

STATE OF TASMANIA v NIGEL WARREN GLEESON
COMMENTS ON PASSING SENTENCE

19 MAY 2016
PORTER J

The defendant has pleaded guilty to 20 counts of computer-related fraud committed between March 2008 and February 2014. 11 counts relate to the fraudulent acquisition of credit cards in the names of other people. The other 9 counts relate to the use of those cards to obtain cash, goods or services. The details are as follows. Between April 2008 and June 2009 the defendant obtained from GE Money three credit cards in the name of his father, without the father's consent or authority. The combined credit limit on the three cards was \$10,500. In December 2011 the defendant obtained a further card in the name of his father from the Bank of Melbourne, with a credit limit of \$1,500. In ensuing years the defendant used the GE credit cards, but not the Bank of Melbourne one and that use is the subject of 3 counts on the indictment. In December 2010, the defendant obtained a credit card from GE Money in the name of his mother. That had a credit limit of \$8,000 and 1 count on the indictment relates to the later use of that card. Next, in June 2009 the defendant obtained a credit card from GE Money in the name of a Ms Flude with whom he was then in a relationship. He did so without her consent. The credit limit was \$8,000, and 1 count on the indictment relates to the later use of that card. In June 2011, although the relationship with Ms Flude seems to have ended, the defendant obtained 2 credit cards in the name of Ms Flude's mother. I infer that this was also from GE Money. The combined limit on the two cards was \$5,800, and 2 counts on the indictment relate to the later use of those cards. Lastly, having married a Ms Harris in 2012, the defendant obtained a credit card in her name without her authority from Aussie Credit Cards with a limit of \$8,500. That card was not used. In February 2012 he obtained a further card in her name with a \$6,000 limit, and there is 1 later count on the indictment dealing with the later use of that card. In October 2013, using a combination of their names, he obtained a further card from National Australia Bank with a total credit limit of \$8,000, and there is 1 count which relates to that later use of that card. The total credit limit obtained over the years was, on my calculations, \$42,300. The Crown is not able to be specific as to how much of this was actually utilised. The estimate given was between \$25,000 and \$30,000 - \$35,000. The defendant's counsel accepted \$25,000 - \$30,000. There being no real dispute about that figure as things stood at the end of the hearing, I will proceed on the lower range, although I should say it does not significantly alter my view of things. The defendant operated the active cards in the ordinary way. He used the card to obtain cash, goods or services and normally made the monthly payment as required. However, he was often late in paying and the amounts outstanding increased by way of late payment fees and interest on monies outstanding. Some interest rates were as high as about 29.5%. These matters came to light in February 2014 when Ms Harris, to whom he was then still married, came across an anomalous credit card statement. She searched the defendant's office and found statement in the name of the defendant's father and one in the name of Ms Flude's mother. The last card perhaps illustrates the situation, in that the credit limit was \$2,000, but the balance outstanding was approximately \$2,500. Police were notified and investigations commenced. It was revealed that the defendant had substantial documentation that he used to operate the cards. He kept detailed accounts and had different post office boxes that he rented for different accounts to be sent to. A matter of some significance is that a very small part of his offending was discovered in 2011. On 18 July 2011 he pleaded guilty in the Magistrates Court to one charge of attempting to dishonestly acquire a financial advantage, and was released without conviction upon his undertaking to commit no offence involving dishonesty for a period of three years for which the proceedings were adjourned. I have not been told whether he is to be called upon to be dealt with for that matter. After he was charged with

these present matters, he has paid off somewhere between \$9,000 and \$12,000, leaving an amount outstanding of approximately \$16,000.

The defendant is now 46, nearly 47, and unemployed. He has no relevant offending history apart, of course, from the related matter in 2011. I should note however, that his traffic record does not say much for his attitude to obeying the law. He is now again married. The couple are expecting a child and he has the weekend care of two children, aged 7 and 3, from previous relationships. His wife is a diabetic and is suffering significant health problems. She is due in July. The couple has a meagre income and their financial situation is poor. The defendant has a good work record, with his most recent employment with a retailer coming to an end as a result of these matters. After leaving school in year 10 he worked in retail, and then as a loans officer for a short time before a long stint with the Australian Tax Office. He left after a dispute about redundancies. The offending occurred against a backdrop of severe depression diagnosed in 1999, and a history of epilepsy. The offending had its origins in a relationship he had with a woman after his first marriage failed. The couple were in a defacto relationship for about a year ending in 2005. I am told that this partner was quite demanding and wanted the best of everything. She would not go without what she wanted. She used her own credit cards to the maximum extent possible. In that environment, he developed what he describes as a compulsion to do the same thing. He overused credit cards to achieve the purpose and obtained a poor credit rating. He was unable to obtain credit cards in his own name. This compulsion continued beyond the end of the relationship. He was not able to fund the lifestyle on his wage and was not able, as I have said, to obtain further credit in his own name. He found he was able to get a card in his father's name and things started from there. He sought help from a psychologist in relation to this compulsion after all these matters came to light. I am told that his state of mind was always that he would be able to manage the situation and to be ultimately able to pay off the credit card debts. It was never his intention or belief that anyone would suffer any loss, including the finance companies. He attempted to make payments on time, but limits were reached, and things got a little beyond his control, notwithstanding his best intentions. It is put that it really started out as a compulsive habit which created a debt level that needed to be serviced. He found difficulty doing that, and high interest rates made it harder. It is accepted that he did not volunteer the full scope of his offending when dealt with in 2011. He seems to have been in a state of denial and was still of the view that it could all be paid off within a reasonable time. All the debt relating to Ms Flude has been paid off, and I infer that much of what remains relates only to the cards in the parents' names.

I have given careful consideration to the appropriate penalty. This was a prolonged course of dishonest conduct. Credit was obtained in the names of unsuspecting people. That credit was used to a large degree. Of particular concern is the continuation of the conduct after detection and a court appearance in 2011. I accept the Crown's submission that as well as being difficult to detect, the offences involved an ongoing creation of debt, details of which may well have come to light only after a traumatic event to somebody whose name the defendant was using. In the event that it was the death of that person, the personal representatives would be in a difficult position disclaiming the debt. It is possible some issues might have arisen for the persons concerned while they living, although any problems would most likely have been short lived. On the other hand, I take into account the pleas of guilty that, although negotiated on the original indictment, in fact saved the State a document intensive trial. I take into account the restitution made since being charged with these matters, but given the defendant's present financial situation and the impending addition to his family, it is unlikely much more will be forthcoming. I also take into account that the defendant seems to have

been a vulnerable person throughout the period, although his difficulties do not fall into the category of a mental illness which would entitle him to mitigation for that reason. I recognise his present family circumstances. He did not have his present wife in mind, nor the impending child of course, during the period of offending. Exceptional hardship on them has not been urged on me but time away from his family in this period would be much more acute for the defendant. All in all, I have decided that the best course is for the defendant, rather than be immediately imprisoned, to be required to contribute to the community. Imprisonment is necessary to mark the seriousness of the offending, and to reflect the need for general and personal deterrence, but the suspension of the execution of the term is justified on the conditions I propose.

Mr Gleeson, I have outlined the factors which I have taken into account. You are convicted of all matters and sentenced to 9 months' imprisonment, the execution of which is wholly suspended on conditions that you commit no offence punishable by imprisonment for a period of three years, and that you perform 105 hours of community service. You will have to report to a probation officer at 111 Cameron Street, Launceston within one clear working day. The victims of crime compensation levy is \$1,000, but I will reduce that to the combined limit of \$500. It will have to be paid within 28 days. I make compensation orders in favour of the proprietors of the businesses known as GE Money and Aussie Credit Cards, and in favour of the National Australia Bank Limited. It does not seem to me that the Bank of Melbourne has suffered any loss as the card was not used. Those compensation orders will be for amounts to be assessed, and I adjourn the application in each instance to dates to be fixed.