

**STATE OF TASMANIA v TRISTAN MICHAEL QUINN**  
**COMMENTS ON PASSING SENTENCE**

**20 JUNE 2022**  
**ESTCOURT J**

The defendant, Tristan Michael Quinn, aged 29 at the time of the offending, has pleaded guilty to one count of obtaining a financial advantage by deception contrary to s 134.2(1) of the *Criminal Code* (Cth). The maximum penalty for the offence is imprisonment for 10 years and/or pursuant to s 4B(2) of the *Crimes Act* 1914 a fine of \$66,000 .

Between 28 August 2012 and 12 June 2019 whilst in receipt of a Newstart Allowance, the defendant under-reported his income to Centrelink on 178 occasions with the intention of obtaining social security payments to which he knew he was not entitled. The offending was sustained and deliberate and resulted in the defendant obtaining a financial advantage in the sum of \$109,053.10. The defendant under-reported his fortnightly earnings from employment on 178 separate occasions (i.e. each fortnight) electronically and in person, over a period of nearly 7 years.

In all but two of the 178 fortnights subject to charge, the defendant was not entitled to receive any payment of benefit. This was because his actual gross fortnightly earnings from employment exceeded the maximum income thresh-hold amount.

Each time the defendant reported to Centrelink he intentionally declared significantly less than his actual fortnightly earnings, which resulted in him receiving the maximum or near the maximum fortnightly Newstart and Start Up payments. Over the period of the charge the defendant declared approximately 10% of his gross income to Centrelink. The offending was detected by data matching. He continued offending after receiving a notice of overpayment. I note that there is a dispute in relation to that.

On 12 May 2021 complaint 90593/21 was filed. The defendant first appeared in the Magistrates Court on 28 May 2021. On 28 October 2021 the defendant pleaded guilty to the charge and was committed for sentence to the sittings of this Court in Hobart commencing 15 November 2021.

The defendant has relevant prior convictions and subject to significant matters raised in mitigation, the Crown submits that the appropriate penalty is an immediate term of imprisonment in light of the nature and objective seriousness of the offending, and the paramount need for general and specific deterrence.

The defendant is now 39 years of age and is currently employed as a supervisor at Hill Street Grocer, Sandy Bay. He has 2 daughters, aged 19 and 17. While growing up, he had a positive relationship with his mother. His father was not as supportive as his mother as his father was controlling, manipulative and dismissive of the defendant. He grew up with 2 brothers. He has a good relationship with his elder brother but has not spoken with his younger brother for a number of years.

He was expelled in year 9 after being caught smoking. He was then accepted by Sacred Heart College, but was transferred to Claremont High as his father was frustrated with paying expensive school fees. Upon completion of his studies, he worked as a casual employee at Domino's, a job that his elder brother obtained for him. He moved to Queensland, when he was 18, with his first partner who was pregnant, in order to give her a better life. The relationship

soon broke down and the defendant came back to Tasmania with nothing, and without his daughter.

After moving back from Queensland in 2012, he was hunting for a job and did odd jobs with his friend to support himself. He started working at Hill Street Grocery as a floor staff member in 2013 and was promoted to supervisor 4-5 years ago.

The defendant was first made aware of anxiety issues when he was 23. He was prescribed medication, but it did not help him and made him more anxious and socially excluded. He was heavily reliant on cannabis to cope with his anxiety. At this time, he did not have a job and was using almost all his benefits to pay for his cannabis. He had further stresses when his brother lost his employment due to mental health problems. His brother attempted suicide and had constant suicidal inclinations. The defendant moved in with his brother and had to emotionally and financially support him. A further financial blow came when defendant and his brother were evicted from their house due to not being able to pay rent. For almost 12 months, they were homeless and were couch surfing. This additional stress caused the defendant to use cannabis over 4 to 5 times daily.

The defendant had become almost estranged with his first child and he was given the opportunity to reconnect with her. He was told that if he provided financial support to his daughter then he would be able to see her and spend time with her. This involved paying for her school and miscellaneous items such as a computer.

All these factors had caused significant distress to the defendant. His cannabis consumption increased dramatically as he has no other way to cope with his stress and grief in his mind. He would become easily irritated and agitated if he did not have cannabis. After paying rent, living expenses, providing for his brother and daughter the defendant was left with no money. What was initially meant to be a one off false claim to get him a week's worth of cannabis became habitual. The defendant knew what he was doing was wrong but his addiction to cannabis and his need for it to help him focus and stay calm became a primary consideration.

I am required to sentence federal offenders in accordance with Part 1B of the *Crimes Act 1914* (Cth) (Crimes Act), including s 16A, which provides a non-exhaustive "check list" of matters that a court should take into account, where relevant.

As to those matters the first two are the nature and circumstances of the offending and a course of conduct. The State submits that it is aggravating that the defendant continued to offend, after he had received notification from Centrelink about a significant overpayment raised against him in February 2019. The defendant significantly under-reported his fortnightly income on a further 8 occasions. It was only after Centrelink second data match and suspension of benefits in November 2019 that the defendant's behaviour ceased. As already noted the course of conduct comprised 178 separate occasions over a period of nearly 7 years.

The next relevant consideration is injury loss or damage. The Crown notes that offending resulted in a financial loss to the Commonwealth of \$109,053.10. Of this amount, the defendant has repaid over \$5,500.00 leaving the outstanding balance as \$103,160.23. A reparation order is sought in this amount pursuant to s 21B of the *Crimes Act 1914* with the further terms to be adjourned sine die.

Next is any guilty plea. The defendant pleaded guilty to the offence on 28 October 2021. The plea of guilty is indicative of his willingness to facilitate the course of justice and should be taken into account for its utilitarian value only.

Next is deterrence. The principle of general deterrence is paramount in cases of social security fraud. The authorities confirm:

- a. The social security system relies on the honesty of applicants for, and recipients of, benefits; the social security system being based on trust is open to abuse with the result that when abuse is discovered, sentences must be salutary.

These considerations, reiterated over many years, remain applicable. While increased data matching has improved the capacity to detect some types of social security fraud, as a crime type it remains prevalent.

Appellate courts have stated that a sentence of imprisonment is ordinarily likely to be required in cases of sustained and deliberate cheating of the social welfare system, because it is unlikely that mitigating factors will be of sufficient significance to outweigh the primary purpose for imposing sentence in such cases, namely general deterrence. Any sentence must impose an adequate punishment

The next relevant consideration is the character and antecedents of the defendant. The defendant has prior convictions for dishonesty.

On 5 December 2012 the defendant was convicted of multiple stealing (by agent) on complaint 13657/2009. He was sentenced to 150 hours of Community Service and supervised probation for a period of 6 months. Specific conditions include attending education programs as directed and to undergo an assessment and treatment for alcohol and drug dependency, as directed.

On 12 December 2019, the defendant was breached for failure to comply with his community service order by failing to complete the hours required. He completed 57.25 of the 150 hours. The original sentence was revoked and he was resentenced to a 12 month community correction order, being supervised probation. Community Corrections records dated 11 November 2021, indicate that the defendant had a poor attitude during the term of his supervision and was using cannabis daily. Factors which are confirmed in the most recent presentence report obtained by me.

The defendant also has prior matters for driving whilst suspended (2016) and driving with prescribed and proscribed illicit drug (2016, 2017, 2018); and driving whilst disqualified (2016). In the most recent conviction for driving with prescribed and proscribed illicit drug (19 July 2018) the defendant was sentenced to one month imprisonment I note the sentence says that he was to be of good behaviour for 2 years so I assume it was suspended.

The defendant was committing these offences, whilst appearing in court on other drug related offences, and whilst subject to supervised probation and community service. In the last 18 months of his offending, the defendant was subject to a good behaviour bond in relation two separate suspended sentences of imprisonment.

The Crown submits that the defendant's persistent disregard of the law, as demonstrated by his non compliance with court orders, should be taken into account in sentencing. The Crown

submits a sentence is required which addresses the need for personal deterrence and increases the prospects for rehabilitation.

To the extent that drug use is offered by the defendant as a motive or explanation for his offending, the Crown submits that should not warrant a reduction in moral culpability or any moderation of any general sentence and that is a correct submission. The offending was repeated and extended over a protracted period. It is submitted by the Crown that a person committing fraud offences to fund their drug use, still has a degree of choice over their actions and that is a correct submission.

The next relevant consideration requires the court to take into account, "the probable effect of any sentence or order under consideration would have on any of the person's family or dependants". It is not a mitigating factor, properly so called; it is in substance an appeal for mercy.

It is submitted on behalf of the defendant that it has long been noted that when sentencing a federal offender, a term of actual imprisonment should be the last resort and only when there are no other sentencing options available. It is submitted in this case, that a recognizance release order is appropriate. I do not accept that submission.

In my view such mitigating factors as can be perceived in this case, including the reasons given for his offending (cannabis usage) and caring for his brother and gaining access to his estranged daughter, are wholly insufficient to outweigh the primary purpose for imposing sentence, namely general deterrence. A recognizance release order is not an adequate punishment.

The seriousness and scale of the offending, and the need to emphasize general deterrence, means ordinarily the only appropriate sentence would be a significant sentence of imprisonment. However, I will take account the defendant's personal circumstances and his plea of guilty and his efforts in repaying the money dishonestly obtained by him and the fact he remains in secure employment with Hill Street Grocer.

The orders I make are as follows:

- 1 The defendant is convicted of the offence to which he has pleaded guilty.
- 2 I make a home detention order for the maximum period of 18 months. All of the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act* 1997 are imposed with specific consideration to s 42AD(1)(g) and (h), I add the following conditions to the order.
  - (a) Mr Quinn, you must during all of the operational period of the order submit to electronic monitoring including by wearing or carrying an electronic device during the period that you are required to submit to electronic monitoring you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring
  - (b) You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment use for the purpose of electronic monitoring.
  - (c) You must comply with all of the reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device or a system used for the purposes of electronic monitoring by
    - (i) a police officer
    - (ii) a probation officer or prescribed officer

- (iii) any other person whose functions involve the installation or operation of a device or a system used for the purpose of electronic monitoring

The following special conditions are also added to the order.

- (a) Mr Quinn you must during the operational period of the order remain at [address] at all times unless approved by a probation officer.
- (b) You must attend the Community Corrections Office at 3 Terry Street Glenorchy, for induction into this order. You must attend for induction during normal business hours and no later than 10am tomorrow.
- (c) You must during the operational period of the order maintain in operating condition an active mobile phone service providing your contact details to Community Corrections and be accessible for contact through this device at all times. You must submit to a Community Corrections office required by that officer.
- (d) You must not during the operational period of the order take any illicit or prohibited substances. Illicit and prohibited substances include:
  - (i) Any controlled drug that is defined by the *Misuse of Drugs Act* 2001
  - (ii) Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.
- (e) You must during the operational period of the order submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.
- (f) You must during the operational period of the order undergo assessment and treatment for drug dependency as directed by a probation officer.
- (g) Pursuant to s 42A(c) of the *Sentencing Act*, that the offender must not, during the operational period of the order, consume alcohol.

I suspect Community Corrections will advise Mr Quinn to seek medical help immediately in order to be prescribed whatever might be appropriate to minimise any withdrawal symptoms or increased anxiety or stress involved in the necessary cessation of consuming cannabis. But if that does not happen, your counsel should assist you in that regard because the alternative is as I have said, a three year sentence of imprisonment.

In accordance with s 16F of the *Crime Act*, Mr Quinn, I explain to you that you have been sentenced to a home detention order for a period of 18 months with a number of conditions attached to that order. If you breach any of those conditions, the Crown are able to make an application to discharge the order and to impose some other sentence, and as I have explained to you, if you were to continue using cannabis that would be a breach of a condition of the order and unless there was some overwhelming reason, I would simply invoke the alternate sentence of three years imprisonment and you would be going to prison.