



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 9.38 A.M.

BEFORE HIS HONOUR JUDGE SLATTERY

NO.DCCRM-20-1202

R V MELANIE JANE FREEMAN

HIS HONOUR IN SENTENCING SAID:

Melanie Jane Freeman, you are charged on information and summons with your co-accused, Robert Harrap, on 3 July 2020 that to the contrary of s 139 of the *Criminal Law Consolidation Act 1935*, on 22 May 2020 at Christies Downs in the State of South Australia, you, as an aider and abettor of Robert Harrap, jointly deceived Bernard Dang of the Courts Administration Authority by misrepresenting who was the driver of a motor vehicle which was then being driven by Robert Harrap at 3.36 pm on 11 April 2020. At that time, the vehicle driven by Robert Harrap was detected committing a traffic offence. In doing so, Robert Harrap obtained a benefit; namely, avoiding 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 for this offence. You entered your guilty plea to the offence on 27 July 2020. You were entitled to a discount of up to 40%. I have not received any submissions from the prosecution in relation to the application of a 40% discount to your offending. I intend to give you a full 40% discount.

I turn to the circumstances of your offending. In February 2019, you were assigned to work as the clerk for Mr Harrap on a full-time basis at the Christies Beach Magistrates Court. Mr Harrap requested that you be moved from the Adelaide Magistrates Court to the Christies Beach Magistrates Court to be his clerk. You had earlier worked for him at the Adelaide Magistrates Court. You moved to the Christies Beach Magistrates Court shortly after Mr Harrap was moved there and he was assigned as the regional managing magistrate.

The move to the Christies Beach Magistrates Court was convenient for you because you lived in the southern suburbs. At the time, your husband was ill, having suffered a brain injury at work. You have three children. As a result of this move, you were able to spend more time caring for your children, easing the burden upon your husband who was housebound and was the primary carer.

From the outset, there were some difficulties for you in operating at the Christies Beach Magistrates Court because of the work practices of Mr Harrap. You were required to remain with him in the court for a full day rather than changing with another clerk after half a day. That was the choice of Mr Harrap. The evidence is that Mr Harrap requested that you be appointed his clerk at the court and that you adopt the work practices as required by him. You believed that there was some resentment felt by other court staff as a result. You later ensured that your immediate supervisor within the court hierarchy was aware of those difficulties caused by Mr Harrap and that you felt unwelcome at the Christies Beach Magistrates Court as a result.

In time, these difficulties increased and compounded and this caused your health to suffer. At the time, you already suffered an unrelated serious health difficulty. In August 2019, you had a panic attack in a courtroom at the court following a disagreement that you had with another clerk about the work practices that had been stipulated for you by Mr Harrap. Mr Harrap was aware of the panic attack and sent you home. You returned to work and received encouragement from Mr Harrap when he said to you that you both worked well together and you were keeping the place running. Mr Harrap also became aware over time from what you told him of the problems that you were experiencing in the court and he re-emphasised to you that both of you should stick together.

Over time, you became used to Mr Harrap's practices and his general demeanour. You also became aware of the aggressive way that he sometimes behaved in court and you came to the view that you had no hope if you needed to confront him or to disagree with him. You shared with Mr Harrap details about your husband's illness, the medications that you were on as a result of your medical conditions including your panic attacks, and in time you grew to trust Mr Harrap. You were then the only person who worked with him constantly. He was also aware of the benefits to you of working at the Christies Beach Magistrates Court which allowed you to save about 2-3 hours every day on travelling time.

In February 2019, Mr Harrap first raised with you the possibility of you taking some of his speeding demerit points. At the time, you were driving to a circuit at the Victor Harbour Magistrates Court. After a discussion about a speed camera he had just passed, he asked about your personal demerit point situation. You told him that you had a full set and he suggested that you could take some points for him. You did not treat the suggestion seriously.

Shortly after that conversation in the car, Mr Harrap showed you a photograph of the picture on his computer screen taken of his car whilst speeding. He said that this was the only photo that there was of the speeding offence which did not show the driver of the vehicle and he wanted you to consider taking demerit points for him. He assured you that if you did, nothing was going to happen to you and you should consider it.

At that time you felt trapped. You had worked with Mr Harrap for a short period of time, you had become used to his methods and you had realised that you would not know how to stand up to Mr Harrap. Nothing further was said that day but there was a further discussion the following day about you taking the points for him as a result of the detection of him speeding in the car. He became very familiar with you. Some of the things that he said to you had lewd and inappropriate sexual connotations and intonations. He suggested that you might, for example, create a story that you were having an affair and that is why you were driving in the car and speeding in the vehicle.

You then told a superior at the court about that approach from Mr Harrap. She told you not to do it and report the matter to your superiors. You have heard nothing further from that person. You raised only the speeding aspect with your husband who told you not to take the points. Following that conversation, you refused to take the points. You became aware that steps were then taken by Mr Harrap to avoid a loss of his licence by entry into a bond.

In about March 2020, Mr Harrap informed you that he had another speeding fine. You had a conversation about the bond that he was serving and he informed you that he had another speeding fine. You had a conversation about the bond that he was serving and he informed you that the bond did not expire for another four months. Mr Harrap suggested that he would have to ask his own partner, Abigail Foulkes, to take the points. However, a few weeks later he told you that he had yet another speeding fine.

He then said to you that because you both worked so well together as a team and that he was so pleased that he stuck his neck out to get you to the Christies Beach Magistrates Court and such was his level of trust and confidence in you, he would want you to consider taking the points for him. At that time, you started to panic. Mr Harrap asked you to think about the matter and get back to him.

Later, Mr Harrap started saying to you how bad things were for you at the Christies Beach Magistrate Court but what a good team you were and that he was glad he poached you from the Adelaide Magistrates Court. He again said that he had a level of trust and confidence in you and that was sufficient for him to ask you to take the points for him. He said that his partner Abigail Foulkes was going to take the points for the first speeding fine and that he needed you to take the second one.

You immediately felt trapped and you did not know what to do. There was no-one you could turn to and you felt there was no option for you at all. You did not think that you could turn to your superiors having regard to your earlier conversations with your superior and what followed. You could not talk to your husband because you knew that he would object to you taking any of the points for anybody else. You felt that you were being bullied and taken advantage of by Mr Harrap and you felt under tremendous emotional pressure.

At the same time, the behaviour of Mr Harrap towards you changed from what had been banter containing sexual overtones and intonations now became more serious. Mr Harrap became friendlier with you and became far more familiar with his language. He would make physical contact with you and asked you if you were 'alright, babe?'

He made suggestions to you of the possibility of a sexual liaison. His statements to you were highly sexualised, highly suggestive and completely inappropriate. It was in that context that he made a request to you to take his points. I am satisfied by this conduct he was grooming you to agree to the request that he was making. Also, he continually reassured you that he would take all of the blame for the situation and that if anything happened, he would take the full blame. He informed you that if he was discovered doing this, he would probably lose his job. He did not mention what would happen to you. As a result of all of this conduct and this pressure, you felt that you had no choice but to agree to what Mr Harrap was putting to you.

You felt that he would not take no for an answer and if you continually refused to take the points, you would lose your position at the Christies Beach Magistrates Court. All of this

combined to cause you extreme distress. Prior to that time, you had again contacted your superior for the second time. You informed your superior of what was occurring. You did not receive any further contact from her. Therefore, on the following day, you gave Mr Harrap your licence. You felt sick about doing so but felt that you had no choice. Soon after you developed migraines and as a result of the stress that you were under, you needed to take sick leave.

You were given a week off work by your treating general practitioner. You received the letter in relation to the fine and gave it to Mr Harrap.

I turn to your personal circumstances. You were born in Adelaide and you grew up in the southern suburbs. As a result of your father's employment you spent part of your early childhood in the Northern Territory. You have a younger sister, who is two years your junior. You have had a difficult and challenging childhood as a result of persistent emotional neglect and physical and verbal abuse from your mother, who suffered from mental health issues at that time. Your parents were unhappily married and you were constantly told that you were unwanted and you were an accidental conception. Your father was largely absent due to his work program and he had very little connection with you in your life.

Your parents eventually divorced when you were about 11 years of age, about the time you commenced high school. Your father moved to Queensland and lived there until his death in 2019. As children, you spent a part of your summer holidays with him but he remained a distant parent. You did not have a loving and supportive relationship with your mother and that only improved slightly after you moved out of the home at 18. Your mother has re-partnered and you are very close to your current step-father. He has fully and unconditionally supported you in these events.

You were married in 2002 and you have three children who are all high achievers academically. As a result of a work injury, your husband sustained a permanent acquired brain injury in 2012. Prior to that time, you had a stable and happy marriage but since that time your marriage situation has deteriorated. Your husband suffers chronic pain and severe migraines on a regular basis. These are significant barriers towards his re-employment. You have therefore been the family's primary breadwinner for at least eight years. Your husband also experiences significant neuro-behavioural problems, such as personality changes, behavioural disturbances and mood disorders. This has caused a deterioration in his relationship with you and the way he treats you.

Part of that deterioration follows from his belief that as a result of these matters coming to light, he thought that you were having an affair with Mr Harrap. Your relationship with your own children has been severely impacted as a result.

In your school years, you displayed a very high intellect and you achieved good results. You successfully completed year 12 at the age of 16 and you achieved excellent grades. Despite those grades, you did not progress to university due to a lack of support and direction both from your school and from your general family group. You commenced working at a Bi-Lo supermarket and stayed there for about 10 years until a sales representative suggested that you should attempt a university degree as a mature age student.

You were accepted into a Bachelor of Arts degree at Flinders University in 1999. You graduated in 2001 with a triple major in sociology, work and labour relations and criminal

justice studies. You obtained work as a ward clerk at the Emergency Department of the Noarlunga Hospital. For a time, you worked as an intelligence officer at the South Australia Police Headquarters. In 2013, you commenced work as a Magistrates Clerk in the Courts Administration Authority. This was a job that you enjoyed immensely because of the responsibilities, the intellectual challenges involved with it and you found that your experiences there were very generally positive.

However, you were transferred from Adelaide Magistrates Court to the Christies Beach Magistrates Court and you were to be employed as a clerk to Mr Harrap from February 2019. From that time, you had great difficulties in your work experience at that court; this was as a result of your perception that you were being bullied and harassed at that court after February 2019. As I have said, you raised these difficulties with your supervisor with whom you have formed a good professional relationship while you were both at the Adelaide Magistrates Court. You confided to your supervisor about your distress resulting from your perception about this bullying and your communication about your position with the supervisor increased. In time, you suffered the panic attack that I have earlier described.

You informed the psychologist, Dr Lim, that Mr Harrap was the first person to offer emotional support after that attack. He was aware that you were experiencing difficulties at work and that he was the primary source of emotional support for you at the court. Over time, you started to confide in him about personal matters. Dr Lim reported, and I accept, that in all of this you tried to remain professional at all times but this was a challenge because of your difficult work situation and your reliance upon Mr Harrap for support. In her report, Dr Lim opined at [10] and following that at the time of the commission of the offence, you were suffering a major depressive disorder and anxiety disorder with panic attacks. These were clearly related to your perception of the workplace and harassment which you were experiencing at the court subsequent to your transfer to the Christies Beach Magistrates Court.

Dr Lim opined that your emotional capacity and resilience had been so profoundly worn down that by the time that Mr Harrap had approached you for the detail of your licence, you eventually surrendered to the pressure to acquiesce to his demands. By that time, and despite the information that you had given to your supervisor, you formed the view that you would not be getting any support from that direction. You feared losing your employment; you feared not being able to be your family's principal breadwinner; and you feared losing the only source of emotional support that you had had at that court.

Dr Lim opined that you were therefore a vulnerable target for Mr Harrap. He was aware of your workplace issues and some of the difficulties that you were facing in your life. Dr Lim opined that you are genuinely remorseful and contrite and that you are of an extremely low risk of re-offending. You have excellent prospects for rehabilitation. Dr Lim also opined that her clinical impression was that you would eventually develop the skills to overcome your psychological difficulties and be able to find a way to lead a meaningful life as a productive member of society. I do not understand Dr Lim to be saying that up to the point of this offending you had not led a meaningful life or been a productive member of society; if that was the intention of Dr Lim, I would not accept it. I am satisfied from the whole of the evidence before me that you have always been a productive member of society and you have led a meaningful life. So much is apparent from the references that I have received.

You are described as an outstanding magistrates clerk, who is conscientious, accurate, attentive, enthusiastic and discrete. You are admired for the way you had met the many challenges in your life and in particular your family situation and your support from your family. You are also suffering a debilitating autoimmune condition. You are described as a good and kind woman who found herself in a difficult situation from which you received no benefit. You have significant regrets; you are enormously distressed as a result but in all things you are a woman of excellent character.

I turn to penalty. In submissions at [54], the Director said it is open for me to consider imposing a simple bond without conditions or recording a conviction pursuant to s 97 of the *Sentencing Act*. In order to reach that conclusion and following your plea of guilty to the charge, I may, if I think that good reason exists for doing so, discharge you without recording a conviction and without imposing any other penalty on the condition that you enter into a bond of good behaviour. I consider that good reason does exist for discharging you without recording a conviction. I am satisfied that at the time you committed this offence, you were suffering a major depressive disorder and a generalised anxiety disorder with panic attacks.

I am satisfied on the evidence that your development of these psychological conditions was directly related to the circumstances as you perceived them to exist at the court subsequent to your transfer to Christies Beach Magistrates Court. I am satisfied that in your time in working with Mr Harrap, you became isolated in your workplace and entirely dependent upon Mr Harrap. I find that Mr Harrap exploited your dependence upon him and placed emotional pressure upon you to agree to the offending conduct with which you are charged. I accept that you were bullied, harassed by and you were taken advantage of by Mr Harrap. I also accept that Mr Harrap crossed the boundaries of propriety with you, that he made lewd and inappropriate remarks to you and that as a result, you were being groomed by him to do that which he was seeking from you.

I am satisfied that Mr Harrap knew that you were entirely dependent upon him for emotional support at work, that he played upon your dependence and your isolation at the court and that he played upon your emotions by telling you that he had put himself out to get you the job at the court and that apparently, you were somehow indebted to him as a result.

Notwithstanding your expectation of support after you had reported the wrongful request made of you by Mr Harrap and that you had been told that it was wrong and inappropriate and that you should not do it, you heard nothing further from the court about the concerns that you had expressed to your superior.

You reported the matter again. You did not hear anything further. You were sick, stressed and anxious at the time. You knew the pressure was mounting upon you as a result of the request made by Mr Harrap. You feared for your position at work if you continued to refuse him, and in the absence of any further advice you surrendered to the pressure imposed upon you by Mr Harrap. You have deeply and profoundly regretted your decision ever since. I accept that in light of all of those circumstances, you could not think of anything more that you could have done when dealing with a man such as Mr Harrap.

In sentencing you, I utilise s 97 of the *Sentencing Act 2017*. I would not record a conviction. I would not impose any other penalty on you on the condition that you enter into a simple bond in the amount of \$100 to be of good behaviour for a period of 12 months and the other usual conditions of such a bond. Are you prepared to enter into that bond?

PRISONER: Yes.

BOND ACKNOWLEDGED

HIS HONOUR: Ms Freeman, the conditions that are there are the standard conditions to be included in any bond. Those are the conditions that you are required to observe.

PRISONER: Thank you.

HIS HONOUR: I am sure Ms O'Connor SC will explain that matter to you.

ADJOURNED 10.03 A.M.

RESUMING 11.57 A.M.

MS O'CONNOR: I am just raising a query in relation to the bond that my client entered into. The bond that I have now got in front of me has a number of conditions on it, but I noticed in your Honour's sentencing remarks your only comment in relation to the bond was that she simply be of good behaviour and fail to comply –

HIS HONOUR: And the other usual conditions of the bond.

MS O'CONNOR: Your Honour did not specifically read out, in your Honour's sentencing –

HIS HONOUR: No, I didn't but I said 'the other terms and conditions of the bond'. That is my usual practice. The reason judges do not do that is because it becomes tedious.

MS O'CONNOR: I understand that. I just wonder about whether your Honour intended that my client not be able to leave the State without –

HIS HONOUR: Yes, I did. This is a serious offence, Ms O'Connor.

MS O'CONNOR: I understand that, it was just that - my understanding of the authorities is, that unless your Honour actually puts a condition in the sentencing remarks - having just spent a little bit of time looking at the authorities between when your Honour sentenced my client and now. Unless your Honour actually says that in the sentencing authorities, even if the condition of the bond says it.

HIS HONOUR: All right, well what I will do is amend my sentencing remarks to ensure that the conditions of the bond are:

- 1 That you be of good behaviour, and comply with all the conditions of the bond.
- 2 That you appear before a court for conviction and sentence on the above offence(s) if you disobey any of the conditions of the bond.
- 3 That you not leave the State for any reason except in accordance with a written permission of the Chief Executive Officer for the Department for Correctional Services.

4 That you do not possess a firearm or 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.

MS O'CONNOR: Thank you.

ADJOURNED 11.59 A.M.