

STATE OF TASMANIA v CHERYL ANN KENDALL
COMMENTS ON PASSING SENTENCE

24 AUGUST 2021
MARTIN AJ

Ms Kendall, you have pleaded guilty to three counts of computer related fraud, committed against your employer over a period of approximately 21 months from July 2018 to April 2020, and involving a total of \$420,849.18. It appears that you had a gambling problem and were living beyond your means.

Between October 2017 and May 2020 you were employed as a bookkeeper for a meat wholesaler known as Robinsons Meats. Your duties included paying the wages of employees and invoices received, using a business bank account. Until July 2018 you shared the bookkeeping duties with another person, but after July 2018 you performed those duties by yourself.

Payment of invoices from the business account was undertaken by online transfer through the business internet banking service. The invoice and fact of payment would be entered into an account keeping software known as Reckon QuickBooks. It was your job to record the payments in that system.

The first count to which you have pleaded guilty concerns two electronic transfers that you made from the business account to a bank account in the name of your daughter. Those transfers occurred on 20 and 30 July 2018 in the amounts of \$442 and \$1595 for a total of \$2,037. To conceal each of those transfers, you entered the name of a legitimate creditor of the business as the name of the account into which the payments had been made. You added an outgoing description to each of the transactions to give them the appearance of being legitimate payments.

The second count to which you have pleaded guilty also concerns payments made to the bank account of your daughter between 31 July 2018 and 29 January 2019. In the 13 transactions you fraudulently transferred a total of \$27,303.10 to your daughter's bank account.

Count 3 concerns funds transferred to your bank account over the period 13 August 2018 to 17 April 2020; 104 transactions were involved, and through those transactions you defrauded your employer of \$391,509.08.

Your system of recording descriptions of legitimate creditors in each of the electronic transfers, and in the business QuickBooks accounting system, successfully concealed the fraudulent transactions from the person who reviewed the books of your employer when preparing business activity statements and bank reconciliations. That person did not identify any discrepancies or matters of concern because the outbound transfers matched with corresponding entries in the QuickBooks system.

Your fraudulent scheme began to unravel in February 2020 when the owner of the business was preparing to sell it and retire. At that time the business was successful and a purchaser was making pre-payments in anticipation of taking full ownership of the business. In the course of reviewing the books of the business and preparing them for the sale, the owner noticed a significant discrepancy between the anticipated cash on hand based on sales and outgoings, and the actual amount in the business account. The owner engaged his brother to conduct an audit and the auditor asked you how much debt was in the business. You told him approximately \$775,000, but the auditor ultimately concluded that the business was

approximately \$1,000,000 in debt. In response to a question by the auditor as to why the debt was increasing, in view of the funds coming into the account, you replied that you did not know.

The auditor noted that payments had been made to two different bank accounts in the name of one of the creditors you had falsely entered into the records. One was a business account, and the other an account with a different bank. The auditor checked with the creditor who confirmed that it did not have the particular account with the different bank. Eventually, the owner and auditor spoke to you and advised that money was missing from the business account which was being transferred into an unknown account in a particular bank. You cried and admitted that the account was yours. You said you were sorry. When asked you admitted taking \$70,000 - \$80,000 over 12 months because of a gambling habit for which you were receiving help. You said you would pay the money back and did not want your husband to find out what you had done. Not surprisingly you were asked to leave the business.

A thorough audit of the company records was conducted and in late May 2020 the crimes were reported to police who undertook an investigation. Police obtained bank statements from you and your daughter. On 8 July 2020 you were arrested.

Between 5 May 2020, being the day you were confronted and made admissions to the auditor and the owner, and your arrest on 8 July 2020 you paid \$73,000 to your former employer by way of restitution. You told police that your husband was giving you funds to make repayments and your daughter had also taken out a loan for \$20,000. No further payments were made after you were arrested.

During the police interview on 8 July 2020 you made full admissions concerning your fraudulent conduct and the method you used. You admitted placing the funds into your own bank account, and that of your daughter, and told police that you had access to your daughter's account from which you withdrew funds. You said your daughter did not know that you were unlawfully taking funds from your employer as you had told her that you had borrowed it from the business. Funds from your account were also transferred to your husband's account to cover funds withdrawn from that account. On occasions you used your husband's funds and did not want him to find out what was happening.

When police suggested that you had defrauded the business of approximately \$400,000, you responded that you had "no idea" that you had taken so much. You said that you did not know how long the defrauding would have continued, and knew that you should have stopped a long time ago.

In your interview you also told police that the catalyst for your offending was the "machines". You were gambling online and also used poker machines at hotels. You said you were gambling "thousands", but also agreed that much of the amount taken from your employer was spent on food, cosmetics and clothing. You agreed that you had been living beyond your means and, when you were unable to pay bills, it would be a trigger for you to make one of the fraudulent transfers.

You also told police that you had seen a counsellor about your gambling, but ceased attending because you felt too guilty. You said that you had ceased gambling earlier in 2020.

As is obvious, you occupied a position of trust. That trust enabled you to commit the crimes over such a long period. Your fraudulent conduct was a serious abuse of the trust the employer placed in you.

Robinson's Meats was not insured for internal fraud. The immediate effect of your crimes was to result in a loss of approximately \$150,000 on the sale of the business. But the effects went much further. Your crimes have had a devastating effect on Mr Robinson, who had worked hard all his life since he left school at the age of 15 to commence an apprenticeship as a butcher. It is apparent that Mr Robinson has always taken great pride in his service to customers and the community and how he cared for his staff. In his words "staff trusted me and I trusted them". You betrayed that trust and the financial and emotional impacts have been profound. The devastating impact is ongoing and will continue for the foreseeable future. In deference to the privacy of Mr Robinson, it is unnecessary for me to set out any more detail of the particular financial and emotional impacts he has suffered.

Pursuant to s 68(1) of the *Sentencing Act* I make a compensation order in favour of P J Robinson Pty Ltd in the amount of \$347,849.18. That is the amount defrauded by you less the \$73,000 you have repaid as part restitution.

As to matters personal to you, born in 1961 you are now aged 59. Prior to July 2018 when you commenced your criminal conduct, you had not offended against the criminal law and you had led a useful and industrious life. Raised in a good family, you left school in year 10 and then from then on without formal training you were constantly employed. Some years ago you were employed at Robinsons undertaking administrative work, then you left to work elsewhere before returning in 2018. Initially you worked with an older employee and when he retired you took over the administrative role on your own. You felt overwhelmed as you learnt on the job, and anxiety and depression from which you had suffered over some years was exacerbated. At the same time, the businesses run by your husband and child were struggling. They both relied on you for administrative tasks in their businesses.

It was in this fragile mental state that you discovered gambling on poker machines provided relief from your anxiety and depression. It was an escape that got out of control. You found yourself making excuses for your absences to your employer, and to your husband and daughter. Initially, you used funds for your gambling from your husband's account. Those funds run out and the fraud on your employer began. The total amount you took from your employer came as a surprise to you. I accept your counsel's submissions that in a strange sort of way, you experienced a sense of relief when your fraudulent conduct was discovered. In August last year, your general practitioner referred you to a psychologist, who has helped you gain an insight in to your mental health and why you resorted to defrauding your employer. I accept that you are shocked by your own behaviour and it is to your credit that you now accept full responsibility for your conduct.

Ms Kendall, you should be under no doubt as to the seriousness of your criminal conduct. It was a grave breach of trust and you fraudulently took from your employer a very large amount of money over a lengthy period. It was a sustained and quite sophisticated course of criminal conduct which only came to a halt because it was discovered. This is not a case in which you voluntarily desisted. The gambling addiction helps explain why you embarked on the fraud and continued it. However, gambling in your particular circumstances is not a mitigating factor. It does however mean that the aggravating feature of pure greed is absent.

On the other side of the balancing exercise which is required of a sentencing court, is your prior good character. You have previously led an industrious life and you were a person of prior good character. However, the weight to be given to your prior good character is somewhat tempered by the fact that your good character enabled you gain the trust of Mr Robinson, and to get away with your fraudulent conduct for so long. Nevertheless, you are entitled to credit for the good and useful life that you led before you embarked on this course of offending. In addition, you are entitled to credit for the fact that you paid restitution of \$73,000 before you were arrested.

You are convicted of each count. Ms Kendall, as I explained to you last week, you present a difficult task for a sentencing Judge. You reached the age of 56, leading a good life and without any offending against the criminal law. But then you embarked on a sustained course of serious criminal conduct which has had devastating effects on the victim. Abuse of trust by trusted employee's is unfortunately not uncommon, and there is a need to impose a sentence which reflects the community's condemnation of such conduct, and which hopefully will assist in deterring others who are minded to commit this type of crime.

As to your prospects for the future, I am satisfied that you possess good prospects of full rehabilitation. You have accepted responsibility and co-operated with the investigation and entered an early plea of guilty, for which you are entitled to credit. As I said, you have paid \$73,000 by way of restitution. I accept that you pose very little risk of offending in the future.

Had it not been for your plea of guilty, I would have imposed a sentence of 3 years' and 9 months' imprisonment. After allowing for your plea, I impose a sentence of imprisonment for 3 years. That sentence will be suspended after you have served 6 months' imprisonment. That means you have an actual term of 6 months' to serve before you will be released on what is called a suspended sentence. I make it very clear, that it is your prior good character, your acceptance of responsibility and your prospects for the future, which have led me to exercise significant leniency in only requiring you to serve a period of 6 months. The period to be served could quite easily have been significantly longer. The operative period of suspension is 2 years. That is, 2 years' after the date of your release. That means you will be on a suspended sentence for 2 years' after you are released, so the balance of the sentence is hanging over your head for that period.

It is a condition that you not commit any offence during that period of 2 years' punishable by imprisonment. So, if you break the terms of your suspension then you will be at risk of going to jail again. It is also a condition of the suspension, that during the period of 2 years' from the date of your release, you complete 100 hours of community service. This is so that you can put something back into the community, because in a real sense you have taken from the community by your fraudulent taking of funds from Mr Robinson. Now, the condition that you perform community service is by virtue of the law as it stands now, subject to a number of conditions. Ms Bourke, I will have to rely upon you to explain the detail of these conditions to your client. Section 24 of the *Sentencing Act* ss 5A, provides that at this time, a number of sections apply with modifications. They are s 42. They automatically apply, as I read the sections, and that includes reporting. I expect Ms Kendall that prior to your release, someone from probation will speak with you, but I will make it a condition that within 48 hours of your release, you report to the probation service. Now, I am not sure what the formal title of that service is, but that is a requirement. You report to them and they tell you from there on what to do, and you will be required during the 2 year period to report to the probation officer as directed, and comply with the reasonable directions concerning your community service. It is

a condition that you perform your community service to the satisfaction of the probation officer.

Automatically, it is a condition that you must not assault, threaten, insult or use abusive language to a probation officer or a supervisor.