



Sentencing Remarks & Judgments

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Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

MAGISTRATES COURT OF SOUTH AUSTRALIA

(Criminal)

DIRECTOR OF PUBLIC PROSECUTIONS V YVONNE DEBRA BUZA

Remarks on Penalty of Magistrate Mcleod

9 July 2019

Informant: DIRECTOR OF PUBLIC PROSECUTIONS
Prosecution: MR M FOUNDAS
Defendant: YVONNE DEBRA BUZA
Counsel: MR T CAMPBELL

Hearing Date/s: 9/7/2019
File No/s: AMC-18-2270

Introduction

1 Ms Buza you were found guilty of 47 counts of Deception under s139(a)
Criminal Law Consolidation Act (SA) 1935 involving \$77,415.02 occurring over the
period March 2010 – August 2014.

2 The maximum penalty is 10 years imprisonment for each offence.

3 As well some 30 uncharged acts from November 2009 through to March 2015
were uncovered involving a deception of \$187,634.81.

4 In determining penalty I do not take account of the uncharged acts. You are not
punished for those acts. The uncharged acts simply put the charged acts into context
as demonstrating an ongoing persistent and systematic scheme of deception over an
approximate four and a half year period.

5 The facts and circumstances as found at trial are set out in my judgment
delivered 14 February 2019 and I do not repeat them all here.

6 Your offending arose from your time as a member, and for some of that time as
chairperson, of the Board of the Aboriginal Health Council of SA ('AHCSA').

7 The court found that each time you submitted a travel claim form in respect of
each count you did so dishonestly misrepresenting your intended travel in two ways:

- a. by asserting that you undertook or intended to undertake travel that you never actually took or intended to take; and
- b. by asserting that your intended travel was to travel to and from your purported home address in Roxby Downs and then later Andamooka (which on the evidence gave rise to your entitlement to a travel allowance) when in fact you did not reside in Roxby Downs or Andamooka, rather you resided within metropolitan Adelaide at Golden Grove and later Windsor Gardens and from time to time choosing to stay in hotels, with family and friends.

8 Essentially you dishonestly maintained the impression that you resided in the north either at Roxby Downs or later at Andamooka in order to claim the travel allowances to which you were not entitled.

Aboriginal Sentencing Conference pursuant to s22 *Sentencing Act (SA) 2017*

9 At your request the court held an Aboriginal Sentencing Conference at which various views were expressed regarding your demonstrated prior good character on the one hand and the impact of your actions on AHCSA and more widely on the other.

10 Notwithstanding that you requested the conference, you did not meaningfully participate in the conference as you continue to maintain your innocence of the charges.

11 That said, I note that you were respectful of the process and of the views expressed.

Submissions and Considerations

12 Sentencing submissions followed the conference at which views as to the impact of your offending were expressed by the current Chair of AHCSA. Further, a Victim Impact Statement authored by the current Chief Executive Officer of AHCSA was tendered by prosecution. It outlines the extreme and deep impact that your offending has had on the organisation as a whole, the individuals within that organisation and the wider Aboriginal community that engages with that organisation. The finalisation of these legal proceedings will not end the suffering, the financial loss and emotional hurt that has been left behind by you. The stain of your actions will be enduring.

13 Against this, I must also consider the character references tendered on your behalf. They were of significance and all that you have achieved both in your professional and personal life as a strong advocate and contributor in the Aboriginal community is not erased by your offending.

14 Subsequently the court was also provided with helpful written submissions on penalty by defence.

15 In determining penalty I take into account all of these matters.

16 Prosecution called for a term of imprisonment of immediate effect.

17 While conceding that a term of imprisonment was appropriate defence submitted that any term should be suspended.

18 Taking into account the sentencing purposes and considering the sentencing principles and factors under the *Sentencing Act (SA) 2017* I am satisfied that the offending is of such seriousness that a term of imprisonment is the only appropriate disposition. I remind myself that however a term of imprisonment is specified it is the harshest punishment a court can impose and in whatever form remains just that.

19 In considering whether to impose an immediate term of imprisonment I note the following matters submitted by prosecution :

- The system of deception was continuous over a lengthy period of approximately four and a half years.
- The offending was a large scale systematic breach of trust.
- The scale and duration of your offending must be considered when determining the credit to be attributed to your prior good character and the assessment as to the likelihood that you will offend again.
- The offending had been enabled by you holding a leadership position which in turn allowed the offending to go on and, when internally challenged, it was in large part your senior position and the high regard that you enjoyed that allowed you to fend off and overcome scrutiny.
- Effectively you exploited your senior and respected position.
- Case law supported the proposition that persons holding positions of trust who engage in systematic courses of dishonesty should receive substantial sentences based on principles of deterrence.
- Cases of this type are often committed by people who are seen as role models or leaders in the community and as such the penalty to be imposed must be capable of deterring not only yourself but others in similar positions.
- Your bankrupt status means there is little chance of restitution.
- Your lack of contrition or remorse leaves you in a position where you offer no explanation nor present any matters which might mitigate your conduct.
- The offending can only be properly categorised as serious.

20 Section 96(1) of the *Sentencing Act (SA) 2017* enables a court to suspend a sentence of imprisonment 'if it thinks that good reason exists for doing so'.

21 While acknowledging that imprisonment must follow your offending, your counsel argued that there are many factors that together amount to good reason why any term of imprisonment should be suspended.

22 These include:

- Your age (62 years, almost 63 years) and complete lack of antecedents.
- Your overall poor health.
- Your active participation throughout your life as a volunteer and as a respected leader in support of the Aboriginal community particularly in Aboriginal health services for over 35 years
- Your active participation in Aboriginal sport.
- Your work in Aboriginal child protection.
- Your dedication and demonstrated work ethic and the very positive impact you have brought as a consequence of your involvement in Aboriginal affairs.
- The severe nature of the extra curial punishment which has followed your arrest in 2015 which resulted in you being shunned and unable to obtain any work or apply your skills in the field of aboriginal health developed over many years.
- The destruction of your reputation.
- Your descent into bankruptcy and the related indignity and humiliation and adverse impact on your family.
- The physical and emotional impact on you caused by the long period between your arrest and the trial.
- As to the offending itself, the fact that you were not an employee but undertook your work as a volunteer.
- Your offending was not motivated by greed but rather the allowances you received were largely shared with the wider aboriginal community.
- The extreme unlikelihood of you re-offending.

23 There are additional personal tragedies and circumstances revealed in the course of the evidence that are important to take into account.

24 Of significance is the fact that your offending commenced shortly following the tragic death of your daughter Vicky, with whom you were very close, and her partner on 15 November 2009 in violent circumstances and the immediate and ongoing need to address the orphaning of their child – your grandchild, Jett.

25 Vicky's death and your inability to come to terms with it had an adverse and
lasting impact on your marriage causing it to fail.

26 Not surprisingly a number of witnesses at trial commented on the impact this
event had on your life. In particular it was observed that you tried to compensate by
drastically increasing your workload to a point where concerns about your ability to
cope and your own health and well-being were raised and you were taken aside and
counselled.

27 As well you were required to address, essentially on your own, the personal and
criminal consequences of your son Dion's drug addiction and mental health issues
which were in large measure exacerbated by Vicky's death. Only last month he was
afforded a suspended term of imprisonment on condition he remains drug free and is
regularly tested. You had been his bail guarantor. You want the opportunity to support
and assist him and the wider community by seeing him achieve his goals and returning
him as a useful member of the community and father to his young son for whom you
are also providing support.

During the offending period there was another significant event. The close and
caring relationship you enjoyed with the Chief Executive of AHCSA Ms Mary
Buckskin became very challenging as she dealt with her diagnosis of cancer,
eventually requiring her to take sick leave in 2014 and sadly succumbing soon after.
This period in turn had a real and devastating impact on your life.

28 These events while not in any way excusing your offending nevertheless shed
some light on why a highly regarded, respected and active member of the community
would change their otherwise law-abiding behaviour so dramatically.

29 That period in your family life was observed by many to be highly traumatic for
you but you nevertheless persevered trying to hold your extended family together. In
large measure as a result of your actions your son Peter and your daughter Marisa
have made or continue to make successful lives for themselves.

30 Assessing the impact on your dependants is important. I do not accept that a term
of imprisonment of immediate effect would have an extreme or extraordinary impact
on your dependants; however, a benefit of suspending any term of imprisonment
would see you able to continue to provide real and active support and encouragement
to the Aboriginal community, to your wider family including your aged siblings who
look to you for nurture and support, while at the same time providing sufficient
deterrence to others from committing an offence in similar circumstances.

31 Taking into account all the matters before me, including the views expressed at
the Aboriginal Sentencing Conference, the submissions, the Victim Impact Statement
and the references I proceed as follows.

Sentence

32 I impose one period of imprisonment for all counts pursuant to s26 *Sentencing Act (SA) 2017*. No discounts apply and no time was spent in custody or on home detention bail.

33 The period I impose is 27 months imprisonment. I set a non-parole period of 18 months.

34 Weighing up the competing considerations I am satisfied that good reason, as I have set out in these remarks, exists to suspend this period. You will be released on a bond to be of good behaviour for a period of three years in the amount of \$1,000. If you breach this bond by any further offending, not limited to dishonesty offending, you risk having to serve the period of imprisonment imposed.

35 I waive the court fee. Prosecution and victims of crime levies to apply.

36 I make no order as to compensation noting that a period of imprisonment has been imposed, you are an undischarged bankrupt currently in receipt of Centrelink benefits and you would be unable to comply with such an order.