. There was an exchange of rude hand gestures. That would have been an end to it except that you both then stopped at the same red traffic light, his car in front of yours. You and he left your respective vehicles and came together on the road way. He was unarmed but you had taken with you, from inside your car, a metal jack handle. A heated verbal exchange took place involving mutual abuse and threats before you suddenly head butted Mr Brown to the bridge of his nose and struck him to the head with the metal rod. He fell to the ground immediately unconscious.

You went back to your vehicle, but when you observed him motionless on the roadway you returned to move him onto the traffic island and to attend to him. Other bystanders provided first aid and called 000. The incident was observed by members of the public.

Mr Brown was seriously injured. He regained consciousness at the scene but on the way to hospital in the ambulance he suffered a seizure involving loss of consciousness and violent muscle contractions. He was intubated and transferred to intensive care. Medical investigations disclosed that he had a fractured left eye socket with bleeding in and swelling around the eye. Even more seriously he had multiple skull fractures involving the parietal, temporal and sphenoid bones with multiple areas of intracranial bleeding, bleeding from his left ear and mild to moderately severe conductive hearing loss. He remained in intensive care for two days and spent a further six days in the trauma surgical unit until his discharge on 29 June 2022.

Mr Brown's victim impact statement describes the type of physical, psychological and financial impact which might be expected to result from injuries of this seriousness. His stay in hospital was traumatic for him and his family. Even after his discharge from hospital he remained unwell for some time, requiring support and supervision at home. He lost the hearing in his left ear and cannot afford the cochlear implant which, in any event, presents only some chance of being effective. He was away from work for three months resulting in significant financial loss. He describes suffering from debilitating psychological symptoms including ongoing fear and anxiety and a loss of enjoyment of life.

Your personal circumstances were outlined by your counsel and in a report of the assessment of your suitability for a home detention order. You are 34 years old. You are married and have parental care of four children aged between 9 and 22, all of whom live with you. You had a very difficult upbringing marred by abuse and neglect all of which contributed to behavioural difficulties arising from ADHD. You were subject to foster care and spent time in detention as

a youth. As a young adult you got into some trouble but also managed to find occasional employment, although you have not been employed for the last six years. Your disrupted education resulted in limited literacy. You have been paid a disability support pension since you were a teenager. You were diagnosed with PTSD accompanied by some hypervigilance. You have been in a stable relationship with your wife since 2013 and the youngest child is of that relationship.

You have a long history of substance abuse including cocaine and methylamphetamine in your early twenties. You have used cannabis daily for most of your life, partly to self-medicate for ADHD, although you claim to have recently reduced the amount of cannabis you use. Your criminal record begins when you were a youth but I intend to refer only to your adult record since 2011. In 2011 you were sentenced to imprisonment, most of which was suspended for a range of offences including breaching court orders, driving offences, anti-social offences and one count of assault. You breached that suspended sentence and in 2012 you served a term of imprisonment for assault and pervert justice. Again part of the sentence was suspended. In 2017 you were sentenced to imprisonment for attempted arson, and on 11 November 2020 you were sentenced to imprisonment for four months, wholly suspended for 18 months, for aggravated assault, and firearm and cannabis offences. Again you breached that suspended sentence, this time by a drug related driving charge, and more firearm and drug offences committed in late 2021 and in April 2022. The suspended sentence was activated and a further suspended sentence was imposed.

This crime, having been committed on 21 June 2022, was not a breach of the suspended sentence which had just expired, but it is aggravating that it was committed while on bail for the further offending and while activation of the suspended sentence had recently been hanging over your head.

It is in your favour that you pleaded guilty. I accept that you displayed immediate remorse, and that you remain sorry for what you did. You acted in a spontaneous and impulsive way, very much in the heat of the moment which was contributed to also by the actions of the complainant. You have been assessed as unsuitable for a home detention order. Your counsel does not accept the recommendation and wishes to dispute it and there appears to me to be merit in many of his arguments. However, there is no need for me to resolve any such dispute because, regardless of the outcome, I do not regard a home detention order as an appropriate sentence. A home detention order is a less punitive order than actual imprisonment. Although the complainant acted in an aggressive way, nothing excused the level of violence you inflicted. You struck the victim twice although the blow with the metal rod is likely to have caused the serious damage. It follows from your plea of guilty to this crime that you either intended to cause serious injury or realised the likelihood that you would do so and acted regardless of the risk. Even assuming the latter to be the case, it remains a very serious crime because the risk of injury from striking a person to the head with such force with a metal rod is so obvious that it involves very little reduction in criminal culpability. There is a need to not only punish you but to make clear to you and others that such actions have serious consequences. In my view, taking into account the nature of this crime, the use of a weapon, the level of violence involved and the injuries inflicted, the only appropriate sentence is a term of imprisonment. I do not see it as appropriate to suspend any part of the term although I will allow the earliest opportunity for parole. You have spent 41 days in custody which I will take into account.

Tristan Donoghue, you are convicted. You are sentenced to imprisonment for 15 months from 3 November 2023. I order that you not be eligible for parole until you have served half of that term.