



# Sentencing Remarks & Judgments

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SOUTH AUSTRALIA

# **MAGISTRATES COURT OF SOUTH AUSTRALIA**

(Criminal)

## **DIRECTOR OF PUBLIC PROSECUTION (STATE) V WANG**

### **Remarks on Penalty of Magistrate White**

**28 April 2017**

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Informant: DIRECTOR OF PUBLIC PROSECUTION (STATE)  
Prosecution: MR A WILSON  
Defendant: DAYANG WANG  
Counsel: MR S APPS, WITH HIM MR I MARGATICH

Hearing Date/s: 28/4/17  
File No/s: AMC-16-14258

## DIRECTOR OF PUBLIC PROSECUTION (STATE) V WANG

### Magistrate White Criminal

1           You are 44 years of age. You are married with two children who are ten and eight and your wife and children live in Adelaide. You are married to a woman who had a very good career as a journalist but when you came to Australia, particularly Adelaide, she found life very hard and isolating.

2           You are a spectacularly successful research Professor with a worldwide reputation of excellence in the scientific world. You have a lot more to achieve it seems and you are making progress. You are currently employed at the Royal Melbourne Institute of Technology, having moved there after resigning from the University of South Australia in June 2015 because of this matter.

3           I have received your Curriculum Vitae that shows you have tenure at RMIT and you are, in very basic terms, researching the separation of oils from water to assist cleaning procedures worldwide including for the awful environmental situation of an oil spill. Your research also involves helping industry waste water recycling.

4           You have pleaded guilty that on 13 December 2013 you wilfully made a declaration knowing that declaration to be untrue in the material particular as to who was the driver of your vehicle when it was detected doing 69 km/h in a 60 km zone in November that year. It was a \$215 fine that was sent out. That included a \$60 victim of crime levy.

5           You then involved a student in a lie that was sworn by you when you nominated the student as the driver. You knew that your wife was the driver. You involved an innocent Justice of the Peace in the lie. You involved a student who was a family friend.

6           You had heard through your social network in South Australia that very often people do nominate others to take responsibility in such situations and it was not a big issue to those that you knew. You and your wife paid the fine. The offence was done, it seems, because your wife was at that stage in very poor mental health and felt very isolated. It seemed that this was a situation that caused her further concern. As I said, at the time she was struggling. She has now improved and is happily engaged in the community in South Australia, particularly through her social involvement of the social network of parents in the school your children attend. She is also now an accomplished artist.

7           It is sad to see such an outstanding man like you before the Court today. You lost your job by resigning from the University of South Australia. In part of your correspondence with the University of South Australia you said this:

I admit that I asked students for their drivers licence details and their personal account details in relation to certain police expiation notices and then in some cases that had the effect of transferring the criminal responsibility to them.

In fact, you said you felt it was ‘just a favour that I asked of them’.

8 Your sentence is only for the one crime that you have admitted but I find it has to be in the background of you, at the very least, attempting to have a method of dealing with expiation notices in the same way with other students should it arise.

9 I have heard the submission that no conviction should be recorded for this offence which has a four year maximum penalty. That is expressly stated in bold on the very form that you signed.

10 You seek under s 16 or s 39 of the *Criminal Law (Sentencing) Act* to have no conviction recorded.

11 I referred your counsel to two recent cases, more particularly the case of *Police v Dolphin* [SASC] 3, an appeal conducted by Peek J. Mr Dolphin was a serving Police Officer with no prior convictions who, against advice of his superior officer, falsely nominated his mother in a situation very similar to yours, as the driver of the vehicle when he was in fact driving. He had poor mental health at the time of the offending and it led to panicked and desperate behaviour due to his pressured mind. Peek J said this about the sentence passed by this Court which was a period of suspended imprisonment:

His Honour correctly observed that this was a serious offence and that generally the system of law relies upon people who have taken an oath or affirmation to proceed to tell the truth and that, particularly in the present type of case, untruths may be difficult to detect. In such circumstances, general deterrence had a significant role to play in sentencing.

12 You are not a Police Officer like Mr Dolphin was but you are a very intelligent man who must have known by the fact that someone, here one of your students, had to be involved in the deception, otherwise it would have failed. Such extra pressure on a student of yours was unfair and gave rise to a feeling that you were corrupting your students by making this request which affects your reputation and, of course, the reputation of the University. If you did not realise this at the time then you must have been completely self-absorbed in what you were doing. You certainly realised the enormity of your actions by the time you resigned from the University of South Australia and I give you credit for your insight.

13 You have pleaded guilty. You are remorseful. You resigned without fuss. You continue to be committed to your work and obtained a tenure at RMIT. I have read your Curriculum Vitae as I said and am enormously impressed by what you have achieved at the age of 44.

14 You now commute to work weekly, returning on weekends and therefore leaving your home life only to be lived on weekends.

15 Your family life, however, in particular your wife’s position in the community, is much better than it was as at December 2013 when you signed that form on that day in an ill-advised piece of behaviour.

16 You can be described as an eminent man in your field of scientific research and I think you deserve such a title.

17 You have done a serious crime. You are unfortunately a man who needs to be the subject of general deterrence. The Courts rely on people who give evidence on oath either before a Court or outside a Court by swearing statutory declarations or affidavits. The Courts rely on people telling the truth and giving their evidence based on their best memory, even if their memory is faulty or unreliable.

18 I have to consider all sentencing options. I must be satisfied that only a period of imprisonment is a suitable punishment if that is to be imposed. In other words, I have to consider all other sentencing options short of that before I do so. I also have to consider, naturally, the question of whether a conviction should be recorded.

19 I now turn to the very recent case of *Playford v The Police* [2017] SASC 26, a decision of Vanstone J of 9 March 2017. That was a case of a former legal practitioner asking on appeal for no conviction to be recorded for a situation of managing or keeping a brothel.

20 Her Honour in her usual concise and helpful fashion has talked about the situation of the two ways in which a conviction may not be recorded under the *Criminal Law (Sentencing) Act*. I quote from paras.25 and 26:

[25] The structure of ss 16 and 39 of the Sentencing Act implies an expectation that in the usual case a conviction will be recorded. The recording of a conviction constitutes an important part of the imposition of a penalty. It forms part of the deterrent effect of a sentence and marks the community's condemnation of the offender for his conduct. In addition, the recording of a conviction acts as notification to potential employers and others who may have a valid reason for knowing the character of the offender. Nevertheless, there will be cases where the likely impact of a conviction upon a person's employment prospects will be out of proportion to the seriousness of the offending (*MacGregor v Police* (1995) 66 SASR 269 per DeBelle J) and where the totality of the circumstances of the offending and the offender will persuade a court that there is justification for departing from the usual course of recording a conviction.

[26] Courts will be alive to the potential effects, both immediate and future, without need of supporting evidence; although the impact of a conviction on a particular position, or situation, or aspiration might need to be verified. I do not suggest that there was a need for supporting material in the present case.

21 Based on her Honour's guidance, I also find in this case I do not need extensive sentencing material from you to understand the impact of a conviction on you and particularly your work.

22 Your work is capable of having a worldwide standing and therefore travelling worldwide would be helpful. You have achieved so much already. As I said, it is very sad to see you before this Court. General deterrence for this type of offending must be weighed against what you want.

23 The Courts have to take a strong view against this type of offending which is what I have gleaned from the comments of Peek J.

24 I now come to sentence.

25 Considering all sentencing options, I find that, firstly, general deterrence must be emphasised in your sentence. People from all walks of life need to understand the significant nature and act of signing a statutory declaration swearing the contents of that declaration to be true.

26 I am also confident that you will not commit any type of offending of this type or any sort again. Therefore, the balance of what I should do I have found very difficult. I have come to this conclusion, that given your guilty plea, immediate acknowledgement of what you have done, the fact that you, at the time, were under stress with your family life and that at the time you were under the impression from people who were wrong, that this was a satisfactory way of dealing with fines, I find that your offending is not as serious as that of Mr Dolphin's. Mr Dolphin was specifically warned not to do what he did. You were not.

27 I have considered the factors I have already mentioned in these sentencing remarks about the effect of what you did and the effect on others, such as putting pressure on your students who are also mainly your friends, to act illegally on your behalf. As I said, that can lead to all sorts of thoughts from people to do with corruption. I note that you are definitely not a corrupt person in that sense but that may have been an affect on what you did in terms of what people thought of you and the University. I accept it is not a situation that you thought through properly, if at all.

28 Therefore, I find that there are sentencing options other than a period of imprisonment in this case.

29 I am going to place you on a bond to be of good behaviour for 12 months. That bond will be in the sum of \$1,000. The question is whether a conviction should be recorded.

30 This has been a difficult question for me to decide. I find that you pass both the tests of ss 16 and 39, although now having imposed a bond it is only s 39 that is operative.

31 For the reasons that I have discussed concerning the effect of what you have done, I find that general deterrence cannot be overlooked to the extent of granting you what you want.

32 I therefore record a conviction with this bond.

33 You will be convicted and placed on a bond to be of good behaviour, as I said, in the terms I have set out.

34 You narrowly avoided me imposing a period of imprisonment which I would have suspended. You must understand, as I think you do, that the effects of what you did when detected by the Courts, have to be the subject of a situation where the Courts cannot overlook what you have done despite who you are.

There will be court fees, victim of crime levy and a prosecution fee.