



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 10.39 A.M.

BEFORE HIS HONOUR JUDGE SLATTERY

NOS.DCCRM-20-1182 & 20-1202

R V ROBERT BRUCE HARRAP

HIS HONOUR IN SENTENCING SAID:

Robert Bruce Harrap, you were charged on information and summons dated 3 July 2020 with your co- defendant Catherine Jane Moyse that between 10 May 2020 and 29 May 2020 at Adelaide you did conspire with each other for you, Robert Harrap, to improperly exercise your power or influence that you have had by virtue of your public office in relation to the matter of HNJ contrary to the common law and s.251(1)(a) of the *Criminal Law Consolidation Act 1935*. The maximum penalty for a breach of s.251 of the *Criminal Law Consolidation Act* is seven years imprisonment. The penalty for common law conspiracy is at large.

You entered your guilty plea to this offence on 27 July 2020. You are entitled to a discount of up to 40%. You have not spent any time in custody. No submissions have been made by the Director about the application of any different amount of discount. I will assume that the Director has made his decision on that topic and that he is content for the full amount of up to 40% discount is to be applied. This position pertains to the other charges.

You were further charged on information and summons dated 3 July 2020 with your co-defendant Abigail Rebecca Foulkes who is charged with aiding and abetting your offence that contrary to s.139 of the *Criminal Law Consolidation Act* on 19 May 2020 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 you at 6.13 p.m. on 24 March 2020 at Verdun. At that time the vehicle you were driving was detected committing a traffic offence. In doing so you obtained a benefit, namely avoiding demerit points being applied to your driver's licence and a subsequent period of disqualification from driving. The demerit points were applied to the driver's licence of Ms Foulkes.

You were further charged on information and summons that at 3 July 2020 with your co-defendant Melanie Jane Freeman who was charged as an aider and abetter, that contrary to s.139 of the *Criminal Law Consolidation Act* on 22 May 2020 at Christies Beach 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 which was then being driven by you at 3.36 p.m. on 11 April 2020 at Littlehampton. At that time the vehicle being driven by you was detected committing a traffic offence. In doing so you obtained a benefit, namely avoiding demerit points being applied to your driver's licence and a subsequent period of disqualification from driving. The demerit points were applied to the driver's licence of Ms Freeman. The maximum penalties for these two offences is 10 years imprisonment respectively. You have not spent any time in custody on these offences. You entered your guilty plea to this offence on 27 July 2020 and you are entitled to a discount of up to 40%.

I will deal first with the allegations concerning Catherine Jane Moyse. In 2008 you fathered a son with Ms Moyse. On the relevant date in 2020 you were aware of Ms Moyse's history as a solicitor, in particular her focus upon wills, estates and inheritance claims. On occasions she sought your guidance and assistance in such matters. Prior to being appointed a magistrate in 2007 you had undertaken some work as a solicitor in that area.

You have had limited involvement in the life of Ms Moyse and your son. You have allowed Ms Moyse to have the custody of your son. You see him on occasion and you pay some of his school fees. As a result Ms Moyse has had some dependence upon you for financial support and for emotional support in relation to the raising of your son. You have a continuing personal connection with Ms Moyse as a result of those matters.

You became aware from Ms Moyse that she was instructed to assist the son of a family friend, HNJ, in relation to a disqualification of his licence. HNJ had been caught for speeding whilst driving a motor vehicle. If he did not receive a reduction in demerit points, he would lose his licence for a period of time and his employment would be in jeopardy.

On 26 April 2020 Ms Moyse sought out your assistance about an appeal against the disqualification of the licence to seek a reduction of one demerit point. You informed Ms Moyse of the need to lodge an appeal against the disqualification. She lodged that appeal on 8 May 2020 at the Christies Beach Magistrates Court.

Ms Moyse was concerned about whether you could sit on the matter of the application if she was to appear on behalf of HNJ. She raised that issue with the registry staff of the Christies Beach Magistrate Court at the time that the appeal was lodged by her. A note was made upon the file by the registry staff. That note was known to and understood by staff who eventually directed the file to another magistrate as a result.

Ms Moyse raised the same matter of her concern about your position with you on two further occasions on 10 May and 13 May 2020 with the general query about whether you were in a position to hear the matter. You expressed a view on each occasion that you did not see any issue arising personally for you or that there was necessarily a problem. Ms Moyse accepted what you said.

Thereafter there was a number of conversations between you and Ms Moyse in relation to ensuring that you heard the matter. You gave some informal advice to Ms Moyse about how the appeal should be prepared and presented and you indicated if those steps were followed it would be sympathetically received.

Prior to the hearing of the appeal there were telephone conversations between you and Ms Moyse on 10 May 2020 and 13 May 2020. In the later call Ms Moyse asked to catch up

with you about the matter of HNJ coming on next Friday in the court. You gave assurances to Ms Moyse to the effect that you could hear the matter or that you did not see a problem with it. You were also aware that this was an area of practice with which Ms Moyse was not familiar. It is apparent to me that in all of these dealings, Ms Moyse trusted you both professionally and personally, having regard to the context of her overall relationship with you.

There were also further telephone conversations on 24 May in which Ms Moyse asked you to ensure that she appeared in front of you. She made other calls to ensure that the matter was listed before you because she had misunderstood the relevant court lists and then sent text messages to you to ensure that you did hear the matter. Ms Moyse understood that the matter was to be in the court's criminal list whereas it appeared in the civil list. This displayed her lack of understanding of the court processes. It is apparent that you were fully aware of the position that you were in as well as the absence of Ms Moyse's complete understanding about that position on that as a result of your conflict of interest, you were not in a position as a public officer to properly exercise the power of a Magistrate.

Despite this knowledge on your part, you gave a direction to the court registry staff which ensured that the file for HNJ was put into your list and so his appeal was heard by you. That was your decision.

You were also aware that after 24 May 2020 the mindset of Ms Moyse changed from raising a query about whether there might be a conflict in you hearing the matter to the position where she attempted to ensure that you heard the application. This included texts exchanged between you on the evening before the application was heard in which she was raising queries about whether you had ensured that you would be hearing the matter.

It is apparent to me that due to her inexperience and lack of familiarity with the court, Ms Moyse panicked because of her lack of skills as an advocate. She did not do court work; in this instance she relied upon what you were saying to her. This affected her judgment sufficiently for her then to attempt to ensure that you did hear the application. You also said to Ms Moyse that if there was a possibility of another Magistrate hearing the matter you would take steps to "plant the seed" for that Magistrate to grant the appeal in the event that you made a decision to not hear the appeal.

I turn to the circumstances concerning Melanie Jane Freeman. Melanie Jane Freeman was your Magistrates clerk at the Christies Beach Magistrates Court from February 2019. She worked with you earlier at the Adelaide Magistrates Court. On 11 April 2020 at 3.36 p.m. your vehicle was detected by a speed camera travelling at 68 km/h in a 60 km/h zone at Littlehampton. The offence attracted two demerit points for the driver and it generated an expiation notice.

On 1 May 2020 Mr Bernard Dang, a person employed by the Courts Administration Authority, sent an email to you advising that an expiation notice for that offence had been issued. It was directed to your vehicle. On 5 May 2020 you replied to Mr Dang and asked whether a photograph was available. Mr Dang replied on the same day and sent the photograph to you. That photograph showed only the rear of your vehicle. I am satisfied that you requested the photograph because you wished to ascertain whether it showed the identity of the driver of the vehicle.

On 5 May 2020 you sent a responding email to Mr Dang and informed him that it looked like your partner was the driver of the vehicle on both occasions but that you would have to confirm whether she was the driver on the second occasion. You knew that this was an untrue statement.

On 22 May 2020 you emailed Mr Dang and advised him that your magistrates clerk Ms Freeman was the driver for the Littlehampton offence. You then provided Ms Freeman's details to Mr Dang including her date of birth, licence number and address. Ms Freeman was not the driver of the vehicle at the time of that Littlehampton offence. You knew your statement to Mr Dang to be untrue. Following the receipt of your email, Mr Dang swore a statutory declaration that Ms Freeman was the driver of your vehicle which was the subject to the relevant expiation notice and that statutory declaration was then forwarded to the police. That is the basis of your offending.

I turn to some background matters concerning Ms Freeman. You were aware that in 2019 Ms Freeman suffered a panic attack at work and was required to take time off work. She was receiving pressure from other court staff. You gave her reassurance that when she returned to work in August 2019. As a result of a combination of circumstances, Ms Freeman was particularly isolated within the Christies Beach Magistrates Court. In your work, you had a very casual and over time an overly familiar relationship with her. You are well aware of the panic attacks which she suffered and that she was in a difficult domestic situation where she was supporting a very sick and injured husband. She was also suffering another serious medical condition.

The first time that you spoke to Ms Freeman about taking demerit points for you was for a prior offending which occurred in February 2019 on a trip between the Victor Harbor Magistrates Court and the Christies Beach Magistrates Court. In the middle of 2019 you attempted to persuade Ms Freeman to take those demerit points for you because you were at the end of your points. She refused. At that time, she reported your conduct to her superior but she did not receive any support apart from general advice.

You were aware from your relationship with her that you exerted considerable power and influence over Ms Freeman and that she may not be able to withstand the pressure that you imposed upon her. You continued to attempt to get Ms Freeman to agree to take those points. You eventually took responsibility for that offence and arranged to enter into a bond of 12 months under s.98BE of the *Motor Vehicles Act 1959* under which you were not to incur any further speeding offences for the period of the bond. If you did commit any further speeding offences in that bond period, then the period of your suspension would double.

In March 2020 you informed Ms Freeman that you had a further speeding fine. You confirmed to Ms Freeman that you were already on a good behaviour bond as a result of your 2019 speeding offending. You said that only eight months of those 12 months had expired. Then a few weeks later you informed Ms Freeman that you had another fine. You later approached her to take the points for you for one of those offences saying that you trusted her, were confident in her, and on that basis would she consider taking the points for you. You asked her to think about it and get back to you. You were aware of your position and your power and influence over Ms Freeman at the time. She reported your approach to her supervisor at the court. Later, and for a second time, you requested Ms Freeman to take the points for you based upon what you said was a level of trust and confidence that you had in her. You informed Ms Freeman that your partner, Abi Foulkes, would take the first further

speeding conviction. Ms Freeman did not get any assistance from her superior despite the second report.

Ms Freeman felt trapped and did not know what to do. There was no-one she could speak to. She was being bullied and taken advantage of by you at the time. She was isolated. Her career at the court was under threat. At the same time, your associated conduct with Ms Freeman became far more familiar and it contained sexual overtones. On occasions you jokingly suggested that you were having an affair with Ms Freeman. You assured Ms Freeman that if she agreed to your request then you would take all of the blame. You told Ms Freeman that if you were discovered you would probably lose your job. The next day Ms Freeman gave you her licence without saying anything to you. Then in a couple of days she received a letter from the Department of Transport which she gave to you and you arranged to pay the fine.

I am satisfied that you used your power as a Magistrate over Ms Freeman as a Magistrates clerk to pressure her into agreeing to cooperate with you to take the demerit points for an offence that you had committed. I am satisfied that she agreed to her involvement in that conduct as a result of the pressure that you had brought to bear upon her, the very exposed position that she was in through her difficulties as a Magistrates clerk at the Court and her ill health generally, particularly associated with her panic attacks.

I am satisfied that as a result of this pressure, Ms Freeman was in a position where she felt that she had no choice but to cooperate with you. She did so against her better judgment. In order to persuade and cajole her into cooperating with you, I am satisfied that you became more familiar with her and that you crossed the boundaries of proper behaviour and the necessary separation between a judicial officer and a chambers clerk. I am therefore satisfied that you overbore the judgment of Ms Freeman.

Ms Freeman has pleaded guilty to a single count of deception of Bernard Dang contrary to s.139 of the *Criminal Law Consolidation Act*.

I turn to the events in relation to Abigail Rebecca Foulkes.

At 6.13 p.m. on Tuesday, 24 March 2020 at Verdun, a speed camera detected you, Robert Harrap, driving a Holden motor vehicle at 60 km/h in a 50 km/h zone. An expiation notice was issued to the Courts Administration Authority for that infringement and there was a \$458 fine and a loss of three demerit points attached to that infringement.

On 20 April 2020 Mr Bernard Dang, as the person responsible for managing vehicles leased by the Courts Administration Authority, requested you to identify the driver responsible for that infringement. At that time you remained under the good behaviour bond under s.98BE of the *Motor Vehicles Act*, after earlier losing the maximum possible demerit points. The position remained that if you lost two or more demerit points whilst under that bond, the period of disqualification would be doubled.

Following the email from Mr Dang of 20 April 2020 you responded by asking Mr Dang whether there was any photographic evidence available. I again find that you did so in order to determine if the identity of the driver could be ascertained from the photograph. A copy of the photograph was provided to you; it disclosed only the rear of the vehicle. You informed Mr Dang that you would be chatting with 'the troops' tonight, indirectly suggesting that

family members may have been using the vehicle on that particular day. You knew that was untrue.

You informed your Magistrate's clerk, Ms Freeman, about that event and told her that you were going to ask your partner, Ms Foulkes, why she was driving so fast. At that time you were pressuring Ms Freeman to assist you by taking responsibility for the Littlehampton offence.

You subsequently deceived Mr Dang by falsely stating that Abigail Rebecca Foulkes was the driver of that vehicle at that time that the Verdun offence was committed. Mr Dang then completed a statutory declaration nominating Ms Foulkes as the driver at the time of the infringement and the expiation notice was then issued to Ms Foulkes. The fine was paid. This is the further basis of your offending.

At that time Ms Foulkes was a Sergeant of police and was based out of the Murray Bridge Police Station. She was the Acting Senior Sergeant of Prosecution Services at that police station. Ms Foulkes has pleaded guilty to a single count of deception of Bernard Dang contrary to s.139 of the *Criminal Law Consolidation Act*.

I have reviewed copies of the transcript of the SMS messages exchanged between you and Ms Foulkes between 1.15 p.m. on 14 May 2020 and 12.12 a.m. on 22 June 2020. On 15 May 2020 you sent an SMS message informing her that you do need her licence number, accompanied by the expression 'pretty please' and an emoji. This followed your request to Ms Foulkes to provide you with the details of her licence number in order for you to deceive Mr Dang.

It is apparent that Ms Foulkes was reluctant to assist you in this deception. In a responding SMS message she said 'Do I really have to have more points?' She was therefore not willing to succumb to your entreaties at that time. You responded within a minute telling her that if she did not want to or she was too uncomfortable, then no.

Two hours later Ms Foulkes sent you another responding SMS message. She said 'Am not thrilled about it to be honest as it pushes my points right up. I don't really have a choice, do I?' She then provided her licence number to you.

Five hours later you responded by saying that you were sorry and that you were aware that Ms Foulkes was not thrilled. She responded within a minute that she was not really thrilled but she had 'no choice, do I?'

It is apparent to me from this evidence that Ms Foulkes felt that she had no alternative but to provide to you her licence number so you could use that licence number to deceive Mr Dang. As a serving police officer and as a sergeant of police and an acting senior sergeant of prosecution services, she knew the consequences of providing her licence number to you and that you would both be committing an offence. You were aware of her position.

You responded to her in another SMS messages within about 20 minutes by saying 'You do have a choice. The consequences will include me being off the road for six months and getting to and from work let alone anything including (your eldest daughter) will be a major headfuck, but I don't want this to be an ongoing sore point. Not worth it if it is. We either get comfy enough with it or we don't and yes, all my fault'.

I am satisfied from this evidence that you were putting emotional pressure upon Ms Foulkes as a result of your relationship with her and in relation to the care of your eldest daughter.

Ms Foulkes responded with the message 'Okay'. I am satisfied that Ms Foulkes felt compelled to assist you. That is borne out by the transcripts of the telephone calls between you and Ms Foulkes at that time and later, including a telephone call on 25 June 2020 where at p.4 line 24 Ms Foulkes asserts that she is furious about the whole circumstances, and again at p.6 line 11, she expresses her extreme anger with you.

I am satisfied on the evidence that Ms Foulkes was a reluctant participant in these events. However, she was feeling both the emotional pressure of her relationship with you and the emotional pressure inflicted upon her by you in relation to your eldest daughter of which she was fully aware and she decided to agree to your proposal. That said, she was aware that she was committing this offence while she was a senior serving police officer. Her conduct was the antithesis of that role and appointment. That conduct of both of you led directly to the deception of Mr Dang.

In summary, the three aspects of your offending have all involved women with whom you have or have had a strong personal and professional relationship. You had a very brief relationship with Ms Moyse. She trusted you and sought your counsel from time to time. In acting for her client in the licence application, she was operating in an environment with which she had no familiarity. She notified the Magistrates Court that she thought that you may have had a conflict. That was noted upon the file. That is why the file was given to another magistrate. When you became aware of that you asked for the file, read it and announced that you did not have a conflict of interest. This was after informing Ms Moyse on two prior occasions that you did not think that it was a problem.

In the days leading up to the hearing she had communications with you in which she wished to ensure that you were the magistrate hearing the matter, but ultimately the question of who would hear the matter was a matter for you not Ms Moyse.

In my view, and on the basis of the facts put before this court, the conflict of interest had been raised with you. You were informed that the court understood that you had a conflict. You took the file and announced that you did not have a conflict of interest or such a conflict as to be sufficient for you to ask another magistrate to hear and determine the matter. That was an issue entirely for you.

The dependency of Ms Moyse upon you from the outset is palpably clear. She obtained your assistance preparing for, lodging and pursuing the application. You knew that she was relying entirely upon your advice and its implementation in the pursuit of the application. You were aware of her relationship with you, your paternity of your son, your connection with her family and your attendance from time to time in some activities involving your son. In many respects, she had a relationship of dependence upon you as a result.

Your relationship with Ms Freeman was multifaceted. She was in a very difficult situation in respect of her work at the court. Her position was fraught as a result of the combination of circumstances that I have earlier outlined. You knew of her difficult home

circumstances. In 2019 you had attempted to cajole Ms Freeman into taking the penalty of some points from another speeding offence for you. As a result of her refusal, you entered into a good behaviour bond. The speeding offences in which you involved Ms Foulkes and Ms Freeman breached that bond with the effect that there would be a doubling of the period of the licence disqualification.

In 2020 you twice attempted to cajole Ms Freeman into taking the points for you. In that time, her personal position continued to deteriorate. I am satisfied that you were aware of her deteriorating position. I am satisfied that you attempted to be more intimate with Ms Freeman in your relationship with her as a Magistrate and a Magistrate's clerk. You inveigled Ms Freeman into accepting the burden of your offending. This was an extraordinary breach of trust and an abuse of your position as a magistrate.

Similarly in relation Ms Foulkes, you imposed emotional pressure upon her to accept the penalty that you had incurred through your own driving. The SMS messages that you sent on 15 May are instructive. In one SMS message you told Ms Foulkes that she did have a choice as to whether she gave you her driver's licence. Then you immediately played upon her emotional and personal connection to you when you said that the consequences of her choosing not to do what you were requesting, would be that you would be put off the road for six months and you would have resulting difficulties in getting to and from work, let alone anything to do with your daughter which would be a major problem. You were casting upon Ms Foulkes the emotional burden and guilt of you being off the road for six months and not being able to have contact with your eldest daughter. You then compounded that guilt and that emotional burden by telling her that if she did not want to do it and it was going to be an ongoing sore point, she should not do it and it was really all your fault.

I am satisfied that as a result of this conduct you were placing emotional pressure upon Ms Foulkes in acting as you did, leaving her under an emotional strain to comply with your requests.

I turn to your personal circumstances. You were born in Naracoorte and raised in Mount Gambier in the South-East of South Australia. You have two siblings. You had a happy childhood and supportive parents. Your father died in 2001 after a long illness. Your mother died in 2016.

You were initially educated in Mount Gambier and then after winning a scholarship, at a boarding school in Adelaide. You were a talented student and an exceptional athlete. Your sporting career was marred by a severe knee injury at age 17.

After year 12 you completed a Bachelor of Laws at the University of Adelaide and you commenced legal work as a solicitor in 1982. You practised on your own account for 23 years until 2007 at which point you were appointed a Magistrate at the age of 48 years. You have worked in the Adelaide Magistrates Court, other suburban Magistrates Courts and in country Magistrates Courts.

You were first married at age 25. You had one child from that union. That marriage ended after about five-and-a-half years.

Your second relationship was with Helen. There were two children of this relationship. That relationship ended after about four or five years. You have provided some financial support to Helen and your two daughters of that relationship.

You married a second time in 1996 at age 37. That union lasted 19 years. During that relationship, which was otherwise financially stable, you became unhappy and leading to your liaison with your co-defendant, Ms Moyse. She became pregnant and had a son. You sometimes pay school fees for your son. You have had an unsatisfactory relationship with him as your father. You eventually confessed to your second wife about your conduct and the marriage ended in about 2015.

In 2018 you commenced your relationship with your co-defendant, Ms Foulkes, your current partner. In 2020 you purchased a property together at Mount Compass.

Your eldest daughter from your relationship with Helen is severely disabled. Helen moved to Sydney with your two daughters to enable better treatment for your eldest daughter. You went to Sydney as often as you could. After that treatment failed, Helen took your eldest daughter and your second daughter to England to enable your eldest daughter to receive further treatment.

Immediately prior to that time, your eldest daughter lived with you and your second wife. You were called to England to assist in bringing your eldest daughter back to Adelaide. For the next 16 or so years your eldest daughter lived with you and your second wife. You had the assistance of a carer. You had the full-time care of your eldest daughter at that time with all of the difficulty and heartache which full-time care of a disabled child entails.

Eight years ago your eldest daughter went to live with Helen and since then you have provided some financial assistance for your daughter, including now the purchase of a house for her in Helen's name. You have serviced the mortgage on that home.

There have been episodes of difficulty with your eldest daughter's behaviour. She has been hospitalised on occasions and those periods of hospitalisation have proved problematic because of her behaviour. Two carers were required to be with her for the full extent of her admission.

The house for your eldest daughter was purchased at Magill in the name of Helen and you are servicing the mortgage. You have assisted to modify the home. Other funding has also been provided by the National Disability Insurance Scheme. Helen continues to be responsible for the management of your eldest daughter's day-to-day care and the funding received from the NDIS.

Your eldest daughter is now aged 28. I am satisfied that in the last 12 months you have only had sporadic contact with her but I am satisfied that these considerations will vary with circumstances. Your second daughter and Helen and a support group cater to all of your eldest daughter's immediate and direct needs.

Medically you suffer high blood pressure, high cholesterol, Type 2 diabetes and Coeliac disease. You have resigned from the magistracy. You describe your financial position as dire. You are seeking alternate work.

In her report of 16 September 2020, Dr Pam Carroll describes your personal history as having been marked by numerous relationships and break-ups largely brought about by your own lack of insight and wisdom. You suffer from mild depression and you are significantly distressed by the events that have brought you before this court. Dr Carroll opined that you present a very low risk of reoffending. I accept that assessment. She also opined that you would not cope with a term of imprisonment and that your mental health would inevitably suffer from those events in the long-term.

I have received a number of references from lawyers, Magistrates, former Magistrates and friends. All of them speak very highly of you. They attest that you are ordinarily a person of good character, who is trustworthy, honest, hardworking and highly motivated to perform your work to a very high standard.

In relation to your work as a Magistrate, I am told that you have worked hard and you have a commitment to providing a fair and efficient court system. These offences are entirely out of character for you.

Mr John Cranwell, the Chief Executive Officer of Inclusive Sport SA, in a letter dated 3 September 2020, attests to your support over many years of the work of Inclusive Sport SA. You have been bestowed a life membership of that organisation. You have been a dedicated supporter of the organisation as a parent, of a participant and as a director. You are described as someone who has a strong social conscience and whose expertise in law has been invaluable. You have been a member of the Committee of Management, a director and you have remained an honorary legal consultant.

Your second wife confirms that over a period of your marriage to her, you were the main caregiver to your eldest daughter from the time that she was about four years of age. Apart from the period of time when she was in the United Kingdom, she lived with you both from the time she was four years of age until when she was about 20 years of age. Your son from your first marriage also lived with you for four years. Your second wife identifies the special relationship that you have had with your eldest daughter and the devoted care that you have provided to her over many years. You were involved in her daily care but also in the sports that she played and at her school. That involvement is confirmed by Dr Pam Carroll in her report.

I therefore accept that you are ordinarily a person of good character and that these character references all speak to your basic humanity, good nature and generosity. You plainly have had a long and intense involvement with the difficulties associated with the condition suffered by your eldest daughter. I accept all of that evidence.

I then turn to sentence. The Director of Public Prosecutions has submitted that the only appropriate sentence for you is imprisonment. Through your counsel, Mr Edwardson QC, you disputed that contention and relied upon the contents of the report of Dr Carroll as a complete answer to that submission.

Mr Edwardson QC made the alternative submission that if a sentence of imprisonment is imposed, then that sentence be suspended or served on home detention. Your counsel criticised the approach of the director by suggesting the director's characterisation of the

motivation for the commission of these offences and its gravity was heartless and lacked compassion having regard to Dr Carroll's report and your connection to your eldest daughter.

Your counsel pointed to the fact that different from the position in the case for example of *Einfeld* where Einfeld committed perjury on a number of occasions, the essence of the two deception charges are that you lied to a bureaucrat who then caused for the reissue of infringement notices in different names. You did not perpetuate the lie as did Einfeld.

Second, your counsel identified that your reputation, character and career have been utterly destroyed as a consequence of this extraordinary error of judgment. Your counsel rejected the Director's submission that your decision was based upon a lifestyle choice. He relied upon the report of Dr Carroll and he said that it was more than a mere lifestyle choice. It was a choice made as a result of other circumstances.

Mr Edwardson QC emphasised in particular the difficulties you have encountered over the course of many years in raising and in caring for your eldest daughter. However, as I pointed out to Mr Edwardson QC at the time, the full-time care of your eldest daughter has now been taken over by her mother, Helen, with the assistance of your daughter and others.

I have accepted and relied upon the reference given by your second wife that for the 16-year period, apart from short periods of time, you were the full-time carer for your eldest daughter. I accept that this was very difficult. Your eldest daughter is now 28 years of age and you have not had the full-time care of her since she was aged 20. You still do have an active role to play in her life but I am satisfied that Helen, your second daughter and a support group currently see to all of the immediate needs of your eldest daughter.

After dealing with the references to which I have earlier made mention, Mr Edwardson QC dealt with the sentencing considerations. I have already accepted that your risk of reoffending is nil. I accept that your prospects of rehabilitation are very high and that there will never be any repetition of this conduct. I accept that you have lost your career and everything that you built up in your life. I accept that your mental health will suffer and that you will need ongoing treatment as a result of the distress that you have experienced and that is likely to continue for some time, if not for the remainder of your life.

I also accept that as a longstanding Magistrate, a custodial setting will place you at a high risk. However, that is a matter for the executive government. I accept that you are not a danger to the community and that consistent with authority, you have a lot to offer, especially because of your voluntary work with disabled children. All of these matters weigh heavily in your favour.

I turn to sentence. In reaching my decision I have read and taken into account all of the sentencing materials that have been placed before me, which comprise all of the affidavit materials, the phone intercepts, the contents of the messages and the references that I have been provided. I have also had full regard to the report of Dr Carroll which I have discussed in detail earlier in these remarks.

It becomes necessary for me to emphasise the matters that weigh most heavily in the balance of my sentencing discretion. You are ordinarily a person of good character. You have given freely of your time to various constructive charitable purposes. You have fulfilled your role as a Magistrate competently. Your various family members have particular needs,

especially your eldest daughter. These considerations are to be balanced against the fact that you are an officer of the court and that at the time of your appointment you made a solemn oath “to do right to all manner of people after the laws and usages of this State without fear or favour, affection or ill will.”

The roles and responsibilities of Australia's judicial officers are well-known and understood by not only those in the judiciary and the legal profession but by the citizens who look to and rely upon them. Members of the judiciary are required to hold themselves separately from other members of society. Courts, and therefore their judicial officers, are a core institution that affects the governance and regulation of our society as a whole, including as instruments of social regulation, “...to do right to all manner of people after the laws and usages of this State without fear or favour, affection or ill will...”

You were a judicial officer who has committed criminal offences. Those acts alone are apt to give rise to public disquiet about the integrity of the judicial system. They are, for that reason, of great significance. When you committed these offences you were required to have had an accentuated sensitivity to the need to maintain the highest reputation possible for the incorruptibility and integrity of the judicial system in which you operated. In your role as a judicial officer you fully appreciated the seriousness of the offences which you committed and there is no basis for the diminishment of your degree of culpability. You understood the significance accorded to your conduct by law and the heightened seriousness of these offences when committed by a person in your position.

Your criminal conduct has struck at the very heart and foundation of that judicial function, and similarly it has struck at the importance of the role. On three separate occasions you deliberately ignored your role as a judicial officer and your solemn oath. In each instance of deception of Mr Dang, you would have been aware of the clear inconsistency between your criminal conduct, your position and your oath. In each case, you dealt with persons over whom you held and exercised varying degrees of power. Ms Freeman was the most diminished person when scrutinising the scale of power that you exercised. She was overborne by your authority, persistence and increasingly over time, your familiarity which overstepped the boundaries of a proper relationship between a Magistrate and a Magistrate's clerk. This is a relationship which by necessity is close and very interdependent. You prevailed upon her to commit an offence in 2020 after having been rebuffed by her for the same conduct in 2019. Your behaviour involving Ms Freeman was particularly egregious.

You are the father of a son with Ms Moyse and she is dependent upon you for financial support for the education of your son and some emotional support in your position as his father. It was demonstrably clear that she initially relied upon your judgment about the appeal application concerning her client and she was concerned about your position without fully understanding the reasons. After your assurances that there were no problems, she then became reliant upon you to hear the appeal.

Ms Foulkes is your life partner and so is in an intimate relationship with you. The broader aspects of that relationship include dependence and the housing of family at your property. She was a senior serving police officer. Following your entreaties she involved herself in criminal conduct that she knew was an offence and that was inconsistent with and completely compromised her role and appointment as a police officer. She advised you of her reluctance initially and then later through her texts. Your response was to highlight your own difficulties without regard to her position. The hallmark of your behaviour was your

focus upon your own self-interest to the exclusion of these women whom you involved in this offending. You therefore failed to pay even lip-service to your position and to your oath.

In those circumstances, I have formed the view that the only proper sentence in this regard is a sentence of imprisonment.

In relation to the offence of deception committed by you in relation to the co-defendant Melanie Jane Freeman in breach of s.139 of the *Criminal Law Consolidation Act*, I sentence you to imprisonment for 20 months. I take into consideration the sentencing discount of up to 40% available to you for your plea of guilty. This leaves a sentence of 12 months imprisonment.

In relation to the offence of deception committed by you in relation to the co-defendant Abigail Rebecca Foulkes in breach of s.139 of the *Criminal Law Consolidation Act*, I also sentence you to 20 months imprisonment. I again take into account the maximum discount of 40% available to you, which leaves a sentence of 12 months imprisonment. I consider that six months of this sentence is to be served concurrently with the sentence for the offending of deception involving Ms Freeman.

For the offence of conspiracy in breach of s.251 of the *Criminal Law Consolidation Act* and the common law, I sentence you to one month imprisonment. I take into account the 40% discount available to you, which leaves a sentence of 19 days imprisonment. I order that this sentence also be served concurrently with the other two sentences.

This leaves a total head sentence of 18 months imprisonment. I fix a non-parole period of 12 months which equates to 66% of your head sentence.

I turn then to the question of suspension of your sentence. Pursuant to s.96 of the *Sentencing Act*, I may suspend your sentence if I consider that good reasons exist to do so. The question of what constitutes good reasons is a question of fact and judgment after weighing in the balance all of the relevant considerations.

I have canvassed in these sentencing remarks all of the relevant considerations which I have taken into account. I repeat that I have taken into account your otherwise unblemished record, your previous good character and your contribution to society. However, I consider that given your position as a judicial officer, your conduct was so egregious and opportunistic, so lacking in judgment and was so serious that good reasons does not exist to suspend your sentence.

I turn then to the question whether you are a suitable person to serve this sentence on home detention. I accept the submission of your counsel that you are not a threat to the safety of the community. I turn then to consider the question arising under s.71(2)(a) of the *Sentencing Act 2017*, whether the making of such an order would or may affect public confidence in the administration of justice. The concept of the administration of justice involves a broad range of considerations. I consider that amongst these your position as a judicial officer is highly substantive. As I have earlier indicated and described, judicial officers are at the pinnacle of the judicial system and so the administration of justice. They obtain that position upon their appointment and upon the making of their oath and having done so, they hold a position of a primacy because they are part of the institution of

government. Judicial officers are required to adjust to and to maintain a standard of behaviour that is without reproach having regard to their judicial independence.

Your criminal behaviour is completely at odds with your role and all of those considerations. You consciously committed criminal offences and consciously co-opted Ms Foulkes and Ms Freeman into that behaviour. In relation to Ms Moyse and her client, you consciously ignored the obvious conflict of interest under which you were then labouring.

For the same reasons, your criminal behaviour strikes at the very foundation of public confidence in the administration of justice that I am required to consider under the operation of s.71(2)(a) of the *Sentencing Act*. I consider that the making of a home detention order for those reasons would affect public confidence in the administration of justice in a stark and detrimental way. I further consider that the making of such an order would strike at the foundations of such public confidence in a way that is significant.

For these reasons, I would refuse to make an order for home detention. Your sentence and the calculation of your non-parole period are to commence from today.

ADJOURNED 11.25 A.M.