



Sentencing Remarks & Judgments

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Settled by Her Honour Judge Liesl Chapman 14 May 2020 – Internet version

IN THE DISTRICT COURT

CRIMINAL JURISDICTION

ADELAIDE

THURSDAY, 14 MAY 2020 AT 9.07 A.M.

BEFORE HER HONOUR JUDGE CHAPMAN

NO.DCCRM-19-1341

R V MICHAEL CHARLES ASKER

HER HONOUR IN SENTENCING SAID:

Michael Charles Asker you have pleaded guilty to the offence of bribery, the maximum penalty for that offence is 10 years imprisonment. At the time of your offence you were employed by the Department of Correctional Services as case management coordinator based at Yatala Labour Prison. You had been employed by the department in various capacities since 1992.

In August 2018, investigators from the ICAC and SAPOL installed tracking, listening and optical devices in your car. Those devices were activated on 27 August 2018.

On 5 September 2018, you were detected driving to a reserve in Oakden. You remained in your car whilst you spoke to a male, you asked him whether there was suboxone in the packets and told him that it takes you a long time because the metal detectors pick them up. You said you would take them out of their containers but asked him to keep that in mind for next time. You said you would deliver the next day. You then put a brown paper bag on your front passenger seat. You and the male shook hands before you drove away from the reserve. You then realised there was no money in the bag. You returned to the reserve and spoke through your car window. It seems you were reassured about why there was no money there. You then drove to Bunnings where you bought a bottle of superglue. You delivered the drug to the prisoner at Yatala as well as the bottle of superglue.

Through your counsel you admit that on 5 September you met with the man and picked up a package which was secreted in a hamburger bag. You understood that it was suboxone. The strips are housed with alfoil wrapping. You had learnt that that would trigger detection devices in the prison. That is the context in which you told the man that he would need to repack it on the next occasion. At that meeting no money was exchanged. You were told that you would be fixed up later.

You admit that you passed the drug on to a prisoner in Yatala. You think there were at least a dozen strips. You also took in the glue. You are not sure what the prisoner intended to do with that, you think it might have been to reseal food packaging to secret illicit substances. You knew there was a market for the drug within the gaol and it would probably be supplied to other prisoners. You say you were eventually paid \$250.

On 8 November 2018, the surveillance devices detected that you returned to the reserve, left your car and then returned to your car about four minutes later. The next day you went to the reserve again, parked in a similar spot and then later returned to the car. You then counted a large amount of cash in your car.

The surveillance equipment also recorded that on 1 December 2018 you met a man who was sitting at a park bench. You left carrying a coffee cup. You went to your car and counted a bundle of cash.

On 3 December 2018, the police searched your car in the car park at Yatala Labour Prison. There was a parcel inside the pocket of the driver's side door. It contained six grams of powder containing methamphetamine and Alprazolam. That is the parcel you received from the man on the evening of 1 December. When the police went to your home they found just over \$5,000 in cash in a brown leather purse in a chest of drawers in the main bedroom.

Through your counsel you admit you met the same man again on 1 December. You admit you received an empty coffee cup with \$500 in it as well as a package which was to go to the same prisoner. That package was the one located by the police in your car on 3 December. You say you did not know what was in that package but you were not surprised to hear that it was in fact methylamphetamine.

Your phone was analysed. It contained messages to the man you met at the reserve. The first recorded contact was 5 August 2018. When you were interviewed by the police you denied knowledge of the content of the packet located in your car. You did tell the police the pass code to your phone. You told the police your wife was unwell and her recent medical surgery had been expensive.

Turning to you and your personal circumstances, you were born in Melbourne in 1954. Your childhood was difficult because your mother had bipolar disorder. You struggled at school. Your parents separated when you were about 17. Your father took you to the Army recruitment office when you were 17 in Melbourne in 1971. You joined the Army and you loved it. You welcomed the certainty and the discipline.

In early 1973 you were posted to Darwin. Following Cyclone Tracy at the end of 1974 you were involved in clearing houses, searching for people who had been killed in horrific circumstances as well as euthanising injured animals. That experience still lives with you and you have not received any professional help in regard to it.

By 1992 you had spent about 20 years in the Army. Because you had a young family, you decided a different work path would be more suitable, you joined Correctional Services.

Your counsel submitted that you were immediately troubled by what you perceived as a lack of professionalism within the department. You were disturbed by the treatment of prisoners and you felt that blind bureaucracy was put before their welfare. Your counsel says that you did what you could to try and make up for that by running such things as cooking classes at the Adelaide Women's Prison in your own time and conducting First Aid programs there.

You ended up being reassigned to Yatala Labour Prison as a case management coordinator. You were not happy within the department and I am told that your feelings became amplified. You felt that your work was made meaningless and negated by what you saw as purposeless bureaucratic decisions. You began to allow yourself to be prevailed upon by other prisoners. You ended up being introduced to a prisoner who arranged for you to be involved in this conduct for which you are now before the court.

Your counsel has submitted that your main motivation was not money, though it might have been had it gone on. You knew what you were doing was wrong. You are unsure why you were doing it but in hindsight put forward a possibility that it was an act of rebellion because of your discontent in the workplace. You say perhaps it was malice towards your employer or perhaps misplaced loyalty to prisoners, but you acknowledge that none of those possible reasons are acceptable. You know that there is no proper explanation for what you did, let alone an excuse.

Your counsel also submitted by the time of this offending you were fatigued. Your wife had a longstanding illness over the prior five years, which was no doubt distressing for everybody. You had also taken on a lot of commitment in coaching swimming over the prior 12 years. You did that both before and after work.

As a result of this offending you have lost your job within the department and were deregistered as a coach by Swim SA. In February last year, you found new employment working in traffic control during periods of roadworks.

I have been provided with many character references from your family and friends. They all speak of your prior good character, your willingness to help out in the community and your devotion to your family and contributions to the wider community. All of them say how difficult it is for them to believe you did what you did. They say it is very out of character. I note you have no prior criminal history.

Your offending represents a serious breach of trust. By accepting money to take drugs into prison, you breached the trust of your employer and of the community. You have let yourself down, as well as the community which relies upon people in your position to do the right thing in order to maintain confidence in the system. You rely now upon your prior good

character to ask for leniency. I will take that prior good character into account, but it cannot carry great weight, because it was the fact of your good character that enabled you to engage in this offending behaviour. The community expects prison officers to have integrity, and to not cross the line.

The need to protect the safety of the community is paramount in sentencing you. The distribution of illicit drugs threatens the wellbeing of individuals who become addicted to those drugs, as well as the welfare of the general community. You know that there are many people in gaol because of their use of drugs, which has fuelled their criminal activity. Those crimes include ones of violence, dangerous driving on the roads, as well as trafficking in drugs. All of those crimes represent a danger to the community. It is very serious that you were bribed to feed the addiction of prisoners, and to feed the ability of some prisoners to gain advantage by supplying drugs through the prison system.

General deterrence is also an important factor. The sentence must serve the purpose of deterring others in similar positions of trust from abusing their positions in this way.

Personal deterrence is always an important factor, although I think the process to date has been a deterrent for you. You have lost your position in the department, lost your position as a swimming coach, and no doubt lost the respect of many. It is a concern that there is no sign from the evidence before me that you were intending to stop what you were doing. It is fortunate that you were caught.

I accept that you now have insight into what you did, and that you are sorry for your actions. Your rehabilitation is also an important factor in sentencing. I note that you have been working toward that already, in that since February of last year, you have been working and contributing positively in the community. Overall, I think you have reasonable prospects for rehabilitation.

There is no doubt a sentence of imprisonment is warranted because of the seriousness of the offence. I sentence you to three years imprisonment. That will be reduced by 15% because of your plea of guilty to a sentence of two years, six months and 19 days. In fixing a non-parole period, I place particular weight on the fact that you have no prior convictions, that you have pleaded guilty, that you have shown contrition, remorse and insight into your offending, and that you have been a contributing member of the community through your employment since last year. I also think it relevant that you will do your time in gaol harder than most because of the position you held in the system. I fix a non-parole period of 15 months.

Your counsel has asked that I suspend the term of imprisonment. He refers to the various personal circumstances which I have just mentioned. Your offending took place over a fairly short period of three months, however during that period you delivered into the prison system strips of suboxone on at least two occasions and a tube of glue. You were prepared to

be bribed to do that. That course of conduct reduces leniency in sentencing you. You were caught before you delivered into the system a mixture of methamphetamine and alprazolam. Taking that contraband into prisoners for a reward seriously undermines the functioning and safety of the prison. What you did was bad on so many levels. I think the seriousness of the offending is such that I am not able to find good reason to suspend your sentence.

I turn then to the question of whether I should order that the sentence of imprisonment be served on home detention. All of your personal circumstances I have just mentioned are important factors to consider, and to be weighed against the seriousness of your offending. I have received a report that your proposed place of residence is suitable and available for your detention. I need to consider whether the making of such an order would, or may, affect public confidence in the administration of justice. Home detention is a less punitive option than going directly to gaol. It is, nevertheless, a significant restriction on your liberty. You must remain at your house, unless you have permission from the department to leave it. You would be able to continue to work, and you would be able to thereby continue to positively contribute to the community. I do think time in gaol would be particularly harsh for you because of your prior position, and the circumstances of your offending, but you must understand that that harshness on its own would not cause me to order home detention. If your offending had gone on for longer before you were caught, I think home detention would have been ruled out. All matters considered, however, I do not consider a home detention would or may affect public confidence in the administration of justice. That then leaves me a discretion to order that the sentence be served on home detention. It is a close call, but ultimately, I have decided to make that order.

Mr Asker, you will serve that term of imprisonment on home detention. There are a number of conditions to that home detention which are set out in the home detention order for you to read. They include that you will require permission from the department to leave your home. I have put in there a condition that you will be permitted to leave your home for your employment, and of course the usual conditions regarding emergencies. Would you come forward and enter into that order, please.

BOND ACKNOWLEDGED

HER HONOUR: Mr Asker, it goes without saying that you need to read those conditions very carefully. It requires you to return home directly, and you will be electronically monitored for the period of your home detention. I put in there that you are permitted to leave your residence in order to continue your employment, but you will see that for other absences you will require the permission of the department.

ADJOURNED 9.26 A.M.