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MAGISTRATES COURT OF SOUTH AUSTRALIA

(Criminal)

DPP (STATE) V BASSANI

Remarks on Penalty of Magistrate White

11 October 2016

Informant: DIRECTOR OF PUBLIC PROSECUTIONS (STATE)
Prosecution: MS L DUONG
Defendant: LINDSAY RAYMOND BASSANI
Counsel: MR A BIDHENDI

Hearing Date/s: 11/10/2016
File No/s: AMC-15-6641

DPP (STATE) V BASSANI

Magistrate White Criminal

1 Lindsay Raymond Bassani, you achieved great success in rising to be manager for the South Australian Aboriginal Sports Training Academy, which I will call SAASTA for the purpose of the sentencing remarks.

2 You have started your own family with a young son and daughter. You have coached Australian Rules football with great success, particularly at the Echunga Football Club from 2013 to 2015. You personally inspired young Aboriginal men and Aboriginal youth to achieve what they could. I have heard and read from Austin Miller, the young man who was greatly influenced by you to succeed in his life. He attributes a lot of his success to you.

3 I have heard from officials at the Echunga Football Club and the Port Adelaide Football Club, who talked about how you and he were instrumental in establishing the Aboriginal AFL Academy and Aboriginal Power Cup in 2014. I have read your letter addressed to the Court.

4 You are regarded as a man who went a lot further than any job or person asked you ever to perform. It is sad to see you have ruined your life and particularly your reputation by the acts of deception and misuse of your position at SAASTA to obtain benefits for yourself and sometimes others.

5 You are a complex man whom I believe to be smart and resourceful. I still do not think you fully realise the consequences of the actions other than on yourself and your immediate family.

6 Aboriginal society and society in general needs people like you to succeed and your downfall, due to elements of greed, hurts those people that fully trusted and admired you as a leader, particularly in the Aboriginal community.

7 I have closely read the psychological report of Dr Loraine Lim dated 20th July 2016 that carefully outlines and analyses your personal life and history, including your Italian mother who died in 2010, your Aboriginal father and their complex relationship with a large number of children from other relationships. As a result of your complex family set up you grew up in a self-sufficient manner and were seemingly lonely at times. As a result of also seeing your half siblings struggle, you wanted to isolate yourself from their type of behaviour. You did well at school and sport, particularly football, and you began your career in 1999 with the Department of Education as an Aboriginal Projects Officer. Your whole working life from there was based on Aboriginal education and ventures. In 2012 you became manager of SAASTA to find it in a disorganised state and you transformed it. In doing so you acted alone with no checks and balances and it consumed basically your entire life.

8 You provide an explanation for each crime to Dr Lim in that background. I do not accept all those explanations and I find some of them were simply you acting for

your own interests, rather than the interests of SAASTA. In some of the offending you were combining the interests of others with your own interests.

9 You have pleaded guilty to 5 counts of dishonesty crimes. Those 5 counts vary in what happened and also vary in seriousness but they all have the background of you abusing your position. It may well be that this abuse came through your isolationist approach to how the Department should run and the lack of checks and balances that occurred during this period. It seems that the good you did may have produced a sense of needing to reward yourself with something. I cannot fully put that forward as an explanation but as a thought that continually passes into my mind as the reason for this offending.

10 For instance, in count 7 you employed your father to be a bus driver for the many and varied tasks needed to make sure that young Aboriginal people could get to the sporting ventures to improve their life and their sense of worth. You employed your father. That was put to me in extensive evidence as something that saved the Department a lot of money, yet you have put in the relevant paperwork your father as being a tutor rather than a driver. I cannot accept that that was a hasty decision or a piece of behaviour that was only decided on at the last moment. It must have been to cover up what you were doing but also you were smart enough to realise that you were saving the Department money. It is a result, I think, of your complex character that you simply could not put down what really happened, that your father was being employed by you as a driver and thus avoided the criminal actions that make count 7.

11 Again a complex piece of behaviour was the \$1,736.00 used for the Echunga Football Club training T-shirts. You say you were to collect the money to repay to SAASTA. Again, given your success at that club, there is no doubt that that club may have seen fit to buy the T-shirts themselves had you asked it.

12 I am told that as a result of this behaviour your family has been harassed on social media and have at times been harassed in a more personal manner. There are mental health issues that have developed for you and your wife. The prosecution say your offending was well planned and did not have an end point as there was no voluntary cessation of the offending. That is true. I have been referred to cases by the prosecution which differ remarkably from yours in the amounts of money and type of activity but not in this important respect, that is in the position of public trust that you held. I will quote from a case called *R v Buckskin* [2010] SASC 138 at [52]:

In accordance with the above observations, it was necessary that the sanction imposed in this case reflects the seriousness of the defendant's conduct, the need to deter others from offending in a similar matter and the need to reassure the public that such conduct will not remain unpunished.

13 The penalty imposed must be sufficient to restore confidence in the community that police officers in that case, and here, you, as a senior public servant running a very important department, who misuse their position, will face the full rigours of the law and would be an example to others who might consider similar activity.

14 The prosecution also refer to another case called *Nath* about abuse of a position
of public trust.

15 I find those comments in *Buckskin* to be important comments about you and your
offending here. As I said earlier this morning, your sentence has been very difficult to
decide. I note now that you have paid in full what you took from the Government.
That is an important factor in sentence.

16 I have come to the view, as I said earlier this morning, that a term of
imprisonment must be imposed and indeed, as I have said, no argument was put to the
contrary. I am going to sentence you pursuant to s.18A of the *Criminal Law*
(*Sentencing*) *Act* to 20 months imprisonment. I give you a 30% discount on that and
reduce it to 14 months. Because of the better part of you and your ability to be a good
person and I think your ability to redeem yourself fully, I impose a lower than usual
non-parole period of 6 months. In taking into account this sentence I have had
reflection on personal deterrence to you, but I have not made much, if anything, of
your earlier conviction in 1997. I also, as I said in the sentence, impose general
deterrence as an important factor in the sentence.

17 My next task is to consider whether the sentence should be suspended. I agree
that a suspended sentence is a real and effective punishment that the law imposes. It
is a longstanding law and one that still stands today. I have weighed up all matters
personal to you and also the factors of deterrence that I have mentioned. I have come
to the conclusion that the offending is too serious to impose a suspended sentence and
therefore I decline to suspend the sentence.

18 I now move to whether the sentence should be served in prison or should be
subject to s.33BB of the Sentencing Act. In short, I have decided that you satisfy all
criteria for an order that the sentence be served as a Home Detention Order. In
particular I have taken into account the fact that you have sought to re-establish
yourself as a self-employed personal fitness gym owner. I have also found that as a
self-employed man the dangers to the community and in particular anyone suffering
from fraudulent behaviour, are basically nil given that you will be running your own
business, are responsible for your own employees wages, your tax obligations and also
aiming to make it a success for your family. I have been told your wife has not got
any ongoing employment that she once had. I also note that you have set up your
business substantially and in a manner that, if successful, will be an important part of
the small business community in South Australia. This was a risk as I may have not
granted you this type of sentence but I was told your duty to support your family
meant you had to act quickly.

19 Given your expertise and given your work ethic in your old life, save for these
offences, I believe you have every chance of success. The Home Detention Order will
by law allow you to continue remunerated employment and I will make sure that that
is part of the conditions that are added to the recommended conditions of the home
detention report.

20 After discussions the following conditions are imposed:

1. I will not leave the State for any reason without lawful permission of the Court.
2. I will place myself under the supervision of a Home Detention Officer, be of good behaviour and comply with the lawful directions of that Officer.
3. I will wear an electronic transmitter and comply with the rules of electronic monitoring, including the requirement to fully charge the transmitter daily for the term of the agreement.
4. I will remain at ... throughout the period of home detention and must not leave that address at any time unless I have the prior permission of an assigned Home Detention Officer to be absent for a particular purpose, or for remunerated employment as defined in Section 33BC of the Criminal Law Sentencing Act, or to avert the risk of injury or death to myself or others, or to obtain urgent essential medical treatment.
5. I will provide and maintain in operating condition an active mobile telephone service with an appropriate mobile communication device and give the contact details to the Department for Correctional Services (DCS) so that they may use it to communicate with me at all times whilst on home detention.
6. I will not consume any drug which is not medically prescribed or otherwise legally available and then only at the prescribed or recommended dosage and I will submit to any drug testing as directed by a Home Detention Officer and sign all required forms and comply with the requirements of the testing procedures.
7. I authorise an assigned Home Detention Officer or delegate to reveal that I am subject to home detention conditions to any person where that is reasonably necessary, for the purpose of confirming employment or compliance with any condition of this agreement.
8. I will present myself at the front door of my nominated address at the request of an assigned Home Detention Officer or delegate, and respond to any call at a telephone at that address at any time, unless absent in accordance with these conditions.
9. I will be subject to home detention and obey all the lawful directions of my Home Detention Officer.
10. Immediately upon my release I will travel to the nominated address at ... and upon arrival I will contact the Home Detention Unit of the Department for Correctional Services by telephoning 1300 796 199.
11. If I am not engaged in any employment or study, I must attend for Community Service at the discretion of a Home Detention Officer.
12. I will not possess a firearm, or ammunition or any part of a firearm.
13. I will submit to tests (including testing without notice) for gunshot residue as may be reasonably required.

21 I will waive Court fees and prosecution fees, but there will be Victims of Crime levies to be paid.