



Sentencing Remarks & Judgments

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ICAC

Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

IN THE DISTRICT COURT
CRIMINAL JURISDICTION
ADELAIDE

TUESDAY, 23 JANUARY 2018 AT 9.13 A.M.

BEFORE HER HONOUR JUDGE DAVISON

NOS.DCCRM-17-2557, 17-2258 & 17-442

R V ALANA MARIE BARTELS

HER HONOUR IN SENTENCING SAID:

Alana Marie Bartels, you have been committed for sentence on seven counts of abuse of public office and pleaded guilty to one count of abuse of public office that was laid on an ex-officio information. In addition to this, there is one count to be taken into consideration in sentencing you. The maximum penalty for each offence is seven years imprisonment.

In respect of your pleas of guilty to these charges, you are entitled to a reduction of up to 30% on counts 2 and 4 on the information and 40% on the balance of the charges. You have also pleaded guilty to two counts of failing to comply with a bail agreement. You pleaded guilty on your first appearance in court in respect of those matters and, therefore, are entitled to a reduction of up to 40% on any penalty that I may impose.

I now turn to the facts of your offending.

You commenced working for the Public Trustee in 2006 and on 22 March 2012, you entered into a contract of employment as an estate manager. At that time, you were paid an annual salary of just over \$59,000. You remained in that position throughout the period of your offending and up to the date of your arrest on 17 May 2016. In your role, you were required to administer estates. The offences of abuse of public office were committed by you in the course of your employment in which you stole and/or used for your own benefit items of property and cash from multiple estates over which you had conduct.

I turn to identify the counts.

Count 2 relates to a Mazda sedan that belonged to a particular estate. This vehicle was valued at \$17,500. The beneficiaries of the estate instructed you to sell it. You informed the beneficiaries that the vehicle had been sold and that the proceeds will be divided between them. You then falsely recorded on the estate file that the car had been received by one of the beneficiaries. You then renewed

the registration and used the car as your own from about 8 July 2015 until the date of your arrest. You were observed by others to be driving that car.

Count 4 relates to the use of a disabled parking permit. On many of the occasions when you were seen to be driving the car the subject of count 2, you were seen to park in a disabled parking space and display a parking permit. That parking permit belonged to another estate. The permit had been given to you by the widow of the deceased. When you were interviewed in relation to this offence, you said that you had taken the permit because you were late for work on most days and by that stage there were no other car parks available.

Count 5 relates to a number of items of jewellery that were taken to a second-hand dealer by you. They were sold to him. You were paid \$450 for these items. The jewellery had been taken from a number of estates for which you were responsible. The money that was received by you was not deposited in any of those estates.

Count 12 relates to a Commodore motor vehicle that belonged to another estate. In late 2014 you were instructed to sell the car. At that time, the car was located in Mount Gambier. The beneficiaries of the estate had found a dealer in Mount Gambier who was willing to pay \$11,000 for it. In January 2015, the car was driven to Adelaide on your instructions. You falsified an email in which you purported that the beneficiaries had authorised a transfer of the car to Adelaide. Soon after the transfer the car was bought by someone you know. They paid \$8,000 or \$9,000 in cash for the car. The beneficiaries were advised that the vehicle had been sold for \$11,000 but no proceeds were received by the estate. The disbursement statement recorded that \$11,000 had been received for the car, however you then edited this to remove it. The effect of doing this was that the \$11,000 was withheld from the beneficiaries.

Count 13 relates to you authorising a payment of \$13,000 from an estate to a third party for work purportedly carried out on the property. The \$13,000 was deposited into another person's account and withdrawn two days later. The person to whom this payment was made is not a person who ordinarily provides services for the Public Trustee, rather it is a person known to you.

Count 14 relates to an estate that included a property at Port Pirie. You arranged for a second-hand dealer to clear out the house. The dealer did this and located \$1,000 cash in a wallet in the house. She told you about it and you arranged for a male to collect this money. However, this money was never deposited in the estate and a couple of days later an equivalent amount of cash was deposited into your account.

Count 15 relates to your conduct in respect of another estate. This estate included a wooden plant stand that was valued at about \$80. The plant stand was later located at your home after your arrest.

The ex-officio information relates to yet another motor vehicle. This motor vehicle was a Hyundai Getz. In late July or early August 2013, you were provided with the keys to this vehicle that was located at the deceased's residence. On 23 September 2013 the registration was paid until 19 December 2013. There is no record from Public Trustee showing the payment for this expense. On 14 December, you sold the vehicle to your then partner's friend. He agreed to pay \$5,000 for the vehicle. You received a deposit of \$500 followed by the remainder in instalments. The application for transfer was signed by him on 14 December. At that time the vehicle was still registered to the estate of the deceased. The value recorded on the paperwork was \$3,000. The records show that the estate did not receive the Hyundai or the cash in relation to this sale. The consideration relates to the same estate as the ex-officio information. Arrangements were made for the property to be packed and collected. This was undertaken.

You, however, signed for personal items from the estate. These items were recorded as going into the securities room but were not receipted in that room nor have they been able to be located.

Thereafter, you entered into a scam with another person where you arranged for the furniture and effects of estates to be transferred to him and he would either receive the proceeds from the sale or keep the items for himself. A rather elaborate scheme was then entered into by you where you drafted a letter to this man so that he could provide it to the auction house claiming that the items had been taken from the estate were his property and not part of the deceased's estate. As such, this man then received money to which he was not entitled. The auction house subsequently paid him \$2,446.06 which related to the amount remaining from the sale after commission, cartage and storage.

A Samsung refrigerator was unaccounted for through the auction and this person subsequently attended at the auction house and collected the item for his own use. You subsequently told the police that you expected to receive something from the third party, however you did not actually receive the proceeds of the sale.

Your offending in this way represents a gross breach of trust. It is not only a breach of trust against each of the estates but also against your employer, the Public Trustee, and the public generally. It is a necessary part of businesses that are conducted like this that every person who deals with them must be able to place their trust in a job being done appropriately and honestly at all times.

Your offending was not just opportunistic but on occasions calculated and premeditated. You took advantage of the reliance that an employer must be able to have in any person employed in your position. That is, they expect that you will act with honesty and integrity at all stages.

The victim impact statement that was provided by the Public Trustee sums up the position eloquently. They consider that you have breached the trust that was placed in you most grievously. Through your actions you deprived beneficiaries of the estate to which they were entitled and you derived benefits for yourself. You ignored the trust and acted for your own selfish benefit.

In addition to this, of course, confidence in the Public Trustee has been undermined. Your colleagues at the Public Trustee also feel betrayed by your actions and will have to deal with the consequences of your behaviour when they deal with members of the public in relation to the administration of estates.

You come before this court with no previous history. Whilst that is to your credit, it is of course because you were a person with no previous history that you were employed in such a position. Even though you do not have a recorded criminal history, you have for many years been unlawfully resourcing, possessing and using illicit drugs. Your addiction to these drugs provides an explanation for your offending but no excuse.

I have received a number of reports on your behalf. These include psychological reports and reports from the Therapeutic Rehabilitation Services in relation to your counselling and drug rehabilitation. In addition to this, I have received numerous progress reports.

You have been on bail during the course of these proceedings. You have been subject to a number of urinalysis and breath tests in relation to substance abuse. You have over time had positive urinalysis and you admit that you have lapsed in relation to the ingestion of amphetamines and cannabis. You have also had diluted results and your two breaches of bail relate to a breach of your condition that you not consume amphetamines. I will come to that in due course.

You are now 38 years old. You were born in Adelaide and spent some time moving around as a result of your father's employment. You appear to have a good relationship with both of your parents. Both of them are still living although they have their health problems. They also are in the process of separating.

You left home at the age of 17 to reside in Adelaide. You were in a relationship at that time. That relationship lasted for 17 years ending in 2013. You have a son as a result of that relationship. You described your ex-partner as being extremely abusive. As a result of this relationship, you were isolated from family and friends and controlled by him. The report from the psychologist, Miss Starkey, outlines the abuse that you suffered both physical and emotional. In 2012, you felt you were able to report his physical abuse to the police. He was arrested and you applied for an intervention order. Despite this intervention order, your ex-partner continued to harass you, contact you and broke into your home on several occasions. You officially ended the relationship in 2013 when there were proceedings in the Family Court. Your ex-partner then moved

interstate to reside with his parents. Communication between you and he is now civil and your son visits his father for holidays.

You are currently in a relationship with a new partner. You have been in that relationship for about two-and-a-half years. He is very supportive of you. He also has a son about the same age as your boy. I have received a letter from him outlining your relationship. It is clear that he loves and cares for you. I will take that into account.

In terms of your education, as I said you left school at the age of 17 after successfully completing year 12. You then went on to train as a legal secretary, then worked with a jeweller. Thereafter, you started work at the Public Trustee in about 2006. You reported to the psychologist that you loved your job and your work performance was good.

You also reported to the psychologist that you had a number of disappointments in your employment and your perception about the management that you received from within the Public Trustee. It is worth observing that your criticisms of the department and the management of you was occurring at about the same time as your offending.

Whilst you reported to the psychologist that your offending started in 2014, it is now apparent that the offending was occurring as early as July or August 2013. You reported to the psychologist that your offending began after your separation from your ex-partner but you were still maintaining a relationship with a number of antisocial people from within your social network. You said you felt ostracised from your colleagues and treated differently by your work manager.

You also reported feeling a high level of shame and guilt for your actions. You have withstood a significant amount of media coverage in relation to this case as public interest in matters such as this is understandably high.

You reported to the psychologist that you initially used methylamphetamine recreationally. Your ex-partner, you said, started to deal in drugs in order to cover his own living expenses and as such you had access to methylamphetamines. Over time you changed from recreational use to being more frequent. You did, however, maintain your work throughout that period and continued to use methylamphetamines until you became pregnant.

You abstained from the use of drugs until your son was one-year-old. After the break-up of the relationship you continued to use ice as a coping mechanism and reported spending about \$500 a week on it at that time. You have continued to use ice since that time.

You have over time, received treatment in relation to your mental health. You have experienced symptoms of depression and PTSD. In addition to this you have, of course, had a stimulant use disorder. The report of the psychologist

outlines the treatment that you have received. I have taken into account this report, including your disclosure of the ongoing use of drugs last year.

You were not always frank in relation to the use of drugs, although it does appear that you have over time attempted to engage in rehabilitation and have become abstinent from these drugs. The history of testing by Correctional Services presents a positive picture that you can and have been abstinent from illicit drugs.

You are naturally very anxious in relation to these proceedings and the outcome of them. You are, of course, very concerned about the care of your son in the event that you are incarcerated. During the course of your treatment you were encouraged to discuss your predicament openly. As a result your son had a visit with his father in Queensland and fortunately got along well with him.

I accept the diagnosis of the psychologist that you have complex PTSD and stimulant use disorder and major depressive illness. Each of these disorders will need to be treated well into the future.

I also accept that you have experienced difficulties in relation to your ongoing life, including nightmares, panic attacks and become hyper-vigilant in relation to a number of other disorders.

In addition to these matters I take into account that you have now made restitution in the amount of \$5,000. You have, however, another property that you are unwilling to part with as it is your security for the future. I have taken into account the letters that have been provided to me by Miss Bolton, Miss Brett, Miss Fallan, who is your sister, Miss Gates, Miss Orrs, each of them speak of your expressing your remorse for your actions and personally being a kind friend and relative.

In addition to this, I have taken into account your cooperation. This morning I have received a letter written by your partner's brother. Your partner's brother is the director of a company called Solar Maintenance and Renewable Technologies, otherwise known as Smart. In this letter, he says that you have been employed with his company since 10 January 2018. He has employed you as a financial officer within this company knowing of the fact that you faced these charges that involve an abuse of public office and dishonesty. I will take into account that he has employed you and the circumstances in which he has employed you.

I also received this morning a letter in relation to your work at the tuck-shop at the school where your child attends, that is, of course, to your credit that you have been engaged in community activity.

Each of the offences that you have committed are very serious. You commit these offences knowing that because of the trust that had been placed in

you, there was a significant chance that your offending would be undetected as it was for many years. You exploited those that you were there to assist.

The law requires that the sentence that I impose reflect a significant amount of general deterrence. It is important that sentences for offences such as this deter other people in similar positions to yourself who may be inclined to abuse their position. It is also important that the public recognise that conduct such as yours will be dealt with severely.

Your offending was motivated by your greed and in an effort to receive personal benefits to which you were not entitled. Your offending occurred over a lengthy period of time and involved deceptions upon a number of different people. None of your offending was spontaneous, rather it was calculated.

This is well illustrated by the honest behaviour of the second-hand dealer in Port Pirie who, having found \$1,000 cash in the wallet at the house, and then disclosed that to you. Rather than you paying it into the estate, you used the money for your own benefit.

Your offending came to an end when you were arrested. Even over the course of time this matter has been in court, further offending has been uncovered. Some of this has been as a result of your information, others having been detected when members of the public came forward.

Over the course of these proceedings, you have become more open in relation to your use of amphetamines, although I note that on occasions in these proceedings you have been less than truthful in relation to your use of these drugs.

I also take into account the significant progress that you have made in your rehabilitation in relation to drugs, and that as a result of your abstinence from drugs, you report that you have a clarity of thought and discovered a real zest for life and obviously been able to obtain employment during that time.

I note your apology that has been offered and read to the court. You accept your wrongdoing and the affects that this has had upon the Public Trustee, your co-workers and the estates and their beneficiaries.

In the circumstances a term of imprisonment is appropriate. In ordinary circumstances, I would have imposed one sentence in relation to all offending, however, this will not be possible given the different reductions that are applicable. I, therefore, indicate that if you had not pleaded guilty in respect of counts 2 and 4, that utilising s.18A of the *Criminal Law Sentencing Act*, I would have imposed a sentence of imprisonment of three years. In the circumstances that will be reduced to two years, one month and one week.

In relation to counts 5, 12, 13, 14, 15 and the ex-officio information and taking into account the consideration, I utilised s.18A of the *Criminal Law Sentencing Act*. Had you not pleaded guilty, I would have imposed a term of imprisonment of six years. Making allowance for your pleas and cooperation, I reduce this to three years and five months.

Each of the offences that you committed was a separate incursion into crime. Each required a particular act that was premeditated, planned and concealed. As such I consider that the sentences that I have imposed should be served cumulatively. The head sentence is therefore, five years, six months and two weeks.

In considering your non-parole period, I take into account your lack of prior offending, your pleas of guilty, the fact that you have the care of your young son, your previous abusive relationship and your mental health considerations and the restitution that you have made. I consider that a non-parole period of two years and six months is appropriate.

I have been urged by your counsel to find good reason to suspend this term of imprisonment. I acknowledge that you have been receiving treatment in relation to your drug rehabilitation, that you have a child for whom you would like to continue caring as you have in the past, and that imprisonment would cause dislocation and hardship to that child.

I also take into account that you have made restitution and that you are extremely remorseful for your offending. However, this offending is so serious and such a significant abuse of the trust that was placed in you by so many people that I cannot find good reason to suspend this term of imprisonment. Nor do I consider that serving this term of imprisonment on home detention is an appropriate penalty.

Deterrence plays such a significant role in relation to offences of this type that the only appropriate sentence is one that is served in a custodial setting.

I have been asked to make an order for restitution. As I have said, you have made restitution in the sum of \$5,000. You do, however, have assets that will enable you to make further restitution. I, therefore, order that you pay restitution in the sum of \$24,681. This takes into account the \$5,000 that you have already paid.

In relation to the two counts of breach of bail, you will be convicted without further penalty. I will also make an order in relation to the forfeiture of particular items in due course when I am provided with a list if that order can be made by consent.

Is there anything further, Mr Ey?

MR EY: No.

HER HONOUR: Miss Garland?

MS GARLAND: No.

ADJOURNED 9.40 A.M.

RESUMING 9.41 A.M.

HER HONOUR: Mr Ey, I have just had the matter recalled because when I think I declared the head sentence I was incorrect. The head sentence is five years, six months and one week, not two weeks, as I said.

ADJOURNED 9.42 A.M.