

STATE OF TASMANIA v MICHAEL JOHN WISBY
COMMENTS ON PASSING SENTENCE

26 APRIL 2023
BRETT J

Mr Wisby, you have pleaded guilty to crimes of dishonesty, in particular one count of computer-related fraud and three counts of stealing.

You committed these crimes between 30 July 2018 and November 2019. During that period, you were the treasurer of the Carbine Club of Tasmania, which is a non-profit incorporated association which provides financial support for persons in need within the sporting community. You had held the position of treasurer for in excess of 20 years and were made a life member of the club in 2017. On 126 occasions, you electronically transferred money from the club account to your own personal account. The total of these transactions was \$122,359. On three other occasions, you acquired cash owned by the club, by writing and cashing a cheque on the club account. The total of these transactions was \$5,100, making the overall aggregate of money which you fraudulently obtained from the club, \$127,459.

The money was spent by you on gambling, and to meet everyday living expenses for your wife and yourself. You were able to perpetrate the crime because of your position as treasurer and because of the trust placed in you by other members of the club. Although there was a co signatory on the accounts, you were able to take the money because the co signatory had some years ago provided you with his login details and password. This was also a consequence of the position of trust and esteem in which you were held by the club. You also used some active deception to continue the offending. On more than one occasion, you tabled false reports at meetings which suggested that the club was in a good financial position. It was only after you had resigned from the position of treasurer that your replacement discovered that the club was essentially insolvent and your criminal conduct came to light. You did not immediately repay the money, but you did eventually satisfy a judgment obtained against you by the club after it had initiated court proceedings against you. You sold your family home to achieve this.

You are 76 years of age and have no prior convictions. You have a good industrial record and for some years worked as an accountant. You have owned and operated businesses, and held a number of responsible positions. Between the age of 57 and your retirement at age 68, you held a position as CEO of the Tasmanian Racing Club. Your explanation for this offending is that although you had always had an interest in gambling, you started to gamble more consistently after you retired. Your wife's health means that she requires constant care and you retired in order to provide this to her. You found this transition difficult, and resorted to gambling as a means of relieving the stress, anxiety and boredom associated with your circumstances after retirement. You quickly expended your own money, including your superannuation, on gambling losses and then started to take and use the club's money. A psychologist has expressed the opinion that, at the relevant time, you were suffering from a major depressive disorder which was moderate in severity, together with a long-standing gambling disorder. The psychologist considers that these disorders impaired your mental functioning by impairing your ability to exercise appropriate judgement and to think clearly, and thereby contributed to the commission of the offences. I accept this as far as it goes, but I do not consider that it significantly reduces your moral culpability or significantly affects the relevance of general deterrence in this case. Gambling addiction is a common causal factor in respect of crime such as this. It often arises in the context of underlying mental health conditions, such as depression, as well as other significant situational factors. Although the excessive gambling and consequent predicament in which you found yourself is explained by your mental health, there is no suggestion in the

psychological analysis that the mental health conditions reduced or impaired your capacity to understand the nature and significance of taking money that did not belong to you, nor affected your ability to resist doing so. On the contrary, your dishonest conduct was deliberate and sustained. The most that the psychologist has said is that your depression and gambling disorder impaired your capacity to exercise appropriate judgement and think clearly. I would think it obvious that that would be the case, but I must also take into account that the offending was consistent, continued over a lengthy period and involved a degree of sophistication, in particular, by providing false reports to the committee. It is clear that you knew what you were doing, and that you must have appreciated the impact that your actions would have on the club and the members of it. I think this is an important distinction in terms of the relevance of your mental health. It is the sad reality of life that many people fall on hard times, and suffer associated impact on their mental health. The great majority do not resort to crime to deal with that situation. The mental health context of the offending is relevant but its effect on sentencing is limited. In this regard, I have assessed the weight to be attributed to your gambling disorder in accordance with the principles discussed in *R v Grossi* (2008) 23 VR 500 and *Johnstone v Tasmania* (2011) 20 Tas R 227.

I accept that eventually the club was repaid the money which you had taken, but it is also clear that it was forced to take legal action to achieve this. The impact on the club, and individual members of it, has been significant. This is explained in a victim impact statement which is been provided to me from the president of the club. The club was rendered insolvent because of the loss of almost all of its funds. It is clear that members of the club suffered considerable embarrassment as a result of this insolvency, and feelings of betrayal and disappointment because of your breach of trust. Various members of the club have had to expend considerable time and effort to deal with this situation and the reputation of the club generally has been adversely affected. This has had practical consequences, such as an adverse impact on its ability to seek donations, and carry out its charitable work. I accept that these impacts are real and significant and what can be expected as a result of the commission of crimes such as this.

I regard these crimes as a serious example of their type. They involved a significant breach of trust and were committed in a systematic way over a prolonged period. Your position of trust facilitated your ability to commit the crime. The victim was a not-for-profit charity and your crimes directly impacted its ability to carry out its charitable work. Organisations of this type must necessarily put trust in people like you, and hence are very vulnerable to criminal conduct of this nature. In my view, general deterrence is a primary sentencing consideration.

By way of mitigation, I will take into account your pleas of guilty and the fact that the money was eventually repaid. I also take into account that you cooperated with the investigation, and this had a significant beneficial impact of the investigation.

Notwithstanding this, however, the seriousness of the crimes requires a proportionate response. This would, in the normal course, be a significant sentence of actual imprisonment. However, I am satisfied that the significant impact on your wife, if you are incarcerated does, in this case, amount to an exceptional circumstance, and for that reason is relevant to sentencing. She is extremely ill, and suffers from several debilitating conditions. She cannot look after herself and requires full time care. You have two adult children but I am satisfied that they are precluded from providing the necessary care by the circumstances of their own lives. An attempt to have the care provided in the home by a nursing agency was unsuccessful, due to its intensive nature. The only realistic option if you were incarcerated is that she would need to go into a nursing

home. This would be a major step, and would almost certainly change her life in a significant and adverse way, perhaps permanently. While your crime is very serious, the principle sentencing factor compelling a sentence of actual incarceration is general deterrence. There is no question here of public protection. I am satisfied that you are unlikely to commit crimes of this nature again, in fact you are extremely unlikely to have the opportunity to do so. You are otherwise a person of good character. I also take into account the mitigating factors I have already discussed. When I place the competing considerations in balance, I am satisfied that appropriate punishment can be imposed by a lengthy period of home detention. This will enable you to continue to care for your wife at home, but will also impose significant punishment. It sends an appropriate message to others who would commit crimes of this nature that there are consequences for such conduct. But for the particular circumstances of your wife's health, this would normally be a sentence of actual imprisonment.

Accordingly, the orders I make are as follows:

- a. You are convicted of the crimes to which you have pleaded guilty;
- b. I make a home detention order, which will have an operational period of 18 months, commencing tomorrow . The home detention premises will be at ****address****. 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 s 42AD(1)(g), which is the provision requiring submission to electronic monitoring. For the purposes of the condition contained in s 42AD(1)(c), I specify that the offender must during the operational period, be at the home detention premises at all times on each day of the week, unless he is not there for a relevant reason, as specified in s 42AD(4). The order will also include the following special conditions:
 - a. That you must report to a community corrections officer at community corrections in Hobart for the purpose of induction no later than 10am tomorrow.
 - b. That you must maintain in operating condition an active mobile telephone service, provide the details to a community corrections 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 period of the order, take any illicit or prohibited substances, including:
 - i. any controlled drug 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 a medical professional that you have been lawfully prescribed the relevant medication.
 - e. You must not during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or community corrections officer, submit to a breath test, urine test or other test for the presence of alcohol

- f. You must engage with ongoing psychological and anti-gambling intervention, as directed by a community corrections officer.