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| IN THE COUNTY COURT OF VICTORIA | ANONYMISED ANDADAPTED FOR EDUCATIONAL PURPOSES |

AT Melbourne

CRIMINAL DIVISION

Case No. CR-ZZ-QDTW

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
|  |  |
| v |  |
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| DARCY PARER (A PSEUDONYM) |  |

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| JUDGE: | HER HONOUR JUDGE COHEN  |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 18 September 2017 |
| DATE OF SENTENCE: |  21 October 2017 |
| CASE MAY BE CITED AS: | DPP v PARER  |
| MEDIUM NEUTRAL CITATION: | [20187] VCC RWR |  |

REASONS FOR SENTENCE

Subject: Sentencing; plea of guilty

Catchwords: Obtain financial advantage by deception x 2; Fraud on employer; no prior or subsequent offending; whether hardship on family member exceptional; long delay since offending discovered

Legislation Cited: *Sentencing Act 1991* (Vic)

Cases Cited: *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342

Sentence: CCO 3 years, 350 hours unpaid community work

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| APPEARANCES: | Counsel | Solicitors |
| For the Crown | Mr A. Finch  | Office of Public Prosecutions |
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| For the Accused | Mr W. Manningham  | Metropolis Lawyers |

HER HONOUR:

# Darcy Parer,[[1]](#footnote-1) you have pleaded guilty to two charges of obtaining financial advantage by deception.

# The maximum penalty for each such offence is 10 years' imprisonment, which I must take into account as a reflection of the comparative seriousness with which this offence is objectively regarded by parliament on behalf of the community.

# These charges arise from your conduct during your employment as sports coaching manager at Club Coach Pty Ltd (‘Club Coach’).[[2]](#footnote-2) That company provided sports coaches to a number of schools. Your role included recruiting and inducting suitable people to be employed by Club Coach as sports coaches for client schools, and allocating and coordinating them, including finding replacements when some could not attend. Your role was also to coordinate the paperwork for payment of those coaches. They were generally paid by Club Coach on a fortnightly basis into their bank accounts, upon the submission of paper timesheets, whether they were full-time or casual employees.

# Your employment commenced in August 2005. A year later you first created false paperwork and through it directed payments into bank accounts controlled by you. In August 2006 you created a fictional employee sports coach, entered his name into the payroll system, and attached a bank account number for him which was in fact an account connected with your ex-wife's business and accessible to you. You submitted a paper timesheet for this fictional person and sent it to payroll for processing, and some days later Club Coach paid money into the bank account based on that paperwork. Over the following four and a half years, you submitted 106 paper timesheets for that fictional coach, and your employer paid a total of $87,022 into the bank account that you had put forward.

# In May 2007, that is some eight or nine months later, after you had first started this process, you created a second fictional employee sports coach and similarly entered his name into the payroll system and attached a bank account number belonging to you. It was in fact the same bank account being used for your legitimate salary. Again you created timesheets for that fictional coach, sent them to payroll over a period of time, and amounts accordingly were paid into your bank account. Between May 2007 and June 2011, you submitted 99 timesheets for that second fictional employee, and your employer paid a total of over $77,000 into the bank account.

# When your employer moved from a paper based payroll system to an electronic one in July 2011, there were further payments arranged for the two fictional coaches based on six electronic timesheets for each of them.

# The total amount obtained from Club Coach in respect of all of the timesheets submitted for those two fictional employees was $169,096. These circumstances are the basis of Charge 1.

# Further, there were some payments made directly by Carlisle High School[[3]](#footnote-3) in respect of coaches sourced through you in your role with Club Coach.

# In May 2008, you drew up a contract of employment for Carlisle High School in the name of a former employee, provided the school with bank account details of yours, purporting that they belonged to the person to be paid under that contract of employment, and between May and August 2008, four timesheets were submitted for that person and amounts paid totalled just over $2,000 into your bank accounts.

# In October 2010, you drew up contracts of employment for Carlisle High School in the names of the two fictional employees you had created for Club Coach’s records, and you provided bank account numbers to the school as if they belonged to these fictional employees. Between November 2010 and December 2010 four timesheets for each were submitted, leading to payments of $3,564 into your bank accounts.

# In January 2011 you drew up two contracts of employment for the same school in the name of former employees, provided your bank account details, as if they belonged to those former employees, and between March 2011 and March 2012, 15 timesheets were submitted for each of them and a total was paid for them of $17,633 into your bank accounts.

# The total amount obtained in this manner from this school was $23,316. These circumstances are the basis of Charge 2.

# In late February 2012, Club Coach’s chief financial officer became aware that money was being misappropriated, and after an interview with you, in which you admitted this offending, your employment was terminated, without notice, on 7 March 2012.

# In December 2015 you presented yourself to a Police Station and were arrested and interviewed at some length. During the recorded interview you made full admissions to the offending. Your explanation was that you devised these arrangements to cover the situation that a number of coaching staff wanted to be paid in cash, including a number who were from overseas and whose visas did not permit them to continue to work in Australia. You said that you would pay sports coaches out of your own pocket in these circumstances, and seek recoupment by way of the fraudulent payment systems you had set up. You conceded that some of the total obtained had been retained by you, in that it was not for cash payments to coaching staff but to cover financial indebtedness of yours, and you estimated that the amount that was kept directly by you was $20,000 to $25,000.

# Due to your frank admissions, the prosecution did not undertake forensic analysis of the payments, so apart from your estimate to police during that interview, there is no evidence as to exactly how much of the money obtained by these deceptions was for your direct benefit. Therefore, I am not able to make a finding of fact as to the amount by which you directly benefited. To find that it was more than the amount you estimated I would need to be satisfied of that beyond reasonable doubt, and without other evidence I could not be. However, notwithstanding that you were cooperative with police, I am also not satisfied on the balance of probabilities that the amount was confined to at most $25,000, as that estimate, made some years earlier, when confronted by your employer’s investigation, seems to have been a rough calculation rather than a direct check of how much was in fact paid out in cash to these coaches.

# I accept that you did not directly benefit from all of the payments, and that at least some of these amounts were indeed obtained to reimburse you for, or enable imminent cash payments to be made to, coaching staff. However, not only was that not a legal excuse, it reflects a willingness by you to facilitate what you must have known were improper arrangements to enable other people to bypass either taxation or immigration requirements on them. I do not make any formal finding against you in respect of that facilitation, but it is clear that you did not think you could reveal the cash payments or those circumstances to your employer, and I do not regard it as an excuse for setting up arrangements to deceive your employer, or indeed the school under charge 2.

# I am told that the logistics of your employment role often placed considerable pressure on you. There is a letter from a person who was a colleague of yours at Club Coach, which apart from providing a strong character reference for you, confirms that he was aware that you were in a high pressured environment, frequently needing to make sure you had coaches available at short notice, with such coaching staff often unreliable and not showing up for shifts. He was also aware of pressure to pay a number of the coaches immediately and in cash, rather than through their bank accounts, especially those who were visiting as backpackers from overseas, and he was aware of that also happening at a school at which he subsequently was employed.

# I must assess the seriousness of your offending from both an objective and subjective point of view. The offence of obtaining financial advantage by deception can cover a wide variety of circumstances, from dishonest use of a credit card on a single occasion, or spontaneously, for a modest amount, to complex arrangements to obtain very large sums of money. The maximum penalty is an objective indication of seriousness for all of that range of circumstances.

# In your case, the deceptions extended over more than four years, involved creating false identities and setting up further false employment arrangements, putting forward false timesheets on some hundreds of occasions, and the total amount of money obtained in this way was some $169,000 from your employer and a further $23,000 directly from one school.

# The fact that your employer was the subject of most of the deception, makes it a breach of trust. You misused information and access to its financial arrangements that were entrusted to you. As so often in circumstances of thefts or deceptions from an employer, it is the trust that the employer has given that has been abused, and enabled the offending to occur. On the other hand while you used your knowledge of the employer’s payment systems to achieve the deceptions, it was not a sophisticated arrangement, and was easily traceable to you.

# I accept that you were subject to various personal stresses at the time, from pressure of the job, to serious financial problems from the failure of your wife's business, and also marital breakdown including feelings of personal betrayal. I also accept that what you gained was not to feed an extremely extravagant lifestyle nor any addiction from gambling or any substance abuse, but was money used to pay for the expenses of your family and the family's debts.

# I assess your overall offending as in the medium range for offences of this type, which having regard to the maximum penalty, puts it at a serious but not the highest possible level for obtaining property by deception.

# General deterrence, that is, the sentencing principle which requires the sentence to send a message to others tempted to commit such offending, that it will attract serious punishment, must be an important sentencing factor in this case.

# I turn now to your personal circumstances. You are now aged 50. Until this offending you had lived a constructive and responsible life. You were raised in a stable, achieving family, and you completed university qualifications in sports management, physical education and a Bachelor of Education. You worked for approximately eight years as a physical education teacher, during which time you married and your first two children were born. In 1998 you started working for a sports management company, and subsequently set up your own business involving public relations services for sporting events. Your third child was born in 2001, and by then it seems there was some financial strain, and the family home was sold.

# I am told that your wife suffered some psychological problems after each of your children's births, and after the third, as a distraction from the domestic environment, she set up a home wares and fashion shop with your help and support, and for that business you were a guarantor. Unfortunately it was apparently never successful. As your family financial situation worsened, you decided to take an employed position for more reliable income, and that is when you obtained employment with Club Coach commencing in August 2005.

# As well as financial pressures, during 2005 your marriage was under strain. In early 2006 it became apparent that your wife was having a relationship with another man whom you had regarded as a good friend. You continued to live in the family home as you could not afford to separate. As 2006 progressed your wife’s business closed with large losses. I note that your offending commenced in August 2006.

# In 2008 you entered a bankruptcy agreement to pay off creditors, albeit at a reduced rate. In that year you were also divorced. Your financial position was so poor that you moved to live with your parents for about two years. That presumably was a blow to your self-esteem, but you were lucky to have had that support available.

# After your dismissal from Club Coach, you obtained new employment in 2012. That was with your current employer, as business development manager. I am told that you do not have any direct contact with its financial systems. A reference from a person supervising you there indicates that he is aware of the charges, and it is still a supportive reference as to your character generally and your work ethic.

# You have now remarried, having met your second wife and been with her since about 2012. You live with her and her two children. You are still close to your three children, the youngest of whom is still at school.

# It was submitted that your role in relation to your daughter is of particular importance in determining your sentence in this case, and that mercy should be exercised because of her condition. I am told that she developed major depression in 2016, and has required hospitalisation at times. A letter from her doctor confirms her condition. The treatment has involved heavy family involvement from both parents. You and her mother have been present when required. I accept that you have been deeply concerned throughout your daughter's illness, and very actively involved in her treatment. Her mother and stepfather have written to confirm this and say that the whole family would suffer if you were imprisoned and unable to continue this active role. Your daughter has apparently not been told that you are facing court for these charges, and I appreciate that that decision has been taken to spare her the anxiety.

# It was submitted on your behalf that these circumstances bring your situation within the principles applicable to cases where a discretionary exercise of mercy by a sentencing court is enlivened. That is, where the court finds that to imprison an offender would impose exceptional hardship on third parties, often family members, such that the sentence should allow the offender to remain in the community or otherwise minimise time in prison.

# There are a number of cases which discuss these principles. The cases make clear that it can only be in exceptional cases where this principle will be applied, because it is an unfortunate fact that the imprisonment of offenders often results in very considerable hardship to their families.

# In your case I accept that you are particularly anxious about your daughter and about the extra anxiety to her if you are not able to be present as part of her treatment. She has completed secondary school, albeit under stress and suffering a relapse some months ago. Fortunately her mother and stepfather are actively involved in her daily treatment, as are her grandparents and brothers. All of this is not to underestimate the concern about your daughter's health, nor your commitment to her treatment or anxiety about her. I do not underestimate that her health is in a volatile situation and various stresses can worsen it, but I am not convinced by your counsel's submission that to imprison you would be likely to increase the risk of her health seriously deteriorating.

# In my view the readily available support from so many other caring and supportive family members, makes this case far from the type of situation where dire hardship to a family member warrants a decision to refrain from imposing what should otherwise be a sentence of imprisonment. I do accept, and take into account as mitigatory, that worry about your daughter's health would make imprisonment more onerous for you.

# You come before the court with no prior offences, and references from both family members and others as to your otherwise good character, strong commitment to your family, strong work ethic, and your involvement in community organisations including sporting activities for children's schools, which are all impressive. I accept that this offending has been your only lapse, and you deserve credit for your otherwise good character and contributions to the community.

# However, in circumstances where it is the offender's believed good character that has placed him or her in the position of trust from which he or she was able to commit the fraud, otherwise good character is of less significance, or to be given less weight than it might be in some other types of cases. In your case, the dishonest offending lasted for some 4½ years during which you were believed to be of good character.

# There are some other mitigating circumstances that I take into account. The first is delay in these matters coming to court. Despite being confronted with your offending and apparently admitting it to your employer in March 2012, you were not interviewed by Police until December 2015. The reason for such delay in unknown, through no fault of yours.

# When interviewed you were cooperative and made full admissions in your recorded interview. You were charged one year later and your plea hearing took place, last week, some ten months or so after being charged. You indicated a plea of guilty soon after committal mention which I take to be at an early opportunity.

# I take these circumstances into consideration in two important mitigatory ways. First, you are entitled to considerable leniency for your cooperation and early plea of guilty, as they have had considerable utilitarian value in saving the time and cost of further investigation and legal proceedings. They also reflect a willingness by you to facilitate the course of justice, and to accept responsibility for your offending. They, together with the various statements made by you to police, and an interview with a psychologist, reflect genuine remorse on your part.

# Secondly, there has been considerable delay since your offending came to light in bringing you before a court for sentencing. It is now more than five and a half years since your offending was discovered by your then employer. Your counsel described this as an “unconscionable” delay, but because I do not know the reasons for it, I am not putting that description on it. There is no actual evidence of you anticipating prosecution after you were dismissed, but I do take into account that you must have had it at the back of your mind as a possibility for the intervening years until you were questioned by police. I also take into account that you had a further year to wait between the police interview and being charged, which must have considerably added to your stress.

# I also take into account that in the intervening years you managed to re-establish yourself in employment and a new relationship, and have continued with an otherwise responsible lifestyle. There is nothing to indicate that you have engaged in any further offending, nor any risk-taking activities or habits, and nothing to indicate that you are likely to take those up despite being under the extra stress of wondering what would occur as a result of these charges. All of this indicates that you have used the intervening period responsibly, and it is also consistent with your offending being isolated to those particular circumstances and not being likely to be repeated.

# Having the uncertainty lasting for so many years of whether you would be prosecuted, and then when you knew you would be, what the result would be, and also showing that in the meantime you could re-establish yourself and behave responsibly are both matters that entitle you to some leniency arising out of the delay, and I have taken them into account.

# Also in your favour is that you have made substantial, although by no means complete, repayment of the amounts dishonestly obtained. You apparently borrowed from your mother-in-law (and by that I am assuming it is the mother of your former wife) the sum of $100,000 which you have not yet repaid to her, but that enabled you to pay the insurer of your employer. That was pursuant to a compromise of the amount owed.

# There is nothing before me as to whether the school has been repaid any of its losses, but I take into account that those were a more moderate amount of $23,300.

# A report from a psychologist was tendered, as was a report from your treating psychiatrist. The psychologist's report outlined your background and history. The psychologist was of the view that, as described to him, you had suffered two episodes of depressive mood disturbance in reaction to significant stressors. The first was from stressors that commenced in about 2005 and which persisted particularly from 2006 onwards when you learnt of your wife's relationship with your brother-in-law. You had not however sought any treatment at that stage. The second episode he considered was triggered by your arrest for these charges. You then undertook some treatment by way of some medication which by the time you saw the psychologist you had ceased, and through counselling with your psychiatrist. The psychologist felt you were still mildly dysphoric when he saw you, and he attributed that to elevated distress in response to facing these charges. He noted you had expressed remorse and that there were no indicators or other factors underpinning your offending or likely to lead you into re-offending.

# Taking into account the matters outlined, I consider that general deterrence and just punishment are the principle sentencing factors in your case. I do not regard specific deterrence, that is to deter you from future offending, as needing much weight in deciding your sentence as I believe that you have well and truly learnt your lesson, and that all other aspects of your life are likely to enable you to live responsibly in the future.

# I must impose a sentence that is no more severe than is required to meet sentencing principles, and under the principles outlined in *Boulton's* case which extended the range of cases and the seriousness of cases for which a Community Corrections Order might be appropriate, it is in my view sufficient punishment in this case to impose a Community Corrections Order. The prosecution acknowledges that a Community Corrections Order would be within the appropriate sentencing range.

# Darcy Parer, on each of the charges you are convicted, and sentenced to a Community Corrections Order which is to last for three years. I impose this as an aggregate sentence because of the overlap in timing, in the use of two false employees' names, as between the offences under Charges 1 and 2.

# The only condition I impose on the Community Corrections Order is for you to perform unpaid community work, but in my view that should be substantial and I set it as 350 hours. That can be performed over the whole of the three year period to enable you to fit it around your employment commitments and your family commitments including of course those involved with your daughter's treatment. However, if you complete the community work in less than the three years, that will in fact bring the CCO to an end.

# In addition to that condition, all usual terms of a Community Corrections Order apply. You must within two working days, and that means by 4 pm this Wednesday, report to your local community corrections office. You must during the whole of the period that the Community Corrections Order operates accept all lawful directions or instructions from community corrections officers. You must advise community corrections officers of any change of address of where you are living or where you are working within two clear working days of that change occurring. You must not leave the State of Victoria without first obtaining permission from community corrections officers. And above all, you must not commit any further offending which could attract a term of imprisonment even if it were minor and a term of imprisonment would not be imposed.

# If you fail to comply with the terms and condition of the Order, or commit any further offending, you can expect contravention proceedings to be brought. It would then be open to me to re-sentence you for this offending. As I have said, I am confident that there is a very low risk of you offending again but I am obliged to explain those consequences to you.

# Now Mr Parer, do you understand the terms and condition of this CCO?

# OFFENDER: I do Your Honour.

# HER HONOUR: Do you agree to comply with it?

# OFFENDER: Yes.

# I was also asked to make an order for a forensic sample to be taken from you, I did not hear submissions from your counsel about that. It is in my discretion in this particular case, and the nature of this offending and your overall lack of any prior offending and low chances of re-offending, have led me to conclude that that order is not warranted in this case~~.~~

# Finally as you pleaded guilty to this charge I must state what your sentence would have been had you not pleaded guilty but had all other circumstances been the same. Had that occurred and you had been found guilty of the exact same charges after a trial, I would have imposed a term of imprisonment of six months to be followed by a further 12 months' CCO under which you would have been subject to supervision and had a more moderate amount of community work imposed.

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1. Darcy Parer is a pseudonym. [↑](#footnote-ref-1)
2. Club Coach Pty Ltd is a pseudonym. [↑](#footnote-ref-2)
3. Carlisle High School is a pseudonym. [↑](#footnote-ref-3)