



Sentencing Remarks & Judgments

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Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

Settled by His Honour Judge Slattery 4 December 2020 – Internet version

IN THE DISTRICT COURT

CRIMINAL JURISDICTION

ADELAIDE

FRIDAY, 4 DECEMBER 2020 AT 10.10 A.M.

BEFORE HIS HONOUR JUDGE SLATTERY

NO.DCCRM-20-1202

R V ABIGAIL REBECCA FOULKES

HIS HONOUR IN SENTENCING SAID:

Abigail Rebecca Foulkes, you are charged on Information and Summons of 3 July 2020 that on 19 May 2020 with your co-defendant Robert Bruce Harrap at Christie Downs in the State of South Australia you jointly deceived Mr Bernard Dang of the Courts Administration Authority by misrepresenting who was driving a motor vehicle, then being driven by Robert Harrap, at 6.13 p.m. on 24 March 2020 contrary to s.139 of the *Criminal Law Consolidation Act 1935*.

At that time, the vehicle driven by Robert Harrap was detected committing a traffic offence. In doing so, you aided and abetted Robert Harrap to avoid demerit points being applied to his driver's licence and a subsequent period of disqualification from driving. Those demerit points were applied to your driver's licence.

The maximum penalty for this offence is 10 years imprisonment. You have not spent any time in custody on this offence. You entered your plea to this offence on 27 July 2020. I was told at the time of submissions that you were entitled to a discount of up to 40%. This was consented to by the Director and no submissions have been made by the Director that you should obtain any other discount apart from a discount of up to 40%.

At the time of the offending, you were a police officer and you were in a personal relationship with Mr Harrap. You were an acting sergeant of prosecution services and you were based at the Murray Bridge Police Station. On 20 April 2020 Mr Dang, who is employed by the Courts Administration Authority, advised Mr Harrap that an expiation notice had been received in respect of a driving offence at Verdun. On 19 May 2020 and with your agreement, Mr Harrap emailed Mr Dang identifying you as the driver of the vehicle for the Verdun offence.

You provided Mr Harrap with your driver's licence details including your date of birth, your licence number, and of course your residential address. Mr Dang then swore a statutory declaration that you were the driver of Mr Harrap's vehicle which was subject to the expiation

notice. That statutory declaration was then forwarded to the South Australian Police, of which you were a member. The information given to Mr Dang was a considered and deliberate lie on the part of Mr Harrap and you assisted in the perpetuation of that lie.

At all material and relevant times, you were a senior officer of the South Australian Police force. You had been recruited to the South Australian Police force from the police force of Great Britain. At the time, you were in a personal relationship with Mr Harrap and you had purchased a property at Mount Pleasant together. Members of your family also resided at that property.

Following receipt of the expiation notice from Mr Dang, the evidence satisfies me that the plan to nominate you as the driver of the vehicle was conceived by Mr Harrap. I have carefully scrutinised the text correspondence between Mr Harrap and yourself in the period between 20 April 2020 and 25 June 2020. I refer in particular to the text of 14 and 15 May 2020. You had been asked by Mr Harrap to allow him to falsely represent that you were the driver of the vehicle on that day. The psychological report of Ms Morrell of 29 June 2020 discloses that you vigorously and argumentatively refused to take the points. The texts followed the very unhappy clash between you and Mr Harrap in your home about two weeks prior to 14 May 2020.

Then, when the time approached for the payment of the fine and the identification of the driver of the vehicle, pressure was brought upon you by Mr Harrap to take the points and to obviate him losing his licence.

Importantly, on two occasions you said to Mr Harrap 'I don't really have a choice, do I?'. Plainly enough, you did have a choice, however, that rhetorical question was asked by you in the context of the act of taking the points and also your personal relationship with Mr Harrap.

His response was that you did not have to take the points but there would be consequences; he would be off the road for six months and that would present difficulties for his work and family commitments, especially those involving his eldest daughter.

Through your counsel, you submitted that at the time you felt a sense of guilt about what was happening. It has been suggested that this is somehow associated with the purchase of the property at Mount Pleasant. However, I think that is only a minor consideration because a loss of licence would be a major disruption no matter where you lived. That said, there are always ways and means to overcome any such disruption to one's personal arrangements.

I accept your counsel's submission that, at the time, you did not again refuse the entreaties of Mr Harrap and that there was emotional pressure upon you. However, at the time you were a senior serving police officer.

It is suggested that, constructively, you had no choice in the matter. I am unable to accept that submission. You were putting a rhetorical question to Mr Harrap. You knew that what you were doing was wrong and that it constituted an offence. No doubt you were under considerable emotional pressure. You were inviting Mr Harrap to tell you not to do something that you knew was wrong. You left the decision to Mr Harrap. That choice distinguishes your position, notwithstanding that I accept that the whole of the circumstances

occurred in an emotionally-charged context in the background of a relationship that meant a great deal to you.

Your counsel submitted that you felt, at the very least, that you were left with no real choice but to help Mr Harrap. Again, I am unable to accept that submission. In the earlier conversations, you made it very clear to Mr Harrap that you would not assist him. You told him that you were not happy to accept more points but you later put the question to him that you did not have any real choice '...do I?', and you allowed Mr Harrap to make the decision for you. I accept that you did so in the context of your relationship and that you put the needs of your domestic partner before your own. However, that is the context in which this offence occurred. You allowed Mr Harrap to make the decision for you and although you were a strong, principled and assertive professional, you allowed him to make a decision that led you into the commission of an offence, the consequences of which you fully appreciated.

As your counsel, Mr Handshin, submitted that you should have rejected Mr Harrap's request because you must have appreciated that what he was asking you to do was unlawful and deceptive. It was the antithesis of your professional duties and responsibilities.

Another distinguishing feature here is that you always knew that Mr Harrap was asking you to commit an offence. This is borne out by the report of Ms Morrell who wrote that you told her that you never actually said "no" to Mr Harrap but you hoped that he would do the right thing and that you felt bullied.

I accept that when Mr Harrap said words to you to the effect that he would not be able to work or see his eldest daughter, you would have felt pangs of conscience and emotional pressure. However, on reflection, that is not a justification for committing an offence, nor does it amount to mitigating circumstances.

I accept that as a result of your own position, you did try to make people happy, to retain relationships and to avoid failure. However, you knew that what Mr Harrap was asking you to do was an offence and a breach of the criminal law. Therefore, to put the rhetorical question to him that you had no choice was no different from accepting that you were involving yourself in criminal conduct and an offence at the behest of Mr Harrap. Any inability of Mr Harrap to get himself to work or to any other place was a situation that had to be dealt with at the time. No consideration appears to have been given to alternative solutions. This is very important in the context of your position as a senior police officer.

I accept that you struggled to say no to the people that you love and you were subject to considerable emotional pressure by Mr Harrap. Despite that, I also consider that your position stands separately because of your role and position as a senior police officer, your knowledge that you were being invited to commit an offence and your failure to address the issue in respect of which you were being placed under emotional pressure.

I accept that you feel great shame and that you are extremely remorseful for your behaviour.

I have closely read the report of Ms Morrell which I have referred to earlier. I accept that you are now experiencing severe levels of depressive symptoms and physiological arousal and anxiety and severe to extremely severe levels of stress. I have observed you present in this Court with marked anxiety and tension symptoms.

In her report, Ms Morrell opined that although you never said “yes” to Mr Harrap to allow him to use your licence, you instead provided your licence details hoping that he would do the right thing and not involve you in the offending. I would accept that has occurred in the context of the emotional pressure that he was placing on you but I reiterate that over a period of several weeks, you had the chance to reflect upon your position. It was some weeks between the time of your first discussion with Mr Harrap when you refused to take the points and commit an offence and the time when you became aware that he was under pressure and that he had to deal with the requests from the Department. Therefore, this was not a spur-of-the-moment thing when you were being submissive, people-pleasing and had difficulty saying “no” in order to keep your partner happy.

I also accept the opinion expressed by Ms Morrell that as a result of your life experience, you had low self-esteem, a fear of being abandoned or rejected and a need to please people. Ms Morrell opined that relationship psychology can cause personal damage and in your case, it resulted in this offending behaviour. However, she also said that it needs to be reiterated that it is not her opinion that your intimate or domestic situation in any way impacts upon your professional life. These two worlds operate independently, that is, notwithstanding the pressure that you were under, it remained your decision not to rebuff Mr Harrap. You assisted Mr Harrap to commit a crime, but you told Ms Morrell that your thoughts were in a different place even though you knew that, from the outset, his conduct was criminal and constituted an offence.

I turn to your personal circumstances.

You are 48 years of age. You were born in the United Kingdom and you lived there until 2007. You emigrated to Australia in 2007 with your now ex-husband and your daughter.

You joined the South Australian Police Force soon after emigrating.

At the age of 15 years, you suffered an extraordinarily traumatic life event. The report of Ms Morrell details the life-changing effect this event had upon you. However, you were able to complete your schooling, commence a university degree in accounting and then change to a law degree which you completed. You did not complete your practical legal training and did not practise as a lawyer.

You married in 1997 and your daughter was born in 1998.

You have had a highly successful career in the South Australian Police Force. You have rapidly progressed through the ranks until in 2017, you moved to the Murray Bridge Police Station where you assumed the role of senior supervising prosecutor. You fulfilled that role until July 2020.

In that role, you worked with a broad range of stakeholders. You have always been dedicated to your work and you have always been a respected prosecutor.

Your father passed away in September 2017 and in October 2017, you permanently separated from your husband. Your marriage had been under strain for some time.

You had first met Mr Harrap in 2009 and following your separation, Mr Harrap again made contact with you. Later you commenced to live as partners and the two of you purchased the property at Mount Pleasant. That is connected with your love of equestrian sports and to provide the best opportunity for your daughter to pursue her career in equestrian events. The location of that property is some distance away from any Magistrates Court especially the Christies Beach Magistrates Court at which Mr Harrap was then working.

You were suspended from your role without pay from 9 November 2020.

On 27 November 2020, your appointment with South Australian Police was terminated. I have taken that into account in my assessment of the extra-curial consequences of your offending. However, I am unable to place significant weight on that matter because this result was inevitable from the time of your guilty plea. On the day that you entered your plea, your career in the police force effectively ended. I am now asked to take this into account on the question of your future employment.

I accept that your prospect of future employment is deleteriously affected but that is also the result of your plea to the offence committed at a time that you were a senior serving police officer. Your decision to become involved in the offences has had such a profound effect upon your life.

Your counsel, Mr Handshin, submitted that under s.24 of the *Sentencing Act*, a conviction should not be recorded. It was first submitted that your role as a police officer and a prosecutor was neither integral to nor related to your offending. Although that is factually correct, I gain no assistance from that submission. At that time you were a serving police officer who committed an offence in the knowledge that it was an offence. You did nothing to prevent Mr Harrap from using your licence to commit the offence, notwithstanding that I accept that you were under a considerable emotional pressure from him at the time. I accept that he took advantage of you. I accept that on a number of occasions you expressed to him that you had no choice in the matter. However, you said to Ms Morrell that although you never said no to Mr Harrap, you hoped that he would do the right thing and you felt bullied. I accept that you were under great emotional pressure at the time but I am unable to give that aspect the significance contended for by your counsel.

I also accept that the offending occurred in the context of an intimate domestic relationship that was tainted by emotional pressure. Although the conduct did not exploit or utilise your professional powers or privileges, it required you to exercise judgment in a way that was consistent with your position and your role to act in the best interests of those you swore to protect.

I am unable to separate your role as a police officer from your offending when you knew that you were aiding and abetting Mr Harrap to commit an offence and took no steps to avoid that eventuality. This is part and parcel of the responsibilities of any senior public official such as a police officer.

Although I accept that your offending was committed in the context of your domestic relationship, and not in the course of your duties, that does not assist you. You appreciated the wrongfulness of your conduct and the inconsistency between your failure to refuse the request and the regulation and punishment of driving offences.

I have closely reviewed the decision of the Court of Criminal Appeal in *R v Stubberfield* (2009) 106 SASR 91 at [43]-[47].

I accept that there is a potential impact on your future. I accept that there will be a deleterious impact on your employment. This is an important and relevant factor to be considered. I have done so. However, your career in the police force has ended. That is the case even though I accept that you will continue to experience the ignominy of the effect of this matter for some time.

However, as Stanley J said in *Police v Watson* [2016] 125 SASR 212 at [22]-[24] '...whether good reason exists involves an evaluative assessment...'. In making that assessment, I accept that your offence was out of character. I accept that it is unexpected and would never be repeated. I also accept that you have a substantial family network. Your family, your friends, your professional colleagues and acquaintances have all rallied around you. You have otherwise been an exemplary police officer and a great contributor to society.

Notwithstanding, I am of the view that in your particular position, the committal of this offence and its ramifications is the type of offence that calls for the recording of a conviction.

I do not consider, in your case, the social prejudice against conviction for a criminal offence is so grave that you will be continually punished in the future, well after the appropriate punishment has been received.

I consider that a failure to record a conviction here would give rise to public disquiet about the integrity of the process of criminal justice. Your status as a senior police officer was of great significance. It is always necessary to maintain the highest reputation possible for the integrity of that police force. To do otherwise would be to diminish respect for the rule of law in our community.

You fully appreciated the seriousness of your offending and you understood the significance accorded to your conduct by law especially for someone of your rank and experience. I therefore am unable to accept the submission that this deception falls at the lower end of the scale of relative seriousness.

I think there are two considerations.

The first is that you understood that the person who was the architect of this conduct was your partner, Mr Harrap. You knew that Mr Harrap was a serving judicial officer. You were a senior serving police officer. You held a senior prosecuting role. You were completely aware of the offence that you were committing but you blithely accepted the possibility that Mr Harrap would use your licence in order to avoid the imposition upon him of the suspension. You were aware of his intentions from your first conversation about the expiation notice with him in which you refused his request.

You then became aware of the pressures upon him as time drew near for him to identify who was the driver of the vehicle. You not only acted in concert with Mr Harrap in the context of your personal relationship but also in the knowledge of your professional position.

Having regard to the content of the report of Ms Morrell, I accept that to some extent your acquiescence is explained as a by-product of your psychological profile. However, you

were a woman of 48 years who has had a broad range of life experiences. The decision you made or, alternatively, the decision not to make a decision is inconsistent with the whole of the function of your role and the responsibilities that fell upon you as a senior police officer. You were not in a position where you could, for any reason, leave this decision to another person, especially Mr Harrap. It was always your decision. The consequences of your decision have been devastating.

I have read and taken into account all of the references and materials filed on your behalf. They speak glowingly of you as a good and decent person. I accept them all but I am not satisfied that, in your circumstances, and having regard to your character, antecedents, age, mental condition or any other extenuating circumstances, good reason exists for not recording a conviction. I have, therefore, decided to record a conviction upon your guilty plea.

In relation to your sentence, I am satisfied that, having regard to the whole of the discussion above, an appropriate sentence is that you be placed upon a bond in the amount of \$200 to be of good behaviour for a period of 12 months. The conditions of your bond, if you are willing to enter it, are as follows.

- 1 That you be of good behaviour and comply with all of the conditions of the bond.
- 2 That you appear before a court for sentence on the offence if you disobey any of the conditions of the bond.
- 3 That you do not leave the State for any reason except in accordance with the written permission of the chief executive officer for the Department of Correctional Services.
- 4 That you do not possess a firearm, ammunition or any part of a firearm.
- 5 That you submit to tests, including tests without notice for gunshot residue, as may be reasonably required.

Abigail Rebecca Foulkes, are you willing to enter into that bond?

PRISONER: Yes.

BOND ACKNOWLEDGED

ADJOURNED 10.33 A.M.