



# Sentencing Remarks & Judgments

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**ICAC**

Independent Commissioner  
Against Corruption  
SOUTH AUSTRALIA

# **MAGISTRATES COURT OF SOUTH AUSTRALIA**

(Criminal)

## **POLICE V SCHULZ**

**Remarks on Penalty of Magistrate B. Harrap**

**Wednesday 2 November 2016**

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Complainant: SOUTH AUSTRALIA POLICE  
Prosecution: MS R SCHELL FOR DPP  
Defendant: KAREN MARIA SCHULZ  
Counsel: MR H BARCLAY

Hearing Date/s: 02/11/2016  
File No/s: MCP-16-486

## **Police v Schulz**

### **Magistrate Harrap Criminal Jurisdiction**

- 1 The defendant Karen Schulz appears today for sentencing in relation to serious offending. Let me say at the outset that I have had considerable assistance from those at the bar table.
- 2 Prior to hearing submission the other day I had received a good deal of documentation relating to her offending and her personal circumstances. I have benefited from having time to consider all of that material before I heard submissions in court. My formal sentencing remarks will list the documentation that I have received, but I make it clear that I have taken some time since court the other day to further consider all that material when considering the issue of an appropriate sentence for this woman.
- 3 The defendant appears before me with no previous offending history. That is a relevant factor for me.
- 4 She appears before me ultimately having pleaded guilty to 20 counts of dishonesty offending. She was employed in a senior financial position with her local council and over a period of four years and four months she – in a sophisticated, deliberate and calculated manner – took funds from the council and applied them for her own purposes. She has formally pleaded guilty to 20 counts. I note the maximum penalties that apply. I note the matters I am asked to take into consideration.
- 5 I note the prosecution factual outline which is accepted by defence and that outline will be formally annexed to my formal sentencing remarks.
- 6 I note the breach of trust. I note that ultimately a sum in the vicinity of \$218,000 was inappropriately taken by the defendant. That amount has been repaid in full and in due course it will become clear that the defendant is to be given credit for such restitution.
- 7 There is consensus at the bar table that the defendant is entitled to a sentencing discount of up to 30% given her guilty pleas. I intend to apply such a percentage.
- 8 In court on the last occasion I heard submissions from defence counsel and in some respects these remarks will summarise what counsel had to say to me.
- 9 The defendant is 48 years of age and she has been married since 1995. She has two daughters, aged 18 and 17. Counsel properly conceded at the outset that this was serious offending and it was inevitable that the only appropriate penalty would be a period of imprisonment. Counsel flagged that he would build to a submission that perhaps consideration could be given to either full or partial suspension of that period of imprisonment. As a ‘fall-back’ position counsel made reference to the recent amendments of the *Criminal Law Sentencing Act* whereby if a sentence of immediate imprisonment is considered the only appropriate penalty, then consideration could be given to having the defendant serve that period on home detention.

- 10 Counsel made much of the defendant's cooperation once this offending had been detected. Her employment was terminated, as I understand it, in December 2015 and she emailed the council on or about 1 February 2016 making very frank admissions to them about her offending. At a subsequent interview she was again fully cooperative and was extremely frank. Of her own volition she then made contact with a view to entering into discussions to repay the amount in question. That was initiated by her. I give her credit for that and the fact that the money was ultimately paid back.
- 11 Counsel submitted that her reasons for committing the offences were complex and reference was made to the report of Dr Pols. I have read that report several times and I note the contents and the opinions expressed. Counsel referred to what was described as her 'dissociative' state and the role her underlying mental health issues played in relation to her offending.
- 12 I note those comments and opinions, but I also note they have to be taken into the context of the length of her offending and in some respects the sophisticated nature of it.
- 13 I note the defendant's personal circumstances, including aspects of her difficult childhood. Her mother's mental health issues played a significant role. I note her parents separated when she was only six. I note the unfortunate incident suffered by the defendant when she was seven, and the fact that her mother's mental health issues took a downward spiral when she was about 17 years of age and at that point she had to experience the difficulty of having her mother committed. I note she was subsequently detained for a period of some months.
- 14 I note what Dr Pols says about the 'flow on' effect of those difficulties.
- 15 I note the difficulties experienced in relation to one of the defendant's daughters in particular. I note the diagnosis of her eldest daughter in 2008 and the subsequent mental health issues. I note that the younger daughter has suffered in recent times given the impact of these proceedings. She is currently struggling with anxiety and the pressures of Year 12.
- 16 I note the impact her offending has had upon the defendant's husband who seemingly because of his 'association' with the defendant lost his job with the council and now has to work away from the family home during weekdays.
- 17 Counsel conceded that there was benefit gained by the defendant by her offending. That has become a little bit of an issue again this morning. I pause here to note that obviously pursuant to s.10 I need to take a number of factors into account and one of those is the impact on the victim. Only this morning have I been provided with a Victim Impact Statement on behalf of the York Peninsula Council. I have obviously only had a brief period of time to consider that statement, but I have done so and I am satisfied that I have sufficiently taken its contents into account.
- 18 It is hardly surprising that the defendant's offending has had a ripple effect and a significant impact on the council and those who worked in the council. Mention was made in court by her counsel the other day that she accepted it had some impact on her

employer and also her immediate family. The Victim Impact Statement I have just perused is a powerful document and in some respect it personalises the impact her offending has had. Some might view the council as an entity, a corporation in some respects, but that Statement makes it very clear that there were people who worked closely with the defendant who were deeply and personally effected and negatively impacted by her offending. It is but one of a number of factors I need to take into account but it is a significant one. I make it clear, I take the contents of that Victim Impact Statement into account.

- 19 The defendant did gain some benefit from her offending. Counsel conceded that he could not submit that it was for need as opposed to greed. Certainly, there was an element of greed when one considers cruises, overseas holidays and bills being paid on her behalf by the money that she was illegally obtaining. Counsel submitted, however, that perhaps, given her underlying mental health issues, she was less ‘morally responsible’ and there was basis for leniency.
- 20 I have mentioned the impact on her family. I note the contents of the documents including, for example, the report of Dr Turner as to the fragility and vulnerability of her eldest daughter. I note the character references that were tendered upon her behalf, and whilst I take those into account, again, the weight that can be given to those references are ameliorated somewhat by the sheer length of time this woman offended.
- 21 I do accept, however, that she is unlikely to offend again. I accept the defendant’s guilty pleas are genuine. She is genuinely remorseful and she is deeply ashamed of her offending behaviour. She does fully accept that she has let a number of people down.
- 22 Counsel then submitted that perhaps good reason existed to suspend the inevitable period of imprisonment and made reference to her guilty plea, her cooperation, the payment of restitution, the impact of her mental health issues and the negative effect any immediate period of incarceration would have upon her family members.
- 23 Counsel then submitted that, for very much the same reasons, that if I was against the issue of suspension, then I could consider home detention given that she would not be a risk to the community, could be seen to be a suitable person, and could continue with her rehabilitation.
- 24 The DPP then addressed the issue of sentencing. They made it clear, and in my view, understandably so, that they would be opposed to any form of suspension, either full or partial. Reference was made to the length of time over which the offending occurred, the amount of money involved, the skilful process undertaken, the fact that it was a clear breach of trust with her employer (her employer being a community council) and that elements of her offending went beyond need.
- 25 The DPP then addressed the issue of home detention and referred to the criteria in the legislation. I think the DPP quite properly considered that there were some aspects of this matter that were finely balanced and the DPP posed the critical sentencing question for me. In simple terms, ‘is this offending simply too serious such that this woman needs to spend some time at the Northfield Women’s Prison’?

- 26 As I say, I heard all those submissions the other day and I took some time to ponder the matter. I also needed to take some time because if I am to consider the recent amendments to s.33BB then I needed to order a report to see whether the defendant's premises are suitable for home detention purposes.
- 27 This morning I received that report, and, as expected, the premises in question are considered by Corrections to be suitable for the purposes of home detention. So that remains an option for me.
- 28 I am firmly of the view that the defendant's offending is so serious that the only appropriate penalty is a period of imprisonment. I intend to utilise s.18A and impose one penalty for all 20 counts.
- 29 I have considered an appropriate starting position. This was serious, blatant, calculated, skilful dishonesty offending over a lengthy period of time. My starting position is 2 ½ years or 30 months imprisonment. I have ultimately resolved to impose 20 months. Something in the vicinity of 2 ½ years is my starting point and I appreciate that is vague, but I ultimately have resolved to impose 20 months imprisonment. So, something in the vicinity of 2 ½ years with 30% being reduced. 20 months imprisonment. I fix a non-parole period of 12 months.
- 30 I turn to the issue of suspension. That involves me revisiting all of the circumstances of the matter – not just in relation to the offending but also her personal circumstances. Notwithstanding all that has been said upon her behalf the gravity of her offending is such that to suspend would be totally inappropriate. I decline to do so.
- 31 I now need to address the issue of home detention. I do think the defendant meets the criteria of s.33BB and home detention is an option for me. I do accept the DPP's submission that this is very serious offending and the matter is finely balanced.
- 32 Whilst I am of the view that the gravity of the offending is such that to suspend would be inappropriate, and whilst this is new legislation and we do not yet have any clear indication from the Supreme Court/Full Court as to the approach to be taken, I am currently of the view that the sheer gravity of her offending – whilst a very relevant factor for me – is not such as to preclude her being eligible to serve this sentence on home detention.
- 33 I have ultimately resolved to order that she serve the 20 months with a non-parole period of 12 months on home detention.
- 34 The recommended conditions – with one exception – shall be included on p.5 of the Home Detention Report. I have to say I am a little bit intrigued by the suggested para.11 which reads 'if I am not engaged in any employment or study I must attend for Community Service at the discretion of a Home Detention Officer'. I am not inclined to include that as part of her conditions. The remaining conditions will be included.
- 35 (1) She is not to leave the State for any reason without lawful permission of the Court, (2) she is under the supervision of a Home Detention Officer and she has got to be of good behaviour and comply with the lawful directions of that Officer, (3) she is wearing

the electronic transmitter, she has got to comply with the rules of electronic monitoring, (4) she has got to remain at the Port Victoria address and not leave unless she gets permission from her Home Detention Officer, (5) she has got to maintain and operate the active mobile telephone service, (6) no alcohol, no drug, and she is subject to testing, (7) she authorises the Home Detention Officer to reveal she is on home detention, (8) she has got to present herself at the front door when required, (9) she is subject to home detention and obey all the lawful directions, (10) immediately upon her release she has to travel to Port Victoria and ring home detention. They are the conditions, and the standard firearms conditions will be added.



KAREN SCHULZ


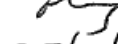
PROSECUTION FACTUAL OUTLINE

1. The Victim in this matter is the Yorke Peninsula Council .
2. The Defendant was an employee of the Council. She was continuously employed from 16 February 2004 to 5 January 2016.
3. Throughout that period, the Defendant had various roles relating to the Accounting practices of the Council. She initially commenced as an Accounting Officer, before being employed to the position of Accounts Payable Officer on 16 February 2007. She was then employed as the Management Accountant on 10 September 2015 and finally, on 25 March 2013, she was promoted to the position of Manager Financial Services. As part of this role, she was required to report directly to the Director Corporate and the Community Services and be responsible for the effective and efficient financial management of the Council's operations.
4. On 9 December 2015, the Defendant was away from work on annual leave. The CEO of the Council was advised of anomalies in relation to various financial transactions made or authorised by the Defendant.
5. The CEO ordered an audit be conducted of the Council's bank records.
6. The audit revealed unauthorised transactions that were made from the Council's bank account into the bank accounts in the name of either:
  - a. MW & KM SCHULZ or
  - b. MW SCHULZ
7. There were 63 unauthorised transactions in total, of various amounts. They are listed within the affidavit of Andrew William Cameron, at pages 4-6.
8. In total, \$218,877.35 was transferred from the Council to the above bank accounts, belonging to the Defendant. The Defendant had no permission to take any of the money.
9. On 10 December 2015, Richard Frost of ICAC was allocated to the investigation. On 15 December 2015, Frost attended the Yorke Peninsula Council office at Maitland and met with the CEO. The financial records of the Defendant were obtained, following the issuance of Authorisations to Inspect on various banking institutions.
10. The Defendant's employment was terminated on 5 January 2016.
11. On 1 February 2016, the Defendant's legal representative emailed Andrew Cameron of the Yorke Peninsula Council. The email attached a statement of the Defendant making full admissions to processing the transactions as outlined. The Defendant further advised the Council of the method in which she obtained the monies without authorisation.
12. On 9 February 2016, the Defendant attended the ICAC office with her solicitor. She was arrested for the offences and interviewed. The Defendant was initially arrested for 62 counts. The additional transaction of 6 September 2012, totalling \$3,746.00 was not included at the time of arrest.
13. As part of the interview, the statement which had been received from the Defendant regarding her admissions was provided to the Defendant. The Defendant signed the document as being a true and accurate copy of what she had provided to the Yorke Peninsula Council.



14. In the interview, the Defendant stated as follows:

- a. That she thinks it started because she just had bills she couldn't pay and she saw a way to do so in the first instance. That in her thinking she was borrowing the money.
- b. That initially it was credit card debt that she couldn't pay and over time it became holidays and her girls' schooling, and her mother's funeral
- c. That the amounts stolen were based on whether there was an available invoice that could be duplicated
- d. That she admits that her conduct comprises theft
- e. That if it hadn't been identified, her conduct would have potentially continued
- f. That some of the money may have been for her eldest daughter's medicinal purposes (Diabetes and mental health problems)
- g. That she paid the first transaction back the following day, when she got her tax refund on 15 July 2011. That she also paid the second one back, namely \$415.60. She stated that she also paid other transactions back over time, initially using her bank account but after by making cash deposits at a bank counter. One of those transactions was the second to last (~~Count 02~~) totalling \$2,348.65 which was paid back via cash [this is all confirmed by Forensic Accountant witness Kirsty Summersides]
- h. That she does not recall how many transactions that she paid back
- i. That she has checked the amounts and agrees with what is alleged to have been taken

  
  
27/10/16