**ANONYMISED AND ADAPTED FOR EDUCATIONAL PURPOSES**

# IN THE COUNTY COURT REF: CR-ZZ-LMNP

**OF VICTORIA**

**AT MELBOURNE**

**IN THE MATTER OF**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**-and-**

**RILEY WILKIN**

**SUBMISSIONS ON BEHALF OF THE ACCUSED**

**Date of document:**

**Filed on behalf of:** The Accused **Ref:**

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# Introduction

1. In an act unfortunate foolishness, Mr RILEY WILKIN (‘the accused’) significantly changed his life and the life of the complainant, Ms Simone Diablo. He is truly sorry for the impact of his actions upon her.
2. He first apologised to her whilst the pair were recovering in the same hospital and repeats that apology as part of his plea.
3. The ‘dangerous’ part of the driving occurs in the matter of a few seconds, when Mr Wilkin accelerates the vehicle and accidentally loses traction, causing the car to collide with a tree. He has always accepted that while unintentional, the car last traction as a result of his driving.
4. While the matter was listed for trial, that issue related to whether the accepted actions of the accused satisfied the elements of the charge alleged, as opposed to any denial by the accused that he was responsible for the crash.
5. The offending has had a serious impact on both the victim and the accused. As a result of this incident Mr Wilkin suffered serious, long term injuries which continue to plague him now, some two and a half years on.
6. Apart from the injuries he has lost his business, his reputation, his financial stability and suffered a significant decline in his mental health. A previously hard-working, self-motivated and energetic man, Mr Wilkin has been consistently, depressed, anxious and beset by thoughts of guilt since the offending.
7. He requires medication for pain management and depression and will do so for the foreseeable future. His life bears little resemblance to that he lived before.
8. In pointing to these issues the accused seeks in no way to detract from the impact on Ms Diablo. Indeed, it is anticipated evidence will be called on the plea indicating the level of true remorse the accused has for his actions and insight into the impact upon her.

# The Offending

1. While there is no question in this case that the offending in serious, significant care still needs to be taken in coming to a view as to the objective gravity of the offending.
2. With respect to the Theft charge, it is clear the accused did not act dishonestly or deceptively with respect to the car. While he was freely given custody of the vehicle, by his plea he accepts that his permission to work on the car did not extend to driving the vehicle with a passenger (Crimes Act 1958 s 73(14)).
3. In *DPP v Neethling* [2009] VSCA 116 at [21] the Court of Appeal considered factors which may be aggravating when dealing with cases of dangerous driving causing death. While the present case is one of serious injury, those principles have application here.
4. The Court noted the following matters are relevant in coming to a view of the objective dangerousness of the driving:
5. Extent and nature of the injuries inflicted;
6. Number of victims;
7. Degree of speed;
8. Degree of intoxication or of substance abuse;
9. Erratic (or aggressive) driving;
10. Competitive driving or showing off;
11. Length of the journey during which others were exposed to risk;
12. Ignoring of warnings.
13. The vast majority of the matters outlined above are not present in the instant offending.
14. Importantly, in this case:
15. There was no erratic lead-up driving, alcohol or drug use;
16. There is no excessive speeding in the lead up to the collision;
17. The accused was not distracted or using a phone;
18. While the accused accelerated the vehicle and lost traction, it is not alleged to have deliberately lost traction;
19. There was no other vehicle involved in the accident and involves a single victim; and
20. The period of dangerousness was decidedly short – only a few seconds.
21. The dangerous driving by the accused is submitted to be best characterised as

‘momentary showing off’.

1. It is also relevant that the accused was not aware the Automatic Traction Control (ATC) function on the car was not engaged, which undoubtedly contributed to the unintended loss of traction on the road.

# Post-Offence

1. Following the accident, the accused spent more than six weeks in hospital, having suffered serious injuries to his legs, neck and back,
2. The ongoing burden of his injures has had a tremendous impact on the accused. The physical impact was a driver for the ongoing and deeply troubling psychological reaction of the accused.
3. Unsurprisingly, the accused has not reoffended since the offending, in fact he has largely avoided driving since that time. As noted by a psychologist, the accused is now hypervigilant about driving and deeply worried about being involved in any further collisions.
4. Despite his will to return to work, his physical state wouldn’t allow it and as a result the accused has been forced to close his business and sell off his equipment.
5. He has sold his assets and is currently surviving on savings.
6. He has become increasingly depressed, anxious and socially withdrawn since the offending, especially as Court dates have grown closer.
7. It is submitted that the following factors are relevant to the ultimate determination of sentence in this matter.

# Sentence

1. Plea of Guilty
	* Significant in combination with genuine remorse;
	* While not early plea, it is of note the accused has never denied that his driving caused the collision;
	* The victim has never had to give evidence as there was no committal;
	* Should result in appropriately significant discount on sentence.
2. Significant / Genuine remorse
3. More than simply being regretful, the accused has shown genuine remorse for what he has done;
4. That remorse has been expressed to the victim herself, those close to him as well as the psychologists who have interviewed him.
5. Character
6. The accused does not have a significant prior criminal history;
7. Lack of prior history for drinking that endangering other road users;
8. No subsequent offending;
9. References from mother and cousin make plain the accused is someone who has strong work-ethic and is a valued family member and friend.
10. Characteristics of the Offending
11. The offending can be categorised as an Act of momentary stupidity, with significant consequences;
12. The accused does dispute that the offending is serious and that he should not

have been driving the car, let alone in the manner he did;

1. Did not intentionally lose traction, nor did he intentionally put the victim at risk;
2. Most of the ‘usual’ aggravating factors are *not* present in this case such as

excessive speed, drugs or alcohol, reckless lead-up driving.

1. The event was short and involved a single car collision and single victim.
2. Psychological Impact
3. It is likely that imprisonment will weigh more heavily upon Mr Wilkin given his current state of mental health, diagnosed by a psychologist as:
	1. Major Depressive Disorder;
	2. Features of Post-Traumatic Stress Disorder.
4. These diagnoses underline the impact the offending has had on the accused and the level of shame and guilt he feels for his actions.
5. Extra-curial punishment
6. Significant injuries;
7. Loss of business;
8. Negative publicity.
9. Current sentencing practices
10. Most cases involving this charge are sentence alongside charges of dangerous driving causing death and so there less appellate authority with respect to charges involving serious injury alone.
11. The accused has been able to locate two decision that may be of some

assistance to the Court, namely:

* 1. *R v Lennon* [2016] VSCA 85; and
	2. *R v Johnson* [2016] VCC 1351
1. Rehabilitation
2. It is submitted that given the above, the accused is highly unlikely to offend again in a similar way in the future and has very good prospects for rehabilitation;
3. He has not committed similar offences in the past and has not been involved in any subsequent offending.

# Counsel for Mr Wilkin