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| IN THE COUNTY COURT OF VICTORIA | ANONYMISED AND ADAPTED FOR EDUCATIONAL PURPOSES |

AT MELBOURNE

CRIMINAL JURISDICTION

CR-ZZ-LMNP

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| RILEY WILKIN (A PSEUDONYM) |  |

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| JUDGE: | HER HONOUR JUDGE GAYNOR |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: |  |
| DATE OF SENTENCE: | 18 August 2017 |
| CASE MAY BE CITED AS: | DPP v Wilkin (a pseudonym) |
| MEDIUM NEUTRAL CITATION: | [2017] VCC ODR |

REASONS FOR SENTENCE

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Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Mr L. Seaview |  |
|  |  |  |
| For the Accused | Mr P. Doble |  |

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HER HONOUR:

1. Riley Wilkin[[1]](#footnote-1), you have pleaded guilty before me to one charge of theft, and one charge of dangerous driving causing serious injury. The maximum penalty for theft is 10 years' imprisonment, the maximum penalty for dangerous driving causing serious injury is 5 years' imprisonment.
2. The facts underling your offending are as follows. On 8 April 2015, a red Ferrari F430 Spider Coupe, worth $230,000 was delivered to your workplace, Flash Rides,[[2]](#footnote-2) to have a small crack in the rear bumper bar prepared. It had just been subjected to a complete service.
3. The Ferrari was fitted with a tracking device, and after it was delivered to you, data from that device, indicates the car was driven from about 8.30 that evening, and at 8.50 that night, it revealed the Ferrari was being driven at 138 kilometres per hour. This is not a matter, however, that concerns this court, insofar as the sentencing for this matter is concerned.
4. At about 10.30 in the evening of 13 April 2015, you went to your work with two friends, sisters Simone and Breanna Diablo[[3]](#footnote-3), and while they are looking at the Ferrari, asked them if they wanted to go for a spin. Simone, it was decided, would go first and got into the passenger seat, and you drove the car away from the workshop.
5. Your driving of the car, which was without permission, and not necessary for the work that you were undertaking, amounts to an unlawful use of the motor vehicle and underlies Charge 1 on the indictment, theft of a motor vehicle.
6. At about 10.40, you drove the car onto Raleigh Street Jacana, towards the intersection of Westmore Road, driving at about 80 kilometres per hour to the left of three west-bound lanes. You suddenly accelerated heavily, which caused the rear wheels of the Ferrari to lose traction. It slid sideways, out of control, and mounted a concrete and grass median strip, striking a tree.
7. It then continued travelling west, where the driver's side front wheel collided with another tree, which penetrated the cabin of the Ferrari through the driver's seat. You and Simone were trapped in the Ferrari, both with serious injuries. Paramedics attended and treated you both, before being taken to the Alfred Hospital for further treatment.
8. Simone Diablo suffered multiple serious injuries, including requiring extensive treatment and lengthy rehabilitation. These included bleeding into her brain, a bruised lung, a fractured sternum, a fractured nose, deep lacerations to her forehead, lacerations to her knee, requiring surgical repair, and severe bruising to her left leg, and other parts of her body.
9. Medical analysis of the injuries suffered by her, were to the effect that the multiple injuries to the head and brain were severe, and that without treatment and surgical interventions in the hospital, those multiple injuries could have deteriorated in the course of unconsciousness, possibly resulting in a critical condition, and death.
10. You also suffered serious injuries in that accident. You broke your tibia, femur, left ankle, wrist, and fractured some ribs as a result of the collision.
11. The Ferrari was damaged beyond repair. An inspection of the car at the scene, revealed a switch on the steering wheel had been activated, so the car was driven while in race mode.
12. Witnesses observing the Ferrari and how it was driven, made observations including that it suddenly sped up dramatically, and then spun out of control, mounting the gutter.
13. While at the hospital, you told a witness that you had taken the car for a drive and, "And didn't mean any of this to happen". Asked why you did it, you said that the, Ferrari was one of your dream cars, and you just wanted to see how it went.
14. In August 2015, you took part in a formal record of interview, admitting to being the driver of the Ferrari, but being unable to actually remember the collision. You told police you were familiar with driving many types of   
    high-powered vehicles, and were familiar with the handling and driving characteristics of the Ferrari.
15. At the time of the collision, the road was dry, the weather was fine, traffic was light, and visibility was good, with overhead street lighting in operation.
16. The record of interview took place in August 2015. You were not charged until June 2016.
17. At a committal mention in mid-September 2016, the matter was adjourned by defence counsel on your behalf. In late September, a not guilty plea was entered, and the matter was committed for trial. In the interim period in 2017, there was a change in solicitors. At a mention in July 2017, you entered a plea of guilty to the charges.
18. I now turn to your personal circumstances. You are 31, the youngest of three children, born to parents who emigrated to Melbourne from Jordan, running small family businesses, such as milk bars, and fish and chip shops.
19. You completed year 12 at an independent boys school. You applied to university, but decided instead to take up a panel beating apprenticeship which you completed. You then worked for a firm doing custom work for two years, and in 2009, opened your own panel beating business, Flash Rides, which was very successful. You developed a speciality in luxury cars. You had two employees and at its height, were earning between 150,000 - 200,000 per year.
20. Your mother and your cousin both gave evidence on the plea, to the effect that you were, in your business, incredibly passionate about it, often working up to 20 hours per day. All of this changed dramatically and catastrophically for you, following this accident.
21. As I said, you suffered serious injuries. You had to undergo five weeks of rehabilitation, after which you were left with debilitating pain, and an inability to walk which has improved, but you have a permanent inability to crouch, or to bend over, and you cannot run. You have problems with one arm, and you do not have the physical capacity to carry out the business that you did before.
22. Ultimately, you sold your machinery to a rival firm, which then took over the lease of where you were operating your business from.
23. You are unemployed. For some time, you moved in with your cousin following your rehabilitation, but now live alone in a house, owned by your parents who have returned to Jordan, although your mother has come back to Australia on numerous occasions and for lengthy periods of time, in order to care for you.
24. Medical material was received to the effect (from two GP's at the medical practice where you attend), that you continue to suffer pain. You are depressed, you are prescribed anti-depressants, you take hefty doses of Endone, and you area also prescribed sleeping medication.
25. Your social life has dwindled to nothing. Your cousin described you as a person who had been energetic and socially active, prior to this accident. He said you now spend most of your time housebound, despairing and unable to envisage a future.
26. Your mother gave evidence that whilst you and Simone Diablo were both hospitalised at the Alfred Hospital, you went to see her on numerous occasions, and apologised to her. Both your mother and your cousin spoke of your deep remorse for the injuries that you caused to Ms Diablo.
27. A victim impact statement was received from her; it is quite clear that the injuries she suffered have been devastating for her. She continues to suffer pain, her studies have been interrupted. She went through a great deal of surgical intervention, rehabilitation and generally speaking, has been left in a continuing difficult position, where her life too has been forever changed by the terrible accident that occurred on 13 April.
28. The prosecution has admitted that I should deal with you by way of a sentence of imprisonment, albeit it combined with a community corrections order, because of the objective gravity of your offending. Certainly, this was serious offending, and this is not the first time that you have been in trouble with police.
29. In 2010, you were dealt with by a Magistrates' Court for criminal damage, and making a threat to kill, which apparently related to a person who was allegedly having an affair with your father. For that, you were placed on a three month suspended sentence.
30. There has been some subsequent offending. In September 2016, you were dealt with by a Magistrates' Court for driving a car with a motor defect, and then in January 2017, you lost your license for six months for exceeding the speed limit by 40 kilometres per hour. This caused me an amount of concern, in light of the offending that had brought you here before this court.
31. However, I understand the circumstances relating to that, were that you had been coaxed out of the reclusive life you habitually live now, by a friend for a day at St Kilda beach. You were picked up by police at 11 pm, speeding along Beach Road, the cause of this being that your Endone, the effects of the very strong pain killer you had taken, had worn off, and you were speeding in order to get home.
32. There is nothing particularly praise-worthy about that, but I do not regard that as you behaving in a cavalier fashion on the road, notwithstanding the terrible accident that has brought you before this court.
33. On your behalf, your counsel submitted that although serious, this offending did not contain many of the aggravating features described by the Court of Appeal in the seminal case of DPP v Neethling [2009] VCC 116.
34. For example, the degree of speed was not excessive, there was no intoxication or substance abuse involved, there was no erratic driving, there was no competitive driving, the length of the journey exposing others to dangers was relatively brief, you were not ignoring warning signs, there were few others on the road at that time of night, and so forth. In effect, he said this was a short session of essentially foolish, unwarranted driving to show off and impress a passenger.
35. In addition to the difficulties that you suffer, although interviewed soon after the incident, you were not in fact charged by police for a year. As I have said, it appears that although an early plea of not guilty was entered, your counsel informed me this was never on the basis of whether you had driven the car, or responsible for the action, but whether the few seconds of lost traction causing the collision, satisfied the elements of the charge you have now pleaded guilty to.
36. It was also submitted of the debilitated state you are now in, (you have been assessed by a psychologist as suffering from a depressive disorder, you have anxiety, you have constant pain), that in this debilitated physical and mental condition, service of a term of imprisonment would be particularly difficult for you, compared to other prisoners. I also accept that the nature of the medication that you are required to take, would render you extremely vulnerable to other prisoners who may well stand over you, in order to obtain that medication.
37. Ordinarily, I would not hesitate to jail a person such as you, Mr Wilkin. This was incredibly stupid offending, but it has clearly ruined your life, and the dreams that you had for your future on a permanent basis. As I have said, you have been left physically diminished, in constant pain, depressed, anxious, unmotivated, and solitary.
38. I accept entirely that because of your own actions, you are now in a pitiable condition, which has persisted since this accident, more than two years ago, with little improvement, and is likely to persist for some time to come. I do accept that despite your late plea, you are truly remorseful for the damage you wrought upon your victim. I also regard your further offending, particularly the circumstances of your driving this year, not as indicative of a disregard for road usage. Having said this, you do need to be extremely careful when you are taking to the wheel of a car.
39. I also accept a term of imprisonment would be particularly difficult for you, and I also accept, that although this is serious offending, many of the aggravating features which would warrant a term of imprisonment are not present.
40. This is a tragic case, where the effects of your offending have been catastrophic, to such an extent that they in my view, overcome the principle of general deterrence, which the court normally must have regard to as a primary principle of sentencing, in cases of this kind. Having said this, obviously, general deterrence is an important matter, but it is my view that this can be successfully achieved via the imposition of a community corrections order.
41. In other words, what is called your post-curial punishment has been so severe, and left you in such a particular state, that in my view, a term of imprisonment is not warranted. In a way, you are a walking cautionary tale, Mr Wilkin.
42. I therefore am going to place you in relation to both charges on a community corrections order. I note that you have been assessed suitable for this order. I need to explain to you the core conditions which attach to any order, which are:
43. That you must report to a community corrections office within two working days of the making of this order; that is by Monday of next week. Whilst on the order, you must not commit another offence punishable by imprisonment. You must not leave Victoria, without the permission of community corrections office. You must inform the community corrections office of any change of address or employment within 48 hours of the making of that order. You must report to and receive visits from the community corrections office. You must not attend upon the community corrections office under the influence of drugs or alcohol, and you must obey all lawful instructions of the community corrections office.
44. How many hours did you serve on your last CCO?
45. OFFENDER: Sorry, community work?
46. HER HONOUR: Yes.
47. OFFENDER: I think it was about 70 hours.
48. HER HONOUR: How did you go, with it?
49. OFFENDER: I think it was pre-accident, so ‑ ‑ ‑
50. HER HONOUR: Yes, I am a bit concerned, about even giving him any unpaid community work ‑ ‑ ‑
51. I will order 50 hours of unpaid community work, on the basis community work, is much harder for you than everybody else quite frankly. I am going to order that you attend for assessment and treatment for mental health.
52. I really want you to concentrate on that one, Mr Wilkin. It would have all felt very hopeless and terrible anyway, but having the court case on top of it, has probably caused you an enormous amount of anxiety, and taken away a great deal of any hope for the future. That is done now.
53. You are only 31, you have got the rest of your life to live. It would be really good if you threw yourself into mental health treatment. You were clearly a talented man. It is a great tragedy that this accident took away this business. That does not mean you have not got a brain; you did VCE, you might have to do something else. It does not mean you cannot start up your own business in the future, if you do some sort of study, and get just as enthusiastic about that.
54. Have you got any thoughts about that at all?
55. OFFENDER: I do, I have. Look, obviously my passion is cars. So I'm hoping to eventually start something again.
56. HER HONOUR: Well look, it would be terrific if you did. All right, but you cannot spend the rest of your life, sitting in your parent's house ‑ ‑ ‑
57. OFFENDER: No, definitely not.
58. HER HONOUR:  ‑ ‑ ‑ you just cannot. I mean, it is most understandable that that is the way you have reacted, but you cannot keep doing this forever. Is there any talk about you going off to something like the pain clinics, so you can do something about your medication?
59. OFFENDER: Yes, definitely. I want to start obviously the mental health plan, and some physiotherapy. But I was just honestly waiting until ‑ ‑ ‑
60. HER HONOUR: Until this was over.
61. OFFENDER:  ‑ ‑ ‑ everything was finished off and ‑ ‑ ‑
62. HER HONOUR: Well you would understand, under a CCO, you are going to get a mental health plan from your doctor, and you go off and see someone. It is not necessarily going to be the Rolls Royce gold plated service, that is something you need search out for yourself. So, that is the only condition, apart from the 50 hours. I do not believe you require supervision.
63. What I am going to do, because I am a bit interested, Mr Wilkin, I am going to do judicial monitoring. So I would like to see you in about six months just to see how you are travelling. It would just be good to see if you have got moving a bit.
64. It is not because I think you are going to offend or anything like that. But I just want to make sure that you have picked up the bundle again, and are moving on a bit more, and you have dealt with corrections before; I am sure you can deal with them again. But just that hopefully things are a bit better for you. The CCO will last for a period of two years.
65. MR SEAVIEW: Is that with conviction, Your Honour?
66. HER HONOUR: Yes, it is Mr SEAVIEW.
67. MR SEAVIEW: Just a query, thank you, Your Honour.
68. MR SEAVIEW: There is an application for a forensic procedure.
69. HER HONOUR: Yes, I do not think that is required really.
70. MR SEAVIEW: All right. Thank you, Your Honour.
71. HER HONOUR: Thank you. We will get you to sign this, thank you very much.
72. MR DOBLE: Could I be excused from the Bar table just to run Mr Wilkin through that, Your Honour?
73. HER HONOUR: Yes. But no great conversations, Mr Doble. I am a busy woman, things to do.
74. MR DOBLE: No, I will keep it to sport and the weather, Your Honour.
75. HER HONOUR: All right, Mr Wilkin, you can come out of the Dock. I thank counsel very much for their assistance in this matter.
76. MR SEAVIEW: Thank you, Your Honour.
77. MR DOBLE: As Your Honour pleases.
78. HER HONOUR: Thank you. Very well, counsel are excused from the Bar table and we will proceed with the next matter.

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1. Riley Wilkin is a pseudonym. [↑](#footnote-ref-1)
2. Flash Rides is a pseudonym. [↑](#footnote-ref-2)
3. Simone and Breanna Diablo are pseudonyms. [↑](#footnote-ref-3)