

STATE OF TASMANIA v GEORGIA LEE ROWLANDS
COMMENTS ON PASSING SENTENCE

2 JULY 2021
GEASON J

Ms Rowlands, you have pleaded guilty to a charge of dishonestly intending to obtain a gain contrary to s 135.1(1) of the *Commonwealth Criminal Code*. Your offending occurred between 7 May and 29 November 2019, and involved your procuring 45 advance payments of family tax benefits using a flaw in the system, which you discovered in the course of your employment, and which you could exploit in that position. You received advanced payments of \$45,429.39 to which you were not entitled.

In the relevant period you were employed at the Australia Post office in Oatlands. The flaw in the system which you discovered, enabled you to make a cash repayment on a previous advance, but then reverse that cash payment without the reversal being registered by the system. The effect of this was that the system thought the earlier advance had been repaid, such that you could apply for another advance payment without in fact having repaid the earlier one. You knew that one of the conditions of receiving an advance payment was that any previous advance payment had been repaid. On each occasion you purported to repay the advance payment in that way, and then made a subsequent application for an advance, knowing that you had not repaid the initial advance. You did so with the intention of dishonestly obtaining advance payments to which you were not entitled.

In May 2019 you dishonestly applied for and received three advance payments, in June four payments, in July two payments and in August four payments. Then in September you received five advance payments, another twelve in October, and fifteen in November. The advance payments ranged from \$1005 at the commencement of your offending to \$1080 at the end of your offending, for the total amount to which I have referred of \$45,429.39.

I have been advised by counsel for the Commonwealth that some of that money has been repaid. I have just made a reparation order pursuant to s 21B of the *Crimes Act* in the amount outstanding of \$42,849.45.

In a helpful plea in mitigation Mr Scott explained your conduct was referable to a gambling addiction, triggered by circumstances that impacted your family following the suicide of a friend of your daughter with whom she had a close relationship. Separately, at around that time, your husband attended at a car accident in his role as an SES emergency officer, in which the fatally injured driver was a family friend. Both these events impacted the family.

As a result of the suicide, your daughter began "self-harming", and expressed a desire to die. She wrote letters to that effect in the form of suicide notes. She required psychological treatment. You were advised of the cost associated with that treatment. You were already in debt at this time. You did not have the requisite funds to meet those costs so you applied for an advance payment of the family benefit you were receiving. You were entitled to apply for that advance. You subsequently received that payment. However, before it had been expended it became known to you that there was a Medicare benefit to which you were entitled which would cover the cost, or some of the cost of your daughter's treatment. That meant that the additional funds received through the advance family payment were not required. Accordingly, you sought to reverse the advance payment. It was at this time that you learned that though you had undone the transaction within the system, you were able to retain the payment. In other words, the system recorded that the money had been repaid, even though you had not repaid it. Mr Scott submits, and I accept, that the discovery of this glitch in the system was not

a consequence of any specialised knowledge of the Centrelink systems and was something you happened upon by accident. To the extent that the facts in cases referred to by the Commonwealth in sentencing submissions, including the case of *Murphy*, involved the employment of more sophisticated systems of subterfuge and false accounting, I consider this case is distinguishable.

The relevant point however, is that having access to that system, and becoming aware of the glitch, you chose to exploit it. The criminality in your conduct is founded upon your decision to exploit the flaw and compounded by your decision to do so repeatedly by taking advantage of your access to the system in your employment. That you desisted only upon being detected is a relevant and aggravating matter in assessing the objective seriousness of your offending.

It is put to me that the repetition of your conduct was a result of the mental health issues you were enduring because of your daughter's circumstances, which had developed into an eating disorder. It is submitted that in consequence of those pressures you reverted to a gambling habit which you had developed in the past, and which had to all intents and purposes been abandoned for some time. This activity was a stress release for you. There is substance to the claim of a gambling problem. According to Dr O'Donnell, who has prepared a psychological report for my assistance, you are diagnosed as having a gambling addiction. The result of your addiction is anxiety, depressive symptoms, and feelings of worthlessness, hopelessness and a state of chronic stress. As I have said, gambling was resorted to by you as a way to escape from your circumstances.

Nevertheless, and despite those circumstances, your moral culpability is high and the need for general deterrence is not diminished thereby. That factor operates whatever mitigatory weight is afforded to your circumstances, and the drivers of your behaviour, because it is a sentencing consideration which operates to discourage others, despite the personal circumstances which spurred the individual offender's behaviour.

You are treated by a psychologist, Ms House, and I have regard to the information provided in a report from her. It is relevant to note that by undertaking treatment with her you exhibit a willingness to deal with an underlying factor that has contributed to your offending. To my mind that demonstrates an insight into your offending and is a relevant issue in respect of personal deterrence. The indication that you intend to continue that treatment is one I afford weight.

I digress to observe in relation to your psychological issues that it is not suggested by you, nor in any of the specialist materials with which I have been provided, that the *Verdins* principles have application in this case.

I have a presentence report. Your personal history is set out in detail in that report.

You were educated in Hobart, and you left school at age 17 to care for your first child. You were not in a relationship with the father of that child, but during your pregnancy commenced a relationship with the man who is currently your husband. That relationship has endured, though it is suggested that there are difficulties in the relationship in part in consequence of your gambling and this offending.

At an early age, your family life was fractured by reason of your father's violent behaviour, and his ultimate imprisonment. Upon your mother remarrying, your childhood appears to have improved markedly.

You have a good employment record. You have held employment in a number of roles in hospitality and retail and you continue to do so. There is no reported history of alcohol or drug use.

It is recorded that you regard your conduct as "stupid" and I accept that by your plea of guilty you exhibit remorse. I also have regard to your plea of guilty as assisting the administration of justice. The utilitarian benefit of your early plea, entered upon your second appearance in the Magistrate's Court, attracts a discount of 20% from the penalty I would otherwise have imposed.

In respect of the extent to which you have shown contrition in any other way, I note you have made some repayments, though they represent only a small proportion of the amount of money you obtained. You have committed to a course of repayments.

In respect of personal deterrence, which I have touched upon already, I have concluded that, your remorse, your acknowledgment of the stupidity of your conduct, your commitment to psychological treatment, and the insight exhibited by reason of that commitment constitute matters which permit me to conclude that the prospect of your rehabilitation is good. I take account too of the salutary effect of your engagement with the criminal justice system.

In relation to the effect of any sentence upon your family, Section 16A(1)(p) of the *Crimes Act* requires me to consider the probable effect of a sentence upon your family or dependants. Submissions were made on your behalf with respect to potential impacts upon your daughter. The presentence report refers to a potential impact upon the marriage. In respect of the first issue, detailed information has been provided to the Court to substantiate the claims with respect to your daughter's condition.

That report indicates that she has participated in 17 sessions of therapy and records that she suffers mental health disorders, including depression and anxiety, social withdrawal, low motivation, negative self-belief and symptoms of disordered eating. She meets the criteria for major depressive disorder, social anxiety disorder and unspecified eating disorder and has experienced "severe emotion regulation difficulties which may develop into other disorders without the right support."

The psychologist considers that you will have an important role in your daughter's on-going treatment, and that without you she is at risk of disengaging from treatment and becoming susceptible to risks, which include the worsening of her current mental health disorders, and the development of chronic and treatment resistant mental health disorders. He considers that the emotional impact upon your daughter of your being sentenced to prison will be devastating and that she will be at risk of engaging in dangerous coping strategies such as self-harm and suicidal ideation. He considers that without your support, she will be at risk of using unhealthy or life-threatening coping strategies which will reduce her well-being and long term quality of life.

These are serious consequences. I accept that the probable effect of actual incarceration is the a risk of your daughter suffering considerable harm as articulated in that report. The

Commonwealth does not submit otherwise, though it maintains its position that actual imprisonment is an appropriate penalty.

In relation to the suggestion that your marriage will suffer in consequence of such order, I not afford any weight to that consideration. It is merely an assertion.

As to other matters, while you did not take advantage of your standing in the community to assist you in the commission of the offence, I do not ignore that your ability to offend in this way was a result of your having access to the Centrelink system.

Ms Rowlands, you appear before me without any relevant prior convictions.

In relation to penalty, as I have noted, the Commonwealth insists that a term of actual imprisonment is required in your circumstances. It points to the continuing nature of your conduct, that it occurred when you were engaged in a position of trust, and the need to deter others as the principle bases for that submission. I have regard to all of the Commonwealth's submissions in relation to sentence.

I was urged by your counsel, Mr Scott, to consider home detention. An assessment was undertaken and the report that I have received indicates that your home address at Oatlands is a suitable address if I take that sentencing option.

The overarching obligation is to impose a penalty that is of a severity appropriate in all the circumstances of your offending. This notion encapsulates principles of totality, proportionality and parity. It requires the Court to have regard to the circumstances of the offending and the offender, and the established heads of consideration including personal and general deterrence, to which I have referred, and to punishment.

It is plainly necessary to deter people from engaging in conduct such as yours in order to protect the revenue, and in recognition of the fact that there is an inherent difficulty in detecting such offending when it is committed by people in positions of trust. As well it must be understood generally that conduct such as this will always attract a severe punishment.

To my mind the question becomes, can a sentence of home detention adequately address that consideration? In the Court of Criminal Appeal in the case of *Director of Public Prosecutions v King* [2020] TASCCA 8 at [32] Blow CJ said this:

"However it must be borne in mind that by its very nature home detention is very onerous. An offender sentenced to home detention may of course receive visitors, but he or she is not permitted to see friends or relatives anywhere but at his or her home. An offender can be checked on by the police at any hour of the day or night, and has to wear an electronic monitoring device which can be conspicuous, particularly in the summer. An offender with a family is unable to go on family outings. The restrictions are likely to be a continuing source of personal embarrassment, which of course is part of the punishment."

At [51] Wood J said this:

"The relative severity of a penal sanction can be assessed by reference to the extent to which it impacts on an offender's rights and interests, particularly fundamental rights

such as freedom of movement and privacy: *Boulton v The Queen* [2014] VSCA 341, 46 VR 308, 248 A Crim R 153 at [90]."

At [52] her Honour acknowledged that a sentence of home detention has obvious punitive aspects and referred to the required conditions described as core conditions which must be imposed.

In relation to the sentences referred to by the Commonwealth, it is not clear, and the Commonwealth was not able to tell me, whether home detention was a sentencing option available to the Court in those cases. But as Wood J noted in *King*, the expansion of sentencing options will involve a degree of recalibration of the sentencing approach.

While I have identified particular sentencing considerations I do not ignore the obligation to approach the sentencing task in accordance with what is described as one of instinctive synthesis.

Having considered the matter I have determined that if I add to a home detention order a requirement that you pay a fine, the sentence will bear the required punitive effect to satisfy the need for general deterrence. A sentence which is framed that way will address your personal circumstances and the matters required to be considered under s 16A of the *Crimes Act*, as well as meeting the need for general deterrence which is a particularly important in the context of offending such as this. I place particular weight on the effect upon your family and in particularly your daughter as I have described it, if I impose a period of actual imprisonment today. But I repeat again, that in identifying particular sentencing considerations I am not to be taken to be approaching the matter otherwise than in accordance with the approach required of me and described the High Court in *Markarian*.

Accordingly, and for these reasons, I have determined that it is not necessary to impose a term of actual imprisonment. You are sentenced as follows, upon your conviction:

- 1 to a period of home detention for 16 months subject to the core conditions and additional conditions requiring you to submit to electronic monitoring including by wearing or carrying an electronic device;
- 2 that you must not remove, tamper, damage, disable or interfere with the proper functioning of that device;
- 3 you must not allow anyone else to do that;
- 4 you must comply with all reasonable and lawful directions given to you in relation to electronic monitoring by a police officer, probation officer, or other persons whose functions involve the installation or operation of such device or system.
- 5 you must during the period of the order remain at [address specified] at all times unless approved by a probation officer.

I impose a fine of \$2500.

(I have already made the reparation order sought by the Commonwealth).