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| IN THE COUNTY COURT OF VICTORIA | ANONYMISED AND ADAPTED FOR EDUCATIONAL PURPOSES |

AT MELBOURNE

CRIMINAL JURISDICTION

CR-ZZ-XTCS

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| HARRISON COOKSON (A PSEUDONYM) |  |

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| JUDGE: | HIS HONOUR JUDGE HIGHAM |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: |  |
| DATE OF SENTENCE: | 16 June 2017 |
| CASE MAY BE CITED AS: | DPP v Cookson (a pseudonym) |
| MEDIUM NEUTRAL CITATION: | [2017] VCC PTE |

REASONS FOR SENTENCE

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Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Mr T. Bentham |  |
|  |  |  |
| For the Accused | Mr E. Goldman |  |

HIS HONOUR:

1. Harrison Cookson[[1]](#footnote-1), you have pleaded guilty to one rolled up charge of attempting to pervert the course of justice.
2. On 12 March 2014, you swore and signed a statutory declaration that you were the driver of vehicle registration UTE639,[[2]](#footnote-2) whereas on 18 July 2013, you had signed a statement that you were the passenger in that vehicle at the relevant time.
3. On 21 October 2014 at the Prahran Magistrates' Court you gave evidence on affirmation that you were the driver of that vehicle, that the statutory declaration was true and that the statement made by you on 18 July 2013 was false.
4. The maximum penalty for the offence of attempting to pervert the course of justice is 25 years' imprisonment.
5. I now turn in greater detail to the circumstances of your offending.
6. On 18 July 2013, you were a passenger in a white Land Rover Discovery, vehicle registration UTE639 being driven by your erstwhile, that means your former friend, and now co-accused, Mr Zac Pyke.[[3]](#footnote-3)
7. You and Mr Pyke had been out drinking for the evening and were returning home. Upon your return journey, you were the victims of a road rage incident. On the plea the prosecution fairly accepted that the incident had in fact occurred.
8. As a result of the incident, your vehicle suffered a smashed window with   
   Mr Pyke being sprayed with glass fragments.
9. You, Mr Cookson, called emergency services and urged Mr Pyke to drive straight to hospital. Mr Pyke refused to seek medical attention.
10. Shortly thereafter police officers arrived and both you and Mr Pyke at that point identified that Mr Pyke was the driver of the Land Rover.
11. Following standard protocol, Mr Pyke was breathalysed by police officers and was found to have a blood alcohol content over the prescribed limit. He was subsequently charged with driving in excess of the prescribed concentration of alcohol and with driving whilst disqualified, and summonsed to appear before a Magistrate at the Prahran Magistrates' Court on   
    1 September 2014.
12. On 12 March 2014, you completed a statutory declaration stating that you were driving the Land Rover on the morning of 18 July 2013. You signed the statutory declaration in the presence of the pharmacist in Aberfeldie.
13. On 1 September 2014, you and Mr Pyke attended Prahran Magistrates' Court. Mr Pyke indicated that he wanted to contest the charge of driving in excess of the prescribed concentration of alcohol. You indicated that you would give evidence to the court that you, and not he, were driving the vehicle on   
    18 July 2013.
14. Police prosecutors advised both you and Mr Pyke to obtain legal advice in relation to giving false evidence, having regard to the signed statements made by both of you on 18 July 2013. The matter was adjourned for a contested hearing 30 September 2014.
15. On that date, 30 September 2014, you and Mr Pyke again both attended at the Prahran Magistrates' Court and confirmed that Mr Pyke's defence to the charges would be that you rather than he were driving the vehicle at the relevant time. The matter was adjourned to 21 October 2014 and you were again strongly advised by police prosecutors to obtain legal advice from the duty lawyer.
16. It is common ground that on neither 1 September nor 21 October 2014 did you,   
    Mr Cookson, seek any legal advice as to the consequences of the course upon which you were about to embark.
17. The contest was heard on 21 October 2014 at the Prahran Magistrates' Court. You were called as a prosecution witness and made an affirmation, that is to say, a promise, to tell the truth. You proceeded to give evidence to the court that you were driving the Land Rover on   
    18 July 2013. You gave evidence that the statement you signed on 18 July 2013, which asserted that Mr Pyke was the driver was false and had been made by you so as to avoid being charged yourself.
18. Following your evidence, Mr Pyke took an oath upon the Bible and gave evidence to the court that you were driving the Land Rover. He gave evidence that the statement he made on 18 July 2013, which asserted that he was the driver, was false.
19. The Magistrate found Mr Pyke guilty of driving in excess of the prescribed concentration of alcohol and of driving whilst disqualified. Pyke was convicted and sentenced to six months' imprisonment.
20. In his judgment, the learned Magistrate stated that:

"The later assertion that Mr Cookson was the driver lacks credibility and compels the conclusion that the content was fabricated to attempt to avoid the repercussions to Mr Pyke."

1. You were arrested and interviewed on 30 December 2014 in relation to the statutory declaration you had signed and the evidence that you gave in court.
2. In this interview you made full admissions to signing a false statutory declaration on 12 March 2014 and to giving false evidence at the Prahran Magistrates' Court during Mr Pyke's matter.
3. You admitted that you understood the affirmation that you were taking when you entered the witness box at the court and that you were committing an offence by lying to the court.
4. The reasons you provided for these actions were that you were afraid of and threatened by Mr Pyke and that you were worried about the consequences of refusing to comply with Mr Pyke's request that you make the false statutory declaration.
5. You believed that Mr Pyke had connections to a gang. You stated that Mr Pyke had prepared the false statutory declaration that was signed on 12 March 2014 and that he had attended the pharmacy with you.
6. You stated consistently and repeatedly that you were scared of Mr Pyke and of the consequences of not doing that which Mr Pyke asked of you. I shall return later in these reasons to your record of interview and the findings that I make.
7. Despite having been interviewed on 30 December 2014 and making what must be regarded as full and frank admissions to the offending, you were not charged until March 2017.
8. On the plea I enquired as to the reason for this delay. I was told by the learned counsel for the prosecution that in part the delay was attributable to awaiting forensic analysis of the statutory declaration with a view to ascertaining whether it was in fact written by you or by another person. The analysis, I am told, took some 12 months to complete, and the result of such analysis was in the event inconclusive. That is to say, it could not answer the question one way or the other.
9. Even given the 12 months required for the forensic analysis, there is still an unexplained and, in my view, significant delay.
10. Upon your being charged, the matter resolved at the first committal mention. The prosecution concede that the plea was entered at the earliest opportunity.
11. Mr Pyke, I am told, is contesting the matter and a committal date has been set for a date in 2018.
12. I now turn to your personal circumstances.
13. You were born in 1990. Thus at the time of the offending you were 23 years of age and you are now 27.
14. I note that you have no criminal record and no subsequent or pending convictions.
15. You grew up in the Yarra Ranges area with your parents and two younger siblings. You describe your family as normal and report no exposure to violence or abuse. Your father is currently unemployed and your mother is currently unable to work due to health matters for which she is receiving ongoing treatment. You describe a close relationship with your family and you moved out of the family home earlier this year when your parents moved into a smaller house.
16. You attended a number of schools where you report that you were severely bullied by your classmates and sometimes, unfortunately, by your teachers.
17. You had trouble with reading and writing, and found it difficult to follow material presented to you in the classroom. You may have had Attention Deficit Hyperactivity Disorder but have not been diagnosed. You found school to be a difficult environment both academically and socially, and you left school after Year 8. You found it difficult to make friends and before meeting Mr Pyke, you did not have male friends.
18. After leaving school, you undertook work intermittently, and started a number of apprenticeships but did not complete them.
19. You received support from Centrelink and over the last few years, have worked as a contractor in the insulation industry.
20. You live with your de facto partner and your two young children.
21. You report once having had a problem with alcohol, having started drinking at age 18 and progressed to drinking two bottles of rum per week. However since you have lost contact with Mr Pyke due to his incarceration, you report that you now only drink a few times a year. You report no other substance use.
22. A report dated August 2017 from a forensic psychologist was tendered on the plea.
23. The psychologist, identified that you were suffering from the residual effects of Post-Traumatic Stress Disorder in relation to the assistance you rendered during the Black Saturday bushfires.
24. In addition to Post-Traumatic Stress Disorder, the psychologist suggested that you were likely to suffer from Attention Deficit Disorder, Social Anxiety Disorder, Obsessive Compulsive Disorder and a Motor Tic Disorder.
25. It was the psychologist’s opinion that your symptomatic presentation of Attention Deficit Disorder in combination with your difficulties with literacy were likely to have had a significant impact on your failure to read the statutory declaration written by Mr Pyke.
26. Further to this, the psychologist stated that your Social Anxiety Disorder, Obsessive Compulsive Disorder and Motor Tic Disorder were, in her opinion, capable of undermining your social competence and that it would have been extremely difficult for you to refuse the pressure placed upon you by Mr Pyke for fear of losing his friendship and of harm coming to you and your family.
27. The psychologist also stated that these disorders were likely to have affected your ability to assert yourself when seeking legal advice from the duty lawyer at the court.
28. In my view, these are all cogent and highly relevant observations.
29. The psychologist measured your Abbreviated IQ score to be 82, placing you in the 12th percentile, with your intellectual ability estimated to be in the low-average range.
30. Further testing identified your overall academic risk score at 99 per cent. This indicates a high probability of you being at risk for learning difficulties.
31. Your test results presented reading as a weakness. You experience difficulties with processing and comprehension and you suffered physical symptoms whilst reading such as headaches.
32. You scored similarly in tests administered to measure listening, writing, concentration, memory and mathematic skills.
33. The psychologist concluded that your test results indicated that you were of low average intelligence but in addition, you suffer from a severe learning disorder affected by emotional factors such as anxiety, attention, memory and concentration.
34. The psychologist further concluded that in the event that you had read the statutory declaration prepared by Mr Pyke prior to signing it, you were unlikely to have had the reading skills and word knowledge to have understood the declaration at the bottom of the document, or to have had the verbal skills to explain your circumstances to the duty lawyer at the court.
35. Now whilst, of course, you well knew that what you were doing was wrong,   
    the psychologist’s opinion posited a direct connection between your learning disorders and multiple interacting mental health disorders and the nature of your offending.
36. I now turn to the submissions of both the parties on your plea.
37. The prosecutor submitted that attempting to pervert the course of justice is an offence which goes to the heart of the administration of justice. As a consequence, general deterrence is the primary sentencing consideration and a firm message must be sent that undermining the curial, that is to say the court process, will not be tolerated and when detected and prosecuted, will be met by appropriate punishment.
38. Thus just punishment, and by that I mean serving justice both for the community at large and for you, required, that you be sent to prison.
39. Mr Bentham, in reply to the defence submissions, did concede that a disposition combining both imprisonment and a community corrections order would be "in range".
40. In the course of the plea, Mr Bentham accepted that the prosecution could not gainsay your account advanced by you in your record of interview. That is to say, they had no material to suggest that what you said in your interview was false.
41. In your record of interview, you stated that you had tried to persuade   
    Mr Pyke to go to hospital, that it was Pyke that had wanted the statutory declaration to be made, that Pyke had written the statutory declaration, that Pyke had pressured you into signing the statutory declaration, that Pyke had pressured you into attending court, that Pyke had pressured you into going into the witness box and giving the perjured, that is to say, false evidence.
42. When pressed by me, Mr Bentham accepted that such findings were open to me. I make those findings on the balance of probabilities and will sentence you upon the factual basis that you advanced in your record of interview.
43. In addition, Mr Bentham fairly and reasonably and as a model litigant, conceded the direct connection between your various disorders and your offending as opined by the psychologist. That concession, I repeat, was both significant and it was fair.
44. Nonetheless the prosecution's position remained that general deterrence and just punishment demanded that you serve a term of imprisonment.
45. Your counsel, Mr Goldman, placed reliance upon the following matters:

(i) Your diagnosed personality disorders and the direct causal connection identified by the psychologist between those disorders and the offending as reducing your moral culpability;

(ii) The fact that you had not embarked upon this offending for personal gain, but rather you were pressured by your co-accused Pyke to serve his personal interests;

(iii) Your full and frank admissions in your record of interview and your plea of guilty at the earliest opportunity which can be viewed as a true marker of your genuine remorse and which should attract a sentencing discount over and above the mere utilitarian benefit;

(iv) The absence of any prior or subsequent convictions and your excellent personal antecedence as demonstrated by work record and your long term membership of your local State Emergency Services[[4]](#footnote-4) and the significant contribution to the community that you thereby make;

(v) The delay in this matter of well over two years between your record of interview and being charged in March 2017;

(vi) Your particular family situation whereby your partner and the mother of your young children has recently been diagnosed as being on the autism spectrum and who would thus struggle to discharge her parental role on her own;

(vii) That concerns for your family's wellbeing would make any term of imprisonment significantly more burdensome for you;

(viii) That you would be more vulnerable than the ordinary prisoner in light of your personality profile and your vulnerabilities; and

1. In summary, Mr Goldman has submitted that in your case, having regard to both the particular circumstances of your offending and to your personal circumstances, sentencing purposes could be met by a non-custodial disposition.
2. Mr Cookson, the offence of attempting to pervert the course of justice will always be viewed as serious offending by this court and not merely by virtue of the maximum penalty of 25 years' imprisonment. That is because our system of justice, Mr Cookson, and the community that it serves, cannot and will not be undermined by those who wilfully seek to mislead the courts in the exercise of their jurisdiction. It cannot happen and it will not be tolerated.
3. General deterrence and denunciation will always be at the forefront of any sentencing disposition and in the normal course of events, those who come before the courts for such offending can expect to receive custodial sentences which deprive them immediately of their liberty.
4. In sentencing you, Mr Cookson, I have to have regard to a range of different factors. I must give effect to principles of both general deterrence and specific deterrence; that is to say, I must deter others from behaving like you have done, and I must deter you from repeating such behaviour.
5. I must express the community's denunciation of your actions and I should promote, if possible, your rehabilitation. I must take into account the effect that your crime has upon the community and I must have regard to current sentencing practices as determined and described by the Court of Appeal for the kind of offence that you have committed.
6. In short, I must try to balance your personal circumstances with the circumstances of your offending.
7. I am however persuaded that in your case, just punishment for the community and for you does not require that you serve a term of imprisonment.
8. In reaching this conclusion, I have had particular regard to, firstly, your personal characteristics and vulnerabilities. That is, the matters raised by the psychologist and Mr Goldman will tell you what I mean by that in greater detail. In my view, those personal characteristics and vulnerabilities substantially reduce your moral culpability for your offending and it reduces, although it does not eradicate, the need for general deterrence.
9. Secondly, your full and frank admissions in your record of interview and the circumstances that you identified therein which led to your offending.
10. Thirdly, my assessment on the material in front of me that you will not offend again and thereby eliminating the need for specific deterrence.
11. Fourthly, your plea of guilty at the earliest opportunity and the sentencing discount which is required as recognition of its utilitarian benefit. That is a benefit that is gained by saving time or cost, money and the like.
12. Fifthly, the remorse which you express in addition to your plea and which I find to be genuine.
13. Six, your prior history which consists not only in the absence of prior convictions but also in the positive contribution you have made to your community by virtue of your membership of the SES and of your work record.
14. Seven, the significant delay in this prosecution which I accept, whilst not criticising the prosecution, I accept has impacted upon you adversely whilst you have had to wait to know the outcome of the police investigation.
15. Eight, the fact that prison would be more burdensome, in light firstly of your genuine concerns for your family's wellbeing and secondly, due to your own vulnerabilities.
16. Nine, your excellent prospects for rehabilitation. This has been demonstrated by your low risk of reoffending as assessed by the Community Corrections, your past antecedents, that is your past history, what you have done up until now, and the ongoing support, both of your family and the mentors which you are fortunate to have.
17. Ten, the provisions of s.36 of the *Sentencing Act* 1991. This is for the lawyers, Mr Cookson, but I make clear, that had the power been available to me, I would have imposed a suspended sentence upon you.
18. Lastly 11, simple plain old fashioned considerations of mercy in your case.
19. So Mr Cookson, on the charge of attempting to pervert the course of justice, I am going to sentence you to a community corrections order for a term of 24 months.
20. There are conditions to the order
21. Now Mr Goldman will explain to you outside court what all of this means. But it is important that you understand, Mr Cookson, that for each corrections order, there are what are called core conditions that attach.
22. They are that you must not commit any offence during the course of the order which is punishable by imprisonment. So that means if you go into a 7-Eleven and you want a can of coke and you steal it without paying for it, that is theft, an offence punishable by prison. If you do something like that, you breach the order. What happens is you come back in front of me and there will not any longer be Judge Nicey, it will be Judge Nasty. Do you understand me, Mr Cookson?
23. Secondly you have got to comply with the obligations that are required under the regulations, and they will be explained to you.
24. Thirdly, you have got to report to and receive visits from the Secretary or their delegate during the period of the order. So that is an officer who might ring you up and say, "I am coming to see you". You have got to make yourself available.
25. You will have to report to a Community Corrections Centre within two clear working days after the order comes into force. So the order is in force from now.
26. So you have got to go to the Corrections Centre by close of business on Tuesday. So if anything comes up, one of your children is sick, do not think, "oh well, I have got a sick child". This order has to have priority; is that clear?
27. ACCUSED: Yes, Your Honour.
28. HIS HONOUR: Secondly you have got to notify the Secretary that will be your officer, of any change of address or employment within two clear days of the change of address or employment.
29. Also you must not leave Victoria within the period of the order except with permission. Is that clear? So I know Victoria is a lovely place, but you may think, well I want to go somewhere else. You can do that but you need to get permission first.
30. You have got to comply with any directions that are given to you.
31. I am going to put on a condition that you complete 150 hours of community work. I am going to impose a condition that you attend for mental health assessment and treatment as directed. That is not because I have taken any view but clearly there are difficulties, Mr Cookson, and put simply, for all of us, at times life gets hard and for all of us we could do with some help. So what I have tried to do is put into the order a condition enabling you to at least have the option of help and assessment if needed.
32. Secondly, I want you to attend for alcohol abuse assessment and treatment. Two bottles of rum a week; That is not healthy. You are given an opportunity to look at that and see if there are any lasting issues that arise out of that.
33. Also I am going to impose a condition of judicial monitoring.
34. Now I do make the order that any treatment that you have can come off the work component. But in terms of judicial monitoring, that means that you will have the pleasure of coming back in front of me and we will touch base to see how you have been getting on.
35. I do have to give a s.6AAA statement, at least by my last look at the legislation. It is better to do it than not. Pursuant to s.6AAA of the *Sentencing Act* 1991, I indicate that but for your plea of guilty, you would have been sentenced to a term of imprisonment of nine months.
36. MR GOLDMAN: Your Honour, is this order with or without conviction?
37. HIS HONOUR: It is with conviction.
38. MR BENTHAM: Your Honour, there is one final thing. That is, the question of a s.464ZF ‑ ‑ ‑
39. HIS HONOUR: I am not persuaded, Mr Bentham, to make the order.
40. MR BENTHAM: As Your Honour pleases.
41. HIS HONOUR: Now before you go, I need to ask you, have you understood everything that I have said and the task that I want you to complete? Are you happy to be placed upon a community corrections order and more importantly, do you consent?
42. ACCUSED: Yes, Your Honour.

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1. Harrison Cookson is a pseudonym. [↑](#footnote-ref-1)
2. UTE639 is a pseudonym. [↑](#footnote-ref-2)
3. Zac Pyke is a pseudonym. [↑](#footnote-ref-3)
4. State Emergency Services is a pseudonym. [↑](#footnote-ref-4)