

James Burrows, you plead guilty to 23 counts of fraud, 43 counts of computer related fraud, 3 counts of stealing and 28 counts of insertion of false information as data, all charges contrary to the *Criminal Code* (Tas), and 16 counts of obtaining a financial advantage by deception contrary to the *Criminal Code* (Cth). All of the crimes were committed in your capacity as a chartered accountant and tax agent conducting your own practice through your company JRB Accounting Pty Ltd. During the period of about four years and three months between 20 November 2015 and 11 February 2020 you stole or dishonestly obtained a total of \$1,449,364.70. Of that sum \$1,262,617.04 was stolen from your personal and business clients. The remaining \$186,747.66 was dishonestly obtained from the Australian Tax Office. Your criminal conduct involved about 300 separate acts of dishonesty. You had a broad client base ranging from individuals for whom you prepared and lodged personal tax returns to small businesses whose proprietors engaged you to manage and control the financial affairs of the business and obligations to the ATO for payment of income tax, goods and services tax and employee superannuation. In many cases you were given full access to each of the business and business owner's bank accounts, including internet banking, and their online portal with the ATO. On the material before me there were 25 clients who were victims of your dishonesty. The amounts stolen from individual clients ranged between \$1,050 and \$298,633. You were engaged by clients to pay personal and business accounts and meet their tax obligations. For that purpose they deposited funds with your firm on trust and, as I have already explained, you were given access to bank accounts and passwords. Income tax and other forms of tax refunds to which your clients were entitled were paid to into your firm's trust account by the ATO. In a deliberate and thoroughly dishonest way you simply helped yourself to this money by withdrawing it yourself or by transferring it into other bank accounts controlled by you. At least one of your accounts was deliberately set up by you in 2015 for that fraudulent purpose, even before your offending commenced, and was referred to by you as your fraud account. You covered your tracks by making false entries in your own records, in client records and in bank transfers. When clients queried transactions you lied about the true purpose of the transfers and payments. The offences against the ATO were committed between March 2017 and August 2019. Without the knowledge or permission of your clients you accessed the ATO tax agent portal using your tax agent number and password to lodge fraudulent income tax returns and business activity statements or fraudulently amend those previously submitted. Your purpose was to dishonestly inflate the amount of income tax or GST to be refunded to the client. When it was paid you appropriated the amount to which the client was not entitled to your own use but made false entries that the money had been paid to your clients.

You are now aged 38. You have no relevant prior convictions although, as I will explain, you re-offended after the crimes for which I am to sentence you. You were born and educated in Launceston. After some early educational difficulties you progressed to qualify as a chartered accountant. You were employed by another accountant until you commenced your own firm in 2012. You separated from your wife and three children in 2019 soon after your crimes were discovered. They now live in a different State. I have no material that your imprisonment will result in any family hardship although forced estrangement from their father may well have some impact on your children even though your contact with them was limited anyway. You have a new and supportive partner. Your registration as a chartered accountant and tax agent has in each case been suspended. Although the suspensions are temporary at the moment I see little prospect that you will ever be so accredited again. You brought those consequences on yourself. I have been provided with a range of very favourable references from family members and personal and professional associates. They regard you as a person of otherwise good character but from a

sentencing point of view the references carry little weight beyond indicating that you have a supportive network who may assist your rehabilitation following your release. Offending over a lengthy period tends to cancel out the significance of prior good character and if you had not been a person of apparently good character you would not have been trusted by your clients and in a position to offend.

It is not suggested that the money was stolen for greed or other criminal activity. It is not in dispute that the primary motivation for your dishonesty was to obtain money for gambling and that all of the money dishonestly obtained was gambled away or shuffled around accounts to replace other money which had been gambled away. Your counsel made lengthy submissions directed to the extent to which this may mitigate your crimes. I was provided with two reports from a psychiatrist, Dr Phil Reid, and three reports from a psychologist, Luke Armstrong, all prepared this year. Through a family culture of gambling and some further family dysfunction, combined with some personality traits, you were conditioned to gaming and gambling from a young age. Gambling was already a problem for you as a young man. Even before the offending commenced the condition became pathological. Both Dr Reid and Mr Armstrong describe your addiction as involving all or many of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) criterion for gambling disorder. However courts in this State and across Australia have consistently held that it will be an unusual case in which the fact that offences were committed to feed a gambling addiction will result in any appreciable reduction in sentence. I refer in particular to the decisions of the Victorian Court of Criminal Appeal in *Grossi* (2008) 183 A Crim R 15; [2008] VSCA 51, the Tasmanian Court of Criminal Appeal in *Johnstone* [2011] TASCA 9, *Deakin* [2016] TASCCA 19 and *Perri* [2022] TASCCA 3, and the New South Wales Court of Criminal Appeal in *Johnston v R* [2017] NSWCCA 53. This is so even if the gambling results from a diagnosed disorder. The relevance of the disorder to the sentence to be imposed is to be assessed in accordance with the principles restated in *Verdins*. Applying those principles to your case I have concluded that your addiction should result in a modest reduction in the level of your moral culpability but that it should result in only a very small moderation of sentence. It remains a very serious case of dishonesty involving a large amount of money and egregious breaches of trust which had a severe impact on a considerable number of people.

Dr Reid diagnosed gambling disorder but also a major depressive disorder. In his opinion the gambling disorder was relevant to but did not cause your criminal conduct because, to use his words, you were aware of your actions and retained your capacity to understand that it was wrong. Nevertheless he accepted that a court may consider you to be less morally culpable because the combined effect of your gambling and depressive disorders lowered your judgment and reduced your capacity to stop gambling. Mr Armstrong detected, in addition to the gambling and depressive disorders, a narcissistic personality disorder. In a series of very detailed reports he concluded that the gambling was a form of self-medication or escape from underlying depression existing from childhood but exacerbated by what you perceived as a loveless marriage and the tensions arising from it, and from a sense of entitlement and self-importance deriving from your narcissism. In Mr Armstrong's opinion the combined effect of these three disorders, in a vicious cycle, distorted your thinking and impaired your capacity to make calm and rational choices.

On the other hand, the material I have been given falls well short of establishing that the choice of how you financed your addiction was removed from your control. The offending took place while you were conducting, apparently competently, a busy practice as a chartered accountant. You knew what you were doing was wrong. You knew you had a problem well before the offending even started but did nothing to address it. Your crimes involved hundreds of planned

and deliberate dishonest acts over an extended period and you took sophisticated and devious measures to conceal what you were doing. Your counsel submitted that you engaged in a long term chase to recoup losses but none of the money was used to repay clients. When it became apparent to you as a result of an ATO enquiry that discovery of your crimes may be imminent your offending only escalated. In the three or four months leading up to July 2019 when the police were notified you gambled and lost hundreds of thousands of dollars. Even after discovery the offending did not stop.

Mr Armstrong also referred to your several complex mental health conditions in the context of a prison sentence. In his opinion your depressive disorder may be exacerbated in circumstances in which you are not in control and that this may make prison more arduous for you. That is one of the *Verdins* considerations and may be taken into account. Mr Armstrong's opinion was not challenged although Mr Armstrong did not really expand on why and to what extent prison may be more arduous for you. It seems to me to be little different than the situation confronted by almost every prisoner, many of whom have depressive conditions. I am quite unable to accept, given the seriousness of your crime and the nature of your conditions, that this is a factor which to which any weight should be attributed.

Your plea of guilty is in your favour. Submissions were made about the extent to which it is to be regarded as an early plea but the charges against you were never prepared for trial and I am satisfied that you pleaded guilty as soon as the number and nature of the charges were sufficiently identified. There is a substantial utilitarian benefit which flows from the plea. The case against you was overwhelming but a trial would have been lengthy and required the allocation of very significant resources. You are also entitled to some benefit from co-operation with those who were investigating your crimes and those asked to identify what you had done: the police, the ATO and auditors engaged by your former clients. You made some admissions and provided some materials, including passwords to programs which might not otherwise have been accessible. The overall utility of the admissions and information is difficult to judge but it must have facilitated the various investigations to some extent. It indicated a willingness to assist but all it achieved was to identify your crimes. Nothing you did resulted in recovery of the money you stole or lessened the impact of the losses suffered by your clients and the public and some of your clients were put to a very substantial further cost to investigate your acts and put their affairs back in order. Some could not afford to do even that.

As to whether your plea of guilty, admissions and co-operation indicate genuine contrition is problematic. Remorse is shown by an offender who has an accurate appreciation of the wrongfulness of his or her offending, and of its impact upon its victim or victims, and who desires to do what reasonably can be done to repair the damage and to clear his or her conscience. It is to be distinguished from expediency or self-pity or self-loathing. Your dishonesty was discovered in July 2019. Your counsel submitted that you demonstrated remorse by contacting clients directly to inform them of what you had done and to warn them, by making admissions when interviewed by the police and by assisting the investigations by the ATO and the auditors. I accept that this does indicate recognition of your wrong doing and some wish to make amends. However, there are strong factors which point in the opposite direction. Even after you departed for Victoria in October 2019 you continued to access client bank accounts to steal from them. You did not stop until February 2020. Moreover, even as late as November 2020, more than a year after your dishonesty was originally discovered and after having found alternative employment in Victoria, you again used the ATO portal by fraudulent use of a colleague's password to steal another \$12,500 for more gambling. This illogical and perverse behaviour may be an indication of your pathology as described by Mr Armstrong but is inconsistent with

genuine contrition and, to me, your actual conduct is a more reliable indicator of your true state of mind. Mr Armstrong suggests that with the passage of time since then, as your level of insight into the seriousness and impact of your dishonesty has increased, there has been remorse. You recently wrote a letter to clients containing an apology. But you falsely told Mr Reid this year that you had ceased gambling altogether. You were still gambling until April 2023 albeit on a much reduced and more controlled level. If there was any remorse it was only remorse which developed after five years of repeated dishonesty. In any event, remorse is relevant only to the prospects of rehabilitation and the need for specific deterrence. There is a prospect of your rehabilitation following your release but it will depend on the type of focussed treatment outlined by Mr Armstrong. For the time being the need for specific deterrence remains high.

There has been some delay in the finalisation of these proceedings. They have been hanging over your head for some time. The delay was not caused by you but is not relevant to sentence. The nature of your crimes is that they inevitably require a great deal of investigation. If anything the period since you stopped offending has enabled further time for you to demonstrate an increased prospect of rehabilitation.

The scale of your fraud, the extent of your breaches of trust, the impact of your crimes on your clients and the need for general deterrence are I think the most significant sentencing considerations. It is a particularly serious fraud because of the number of people affected, the amount stolen and the devastating effect it has had on some of them. You were entrusted by your clients with access to very large sums of money and you deliberately and systematically betrayed that trust over a lengthy period. Tellingly, you told the police in August 2019 that you stole most of the money from the clients you were closest to because they trusted you the most. The victim impact statements from two of those clients reflect the profound impact your dishonesty had on their lives not only in financial terms but extending to their psychological and physical health. Their stories are repeated in various ways and to various degrees for the rest of the clients who were affected. None of the almost \$1.5m you stole or dishonestly obtained has been repaid and there is little prospect that you will ever have the means to do so.

The significance of your offending against the ATO should not be overlooked. The system of tax agents depends substantially on the honesty and trustworthiness of those authorised to hold that position. Again, as part of a sustained course of dishonesty, you breached that trust and took advantage of your appointment to commit the offences, thus aggravating the seriousness of your criminal behaviour. The money you fraudulently obtained has not been recovered and constitutes an impost on all taxpayers. For those reasons no sentence other than imprisonment is appropriate. In imposing sentence for the Commonwealth offences I have taken into account all of the factors listed in the *Crimes Act* 1914 (Cth), s 16A, so far as they are relevant and known.

Those who trust accountants and other professionals with money are entitled to expect honesty from them. Persons who breach that trust should expect harsh consequences not only as punishment and retribution, but as an indication to you and to anyone else who may be minded to act in a similar way of the likely consequences. Even taking into account my comments about a modest reduction in your moral culpability I consider that there remains a very high need for general deterrence. It is my duty to impose a substantial prison sentence upon you. Separate sentences must be imposed for the State and Commonwealth offences but the total sentence must be a just and appropriate reflection of your total criminality taking into account that all of your crimes arise from a lengthy but related course of conduct and a common motivation. I have concluded that the best way to achieve that result is to impose partly concurrent sentences, not

to make a recognizance release order in respect of the Commonwealth sentence, and to fix the shortest possible non-parole period in respect of the State sentence.

James Burrows, you are convicted on each count on the indictment. I make compensation orders in favour of those persons identified by counsel for the State during the sentencing hearing for the amounts stated, which will be set out in the order you will be given. I make a reparation order in favour of the Australian Taxation Office in the sum of \$186,747.66. On counts 98 to 113 inclusive, the Commonwealth charges, I impose one sentence. You are sentenced to imprisonment for 2½ years from 1 August 2023, the date you were remanded in custody. I make no recognisance release order because, for the balance of that term after one year, you will be serving the sentence I am about to impose. For counts 1 to 97 inclusive, the State charges, I impose one sentence. You are sentenced to imprisonment for 6½ years to commence on 1 August 2024. I order that you not be eligible for parole until you have served half of that term.

The effect of those orders is that you will be liable to serve a total term of 7½ years from 1 August 2023 and that you will be eligible to apply for release on parole after having served four years and three months of that term.