

Mr Burk, you have pleaded guilty to one count of dishonestly acquiring a financial advantage. The crime was committed by means of a dishonest course of conduct perpetrated by you between 4 July 2012 and 27 February 2017. During the whole of that period you were employed as the chief executive officer of the Meals on Wheels Association of Tasmania. Your employer is long established, volunteer-based organisation, well known in the community for its charitable work, particularly with vulnerable and elderly people.

You committed the crime on a systematic basis over the said period, by deliberately and dishonestly arranging for payments to be made to you and on your behalf by the organisation. Some of the payments were made by way of regular direct debit from the organisation's bank account. These were to meet personal expenses such as rent, car lease payments, personal loan and credit card repayments. On six occasions in late 2016 and early 2017, you arranged for direct payments of cash to either you or another person. All of these monies were purportedly taken by you pursuant to a salary sacrifice arrangement with your employer which, in itself, was legitimate, but which was limited by your actual entitlement to remuneration under your employment contract. The money paid to you or on your behalf exceeded that to which you were entitled pursuant to this arrangement. The total sum by which payments were made to or on your behalf purportedly under the arrangement, exceeded that to which you were entitled by an aggregate amount of \$111,186.16.

Because of your position as the chief executive officer, you were able to arrange for these payments to be made without difficulty or detection. You are a qualified accountant and you were directly involved in the management of the finances of the organisation. There is some evidence that, from time to time, you took steps to cover up the excess salary sacrificing. For example, you directed the finance officer to zero off the salary sacrifice balance by a journal entry at the end of the financial year so that it would not draw attention on audit. However, there does not seem to have been any particular sophistication, nor more extensive efforts made to hide or disguise the payments. Anything more than a cursory enquiry would have revealed that the payments were being made to you or on your behalf. Your offending eventually came to an end after the finance officer discovered discrepancies in the organisation's accounts in early 2017. This discovery followed her identification of a shortage of funds in the organisation's bank account some months earlier.

You are 62 years of age. Your only prior offending is traffic related. You have a strong long term employment history, with no suggestion of prior criminal behaviour. You have held a number of responsible positions during your working life, many of which have involved financial management. You have also made significant contributions to the community in a voluntary capacity. It would seem that you have strong family support. Overall, I conclude that, apart from this offending, you are person of otherwise good character.

The explanation offered by your counsel for your offending is closely related to the onset of Parkinson's disease in 2013. When this condition was diagnosed in that year, you were prescribed a drug known as Sifrol, and you were taking that drug throughout the entire duration of the offending. A known and common side effect of this drug is impaired impulse control, consistent with an impulse control disorder. It would seem that this side effect was active in your case. Specific manifestations of the impulse control disorder included sexual disinhibition, impulse buying and carelessness about incurring debt. The impulsive and disinhibited decisions made by you in this context had financial consequences. For example, some of the money taken directly by you was paid to a woman living in another country who

had deceived you in respect of a potential relationship. You were vulnerable to such a scam having regard to the effect of the drug on your judgment and decision-making capacity.

The existence of the underlying Parkinson's disease and its role in the development of the impulse control disorder, in particular because of the administration of Sifrol to deal with it, is not controversial and is supported by the medical evidence provided to me. However, these circumstances are of marginal relevance, in my view, with respect to your moral culpability for this crime. A psychiatrist, Dr Michael Jordan, in a report provided to me, supports the proposition that the medication resulted in impulsiveness during the relevant period, but also expresses the opinion that your decision-making was not impacted on a wider basis by a psychiatric condition. Although your impulsive decision-making led to you incurring debt and financial commitment, it did not affect or diminish your capacity to understand that taking the extra money was dishonest and wrong, and to fully appreciate the nature of your responsibilities to your employer. Many people find themselves in financial hardship for all sorts of reasons, but do not resort to crime to resolve that problem. My conclusion is that the difficulties associated with the Parkinson's disease, and the effect of Sifrol, are relevant to explain your perceived need for funds, and the context in which you committed the crimes, but they do not explain or mitigate your dishonesty, nor reduce to any significant extent, your moral culpability for these crimes. I think that there is a very clear distinction between your case and the case of Martin, to which I was referred by your counsel. In that case, the offending conduct was a direct consequence of the disinhibition resulting from the administration of Sifrol. You, on the other hand, acquired a need for funds because of the effects of the medication, but then resorted to dishonesty to meet that need. The Sifrol did not cause you to act dishonestly.

I do accept, however, that now you are no longer taking the medication, you have developed genuine remorse for your conduct. This remorse is evidenced by your plea of guilty and your efforts to make some restitution. I note that you have taken steps to borrow around \$20,000, which you will use to make partial restitution. I have been informed today that, of that sum, you have secured \$4,875, and that that payment to Meals on Wheels is imminent. Further, although the offending was systematic and stretched over a number of years, because the offending coincided with the administration of this drug to you, I am prepared to accept that your conduct was out of character, and is unlikely to be repeated.

Your counsel also submitted that the Parkinson's disease is relevant in another way; that is, to your potential experience of prison, in the event that you are sentenced to a period of actual imprisonment. The medical evidence would support the proposition that the Parkinson's disease will require active management and particular treatments, which are unlikely to be provided to you in prison. The consensus is that your disease would not be well managed in prison. I am not going to make any specific judgment about this because I am confident that the prison authorities would do what they can to ensure that you receive appropriate medical care. However, I do accept that, particularly in the current environment resulting from the global pandemic, it is likely that your condition would make your experience of prison more difficult than would normally be the case.

Notwithstanding the lack of sophistication in your methodology, there are some serious features of this crime. It constituted a grave and ongoing breach of trust, and was committed in a systematic way over a prolonged period. The victim was a not for profit charitable organisation, and the commission of your crime can be expected to have impacted on its capacity to provide services to the vulnerable and the needy. I am of the view that general deterrence is an important sentencing consideration. Normally, a sentence of imprisonment would be inevitable. However, when I have regard to your personal circumstances, and in particular to your past and present health difficulties, and the relationship between the

medication prescribed to you during the relevant period and your offending behaviour, I am satisfied that the objectives of sentencing can be adequately met in this case by the imposition of a home detention order. I note that you have been assessed as suitable for such an order by Community Corrections.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 I make a home detention order which will have an operational period of 18 months commencing today.
- 3 The home detention premises will be at [premises].
- 4 I note that the core conditions of the order contained in s 42AD(1) will have effect during the operational period of the order. This will include the conditions specified in s 42AD(1)(g), which is the provision requiring submission to electronic monitoring.
- 5 For the purposes of the condition contain in s 42AD(1)(c), I specify that you must, during the operational period, be at the home detention premises at all times on each day of the week unless you are not there for a relevant reason as specified in s 42AD(4).
- 6 The order will also include the following special conditions:
 - (a) that you must report to a probation officer at Community Corrections in Glenorchy immediately after your release from Court today, but, in any event, not later than 10am on 6 August 2020;
 - (b) that you must maintain in operating condition an active mobile telephone service, provide the details to your probation officer, and be accessible for phone contact through this device at all times;
 - (c) that you must submit to the supervision of a Community Corrections officer as required by that officer;
 - (d) that you must not, during the operational of the order, take any illicit or prohibited substances, including any controlled drug defined by the *Misuse of Drugs Act* 2001, and any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine, unless you provide written evidence from a medical practitioner that you have been lawfully prescribed the relevant medication.
- 7 I make the following compensation orders:
 - (i) An order in favour of Meals on Wheels Tasmanian in the sum of \$4,875.54.
 - (ii) An order in favour of Berkeley Insurance in the sum of \$98,653.89.