



Sentencing Remarks & Judgments

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MAGISTRATES COURT OF SOUTH AUSTRALIA

(Criminal)

DIRECTOR OF PUBLIC PROSECUTIONS

V

MICHAEL WILLIAM KING

Remarks on Penalty of Magistrate Mcleod

19 June 2020

Informant: DIRECTOR OF PUBLIC PROSECUTIONS
Prosecution: MS INGLETON & MS BROWN
Defendant: MICHAEL WILLIAM KING
Counsel: MR M ABBOTT QC & MR C JACOBI

Hearing Date/s: 18/6/20

File No/s: AMC-16-14548

Introduction

1 These Remarks have been prepared in the interests of expediting the completion of this matter. While every care has been taken, I reserve the right to add to or enlarge upon these reasons should it become necessary to do so.

2 Mr King on the 25th day of your trial on a number of dishonesty charges you pleaded guilty to two counts of Failing to Act Honestly contrary to s26 *Public Sector (Honesty and Accountability) Act 1995*.

3 On a no costs basis all other charges against you either forming part of the trial or which were severed and pending were withdrawn and an uncharged act was not pressed.

4 The first count dated 30 October 2013 involved your misappropriation of an amount of \$1893 being the credit due on returned goods purchased from TJM Nailsworth. The returned goods were validly purchased on your government credit card but were returned with the credit due being wrongfully applied by you toward the purchase of a rooftop camping tent, an awning and an awning bracket for use on your own personal vehicle.

5 The second count dated 12 March 2014 is similar. It involved your misappropriation of an amount of \$1990 being the credit on goods also purchased from TJM Nailsworth. The returned goods were validly purchased on your government credit card but were returned with the credit due being wrongfully applied

by you toward the purchase of an exhaust system and air snorkel for use on your own personal vehicle.

6 The maximum penalty is 4 years imprisonment or a \$15,000 fine or both for each offence.

7 In determining penalty I do not take into consideration and take no account of the charges withdrawn or the uncharged act not pressed.

8 Your offending arose from your time as the Regional Coordinator of the Marine Operations and Response Section in the Transport Safety Regulation area of the Department of Planning, Transport and Infrastructure.

9 Considerable evidence was given during the trial but suffice to say the charges arose from an ICAC investigation into the suspected misuse by DPTI employees of government issued credit cards. As time passed, charges levelled against your colleagues were discontinued and you found yourself the only employee left facing charges before a court. While the charges to which you have pleaded guilty are against this background and the background of a trial in which numerous other charges were ultimately withdrawn I again state that I limit my consideration of your offending to the circumstances of the two offences.

10 No compensation is sought.

11 You are a long standing public servant of otherwise good character. You have no relevant criminal history. This offending is now over six years ago and there has been no offending since.

12 You cooperated throughout the initial stages of the investigation and at no stage sought to hinder it.

13 While the offences to which you have pleaded guilty are serious they are to be considered against this backdrop.

14 They are also to be considered against your personal circumstances.

15 You are 49 years of age, married with children and live in your own renovated house. You have done your best to support your family and are a loving husband and father.

16 You have been supported both emotionally and financially throughout these protracted proceedings by your wife, mother-in-law and other members of your family. You are fortunate to continue to have their support.

17 While your plea came late in the proceedings it followed the ultimately successful contest of a trial with the withdrawal of the bulk of the charges against you and this extent legal considerations played their part.

18 You have been the subject of legal scrutiny for a considerable period and incurred significant costs and other outlays. That and the associated notoriety have

taken their toll and been a considerable burden to you and your family. The proceedings have been hanging over your family like a black cloud for a very long period of time. I accept that you are contrite and remorseful.

19 Your counsel tendered a number of medical reports from Dr Wood, Dr Hurley, Dr Green and Dr Bastian relating to the impact on you of a severe accident you suffered in 2011 when as a cyclist you were struck by a motor vehicle.

20 As a consequence you suffered multiple injuries including traumatic brain injury.

21 Without going into the detail of the injuries the sequelae includes chronic pain, depression and anxiety with cognitive impairment in part manifesting as poor memory and impairment in making reasoned decisions and information processing.

22 I accept for the purposes of sentencing that at the time of the offences your cognitive functioning was likely to have been impaired in this way.

23 While attempts were made to reunite you with your pre-accident workload when you were a fit and active and valued employee, it became increasingly clear that your ability to carry out your duties was severely compromised. You were first effectively side-lined and then told to remain at home until you got better.

24 You had been promoted several times and had become responsible for marine pollution and marine safety in SA. Your reputation was such that an offer of a dream job as part of AMSA in Canberra had to be declined as a consequence of your accident.

25 Of importance is that the offences before the court occurred during this period of your life.

26 The accident and these charges have led to you no longer being employed by DPTI and at age 49 years your working life has stalled.

27 In determining penalty I must consider issues of personal and general deterrence and weigh them against your personal circumstances.

28 The offences are serious and general deterrence looms large in the determination. Offences involving the use of government issued credit cards are often easy to commit and hard to detect.

29 I have weighed the gravity of your offending against your personal circumstances, including your age, your lack of prior convictions or offending since, your good work history, the impact of the 2011 accident, the fact that notwithstanding your impaired cognitive functioning you acknowledge the wrongfulness of your behaviour, and that you are contrite and remorseful.

30 Notwithstanding the seriousness of the offences, and noting the diminished nature of the offending, the Director does not call for a term of imprisonment in this

case but has invited the court to consider instead imposing convictions and fines as an appropriate penalty regime. Defence counsel essentially supports this approach.

31 In all the circumstances, weighing these matters carefully, I have determined to
impose a conviction and a fine of \$2,500 in each case.

32 Court fee to be paid. Prosecution and victims of crime levies to apply.

33 By consent, pursuant to s32(3a)(b)(iii) of the Independent Commissioner
Against Corruption Act 2012, I order that all property seized in this matter during the
searches of Mr King's house on both 19 September 2014 and 21 January 2015 be
released to the Department of Planning, Transport and Infrastructure.

34 I make no order for compensation or costs.