



# Sentencing Remarks & Judgments

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SOUTH AUSTRALIA

# **MAGISTRATES COURT OF SOUTH AUSTRALIA**

(Criminal Jurisdiction)

## **POLICE V TEMPLETON**

**Remarks on Penalty of Magistrate J. McGrath**

**2 November 2017**

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Complainant: OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
Prosecution: MR S. ADAMS  
Defendant: FRANK EMMANUEL TEMPLETON  
Counsel: MR S. WHITE

Hearing Dates: 26/10/2017; 02/11/2017

File No: AMC-17-5969

## **Police v Templeton**

**Magistrate J. McGrath**  
**Criminal Jurisdiction**

### **Introduction**

1 Frank Templeton, you pleaded guilty to three charges pursuant to s.27(1) of the *Oaths Act, 1936* and that is on 7 August 2013, 3 March 2014 and 28 April 2014 at Mount Gambier you wilfully made a statutory declaration knowing that that declaration to be untrue in a material particular. Your plea of guilty is representative of a total of six occasions of offending between 7 August 2013 and 28 April 2014.

2 The maximum penalty for the charge is a period of imprisonment of up to four years. You are entitled to a discount of up to 30% for your plea of guilty and I indicate that ordinarily in the sentence that would be imposed the full discount that would be available.

### **Materials**

3 In considering this matter I have heard oral submissions from both counsel and I have received the following materials:

- an electronic disc of the prosecution brief;
- your antecedent history;
- written prosecution submissions;
- reference from Mr C dated 20 September 2017
- reference from Mr J dated 14 September 2017; and
- reference from Mr N dated 1 September 2017.

4 I have also received a community impact statement and a certificate from the Lions Club acknowledging your 40 years of service and a letter from the Department of Child Protection dated 29 August 2017.

### **Factual Summary**

5 I turn now to the factual summary. On 8 April 2013 Templeton Constructions Proprietary Limited entered into a contract with the Minister for Transport and Infrastructure to carry out building works at the Keith Area School. The amount tendered for the contract was \$2,716,489. This amount was to be paid to Templeton Constructions periodically as progress payments. For the duration of the contract you were the sole Director and Secretary of Templeton Constructions. The contract included a clause requiring Templeton Constructions to submit a monthly statutory declaration swearing that all subcontractors had been paid all monies due and payable to them in respect of the work that they had undertaken under the contract. Given the project was a significant one there were several subcontractors engaged. As part of

the contract conditions failure by you to submit this statutory declaration enlivened a discretion by the Minister to withhold progress payments to Templeton Constructions.

6 On six occasions between 7 August 2013 and 28 April 2014 that is over a period of eight months you falsely swore statutory declarations stating that Templeton Constructions had paid all monies due and payable to all subcontractors in respect of work under the contract when in fact all such monies had not been paid. You did not conscientiously believe that the contents of those six statutory declarations were true. It is accepted by prosecution that you intended to pay the monies due to the subcontractors on the basis that you believed you would trade your way clear and that your view was that your financial difficulties were temporary.

7 The amount outstanding to subcontractors at the time of each false declaration is as follows:

- On 7 August 2013 the amount outstanding was \$5,000.
- On 20 December 2013 the amount outstanding was \$65,241.
- On 30 January 2014 the amount outstanding was \$29,188.50.
- On 3 March 2014 the amount outstanding was \$141,447.
- On 31 March 2014 the amount outstanding was \$13,337.
- On 28 April 2014 the amount outstanding was \$98,307.

8 The businesses to whom Templeton Constructions owed money at the time of one or more of the above statutory declarations were Braithwaites Carpet and Bedding, Direct Blinds, Goldsmith Plumbing, Highcraft Cabinets, Kappy Plumbing, Laser Electrical, DeWit Painting, Viridian and ATF Services.

9 On 27 June 2014 Templeton Constructions went into liquidation. Approximately \$142,249.00 remained outstanding at the time that the company went into liquidation. However most of what was owed to subcontractors had been paid prior to that date. I note the school received significant and beneficial building works while Templeton Constructions carried out the contract.

### **Submissions and General Comments**

10 I turn now to the submissions that were made. A community victim impact statement has been tendered pursuant to s.7B of the *Criminal Law (Sentencing) Act, 1988* and I take into account its contents. The impact of your actions are pervasive extending not only to the particular government department involved namely the Department of Planning, Transport and Infrastructure but more widely in terms of the ordinary tax payer. More specifically your illegal activity has had a direct impact on those small and large business who subcontracted their services to you and have now suffered on different scales as a result of your actions. Government contracts on whatever scale rely on the trust and integrity of those who win the tenders. Your

actions were not isolated, they were not fleeting. They were deliberate decisions that you made over a period of eight months to deceive not only the government but ultimately the public purse and those small business whose ongoing viability were at least partly dependant on you honouring your arrangement with them also suffered.

11 Your disregard for all of those involved undermines the confidence of the community and indeed also undermines the very structure and processes of the system. Your offending Mr Templeton comes compounded by the fact that it occurred in a rural community and the impact on a rural community is of course far more visible. It has left that community damaged, emotionally and financially.

12 As such, personal and significantly general deterrence must be reflected in the penalty that I impose. A clear message must be sent out to not only yourself but ordinary members of the community that statutory declarations and oaths taken by them, not just in these circumstances but in any circumstances are made understanding that a breach of that obligation is a serious offence. The maximum penalty, a period of up to four years imprisonment, reflects that seriousness. Further, detection is not always easy or as in this matter takes some months to be uncovered. By then the significant damage has been done to the project and those involved, and the financial loss is far greater. The penalty imposed must not only reflect the need to protect the greater community but also to ensure that an adequate punishment is imposed.

13 Sentencing is of course a balancing process and Mr White has put much on your behalf that I must also take into account. Your plea of guilty and the submissions that have been made reflect that you are remorseful and you are contrite. You have taken responsibility for the offending and you acknowledge the significant impact of your actions. You feel embarrassment and distress about what you have done. It is important to note that a significant amount of the work on the project was completed and further that you too lost a great deal financially and the liquidation of your company must have had an emotional impact on you. I accept that whilst you submit that given your limited literacy skills you found the paperwork confusing and the delays in the commencement of the project impacted your understanding of the administrative issues, you do not resile from the fact that you with full awareness repeated your dishonest declarations knowing they were untrue but believing that you would recover from the difficult financial position and at some point in the relatively short term you thought that you would be able to pay back the money owed to the various subcontractors. It is clear that you were not being realistic holding this belief.

14 At 72 years of age your references speak highly of you as a valuable and respected member of the community and particularly you have had a strong and long involvement with the Lions Club of Gambier City holding a particularly senior position. You have also had wider community engagement and additionally you significantly have the kinship full-time care of two children who are currently under the guardianship of the Minister and you have done this together with you wife since 2008. I accept that the children are thriving in your care and it is your contribution and care with your wife that is the reason. There is no doubt Mr Templeton that your commitment to the community over a long period is impressive and that your antecedent history in my view is of little relevance.

15 Your personal circumstances are that you are in a stable relationship. You and your wife manage six family own chalets and you undertake maintenance gardening and cleaning. You live on the site together with the two boys. You were born in Jamaica. You had limited schooling but you worked hard to ensure that you have always had a strong and diligent employment history. You started the business of Templeton Constructions with only \$250 and you worked hard both administratively and practically to establish the business and build its reputation, not just locally but also interstate and at its peak the company employed up to 70 staff.

16 Your counsel makes an application for no conviction to be recorded. I indicated at the outset that imprisonment is a penalty of last resort. In my view it is not the appropriate penalty. Given all of the matters, in my view, the appropriate penalty is to release you on a bond to be of good behaviour. The conditions of which I will set out in a moment.

### **Application for Without Conviction and Sentence**

17 The *Criminal Law (Sentencing) Act, 1988* prescribes discretions to not record a conviction. Section 16 empowers the court in prescribed circumstances to impose a penalty but without recording a conviction. However, in order to do so the court must first decide to impose a penalty of a fine or community service or both. Section 39 allows the court to impose a bond to be of good behaviour without recording a conviction where it considers there is good reason to do so. The structure of both those section implies an expectation that in the usual case a conviction will be recorded.

18 The recording of a conviction plays a valued and important part of the penalty that I must impose. I have spoken about the need for deterrence and that a conviction forms part of the deterrent effect of a sentence. What it does is it signals to the community its condemnation of you and your conduct. In addition the recording of a conviction acts as a notification to potential employers and others who are likely to have a legitimate reason for knowing the character of an offender. They are the general principles but each case needs to be determined afresh. There will be some cases where the likely impact of a conviction on a person's employment prospects will be out of proportion to the seriousness of the offence and where the whole of the circumstances of the offending and the offender will persuade the court that there is justification to not record a conviction and move away from the usual course. It seems clear that the impact on your future employment is negligible.

19 Your current employment and accommodation is well settled at the chalets where you reside with the two children and your wife. They are owned by members of your family. Nothing has been identified to me as to any potential impact on travel plans that a conviction might have. The focus of the submission is that the impact of a conviction will have on you is your involvement in the Lions organisation and other community groups and the potential impact a conviction might have on whether you can continue to be a person who is regarded as suitable to continue caring for the two boys that I have referred to earlier. There is no dispute that your counsel cannot put

this submission in terms of the care of the boys any higher than a 'potential' impact and nothing has been put to me to confirm that there indeed will be an impact.

20 Your circumstances, Mr Templeton, evoke sympathy and the matters in your favour are compelling. You are a person without any relevant antecedence who admitted responsibility and has shown remorse. There is no doubt that I can confidently make the finding that is applicable to s.16, whilst not a prerequisite of s.39, it is still an important determination that you are unlikely to reoffend again. The matters that I have referred to in my remarks are equally important as to whether a conviction should be recorded. The matters in your favour must be balanced against the need for general deterrence, namely that a breach of trust, not just in these particular circumstances but those swearing statutory declarations and other such declarations under the *Oaths Act 1936* that a breach is likely to impact their immediate and future personal circumstances and employment.

21 The matters are finally balanced but I am not persuaded that good reason exists to accede to the submission made by your counsel. A conviction will be recorded. You will be released on a bond to be of good behaviour for a period of 18 months in the sum of \$500. It is difficult to reflect the 30% discount when imposing a bond. It will be a condition of the bond that you will return for re-sentence should there be any further offending during the 18 months and that offending is not limited to any like offending. Any type of offending will breach the bond. In my view it is not necessary to impose any further conditions for example the need for community service hours or any supervision by correctional services.

22 You will be required to pay a victim of crime levy that will be \$160 on each of the counts and court fees. I know that this financial burden will also act as a deterrent to you in terms of any further offending.