

DIRECTOR OF PUBLIC PROSECUTIONS

v

APHRODITE MYRON

JUDGE: Karapanagiotidis
WHERE HELD: Melbourne
DATE OF HEARING: 21 July 2023
DATE OF SENTENCE: 22 August 2023
CASE MAY BE CITED AS: DPP v Myron
MEDIUM NEUTRAL CITATION: [2023] VCC 1453

REASONS FOR SENTENCE

Subject: CRIMINAL LAW - Sentencing
Catchwords: Obtaining financial advantage by deception – Early plea of guilty –
Verdins – *Worboyes* – Covid-19 pandemic – Gambling addiction –
Good prospects of rehabilitation
Legislation Cited: ss 5(1), 6AAA *Sentencing Act 1991* (Vic)
Cases Cited: *Apted v The Queen* [2021] VSCA 151; *Boulton v The Queen* [2014]
VSCA 342; *DPP v Bulfin* [1998] 4 VR 114; *DPP v Munn* [2019] VSCA
267; *Kruger v The King* [2023] VSCA 149; *Leimonitis v The Queen*
[2018] VSCA 198; *R v Cockerell* [2001] VSCA 329; *R v Grossi* [2008]
VSCA 51; *R v Koumis* [2008] VSCA 84; *R v Osenkowski* (1982) 5 A
Crim R 394; *R v Verdins* [2007] VSCA 62; *Rossi v The Queen* [2021]
VSCA 296; *Shiel v The Queen* [2017] VSCA 359; *Worboyes v The*
Queen [2021] VSCA 169
Sentence: 4 years and 1 month imprisonment with a non-parole period of 2 years
and 2 months' imprisonment

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	N. Stevic for plea J. Coulter for sentence	The Office of Public Prosecutions
For the Accused	M. Greener for plea A. Lewin for sentence	Emma Turnbull Lawyers

HER HONOUR:

- 1 Aphrodite Myron, you have pleaded guilty to eight rolled up charges of obtaining financial advantage by deception.
- 2 The full circumstances of your offending are outlined in the prosecution opening, marked as Exhibit A. This constitutes the factual basis upon which I sentence you.

Circumstances of the offending

- 3 The total quantum fraudulently obtained was \$3,383,056.96 over an approximate eight year period, between January 2014 and January 2021.
- 4 At the time you were an employee of Hisense, a company that produced and sold electronic and home appliances.
- 5 Between 30 May 2012 and February 2020 you were employed as a Call Centre Manager. The call centre was a hotline that dealt with enquiries relating to product repairs and troubleshooting. The company would first endeavour to solve any problem through the service centre or assist the customer to do it themselves, otherwise the complaint could be escalated to a relevant State Consumer Complaints Body.
- 6 In about 2017 you were promoted to Service Manager, in charge of the call centre, the spare parts division, service agents and network and product returns. You were responsible for resolving issues with the Consumer Complaints Bodies. You were a relatively senior and a trusted employee of the company.
- 7 Customers may make a warranty claim directly with Hisense, or occasionally make a complaint through a Consumer Complaints Body. Hisense would be notified and given an opportunity to respond. If a resolution conference was scheduled, you would attend on behalf of Hisense.

- 8 You advised Hisense management that the following process occurred when a customer complained to a Consumer Complaints Body about a Hisense product was upheld:
- (a) That Hisense would be notified of the result and what, if anything, they had to pay;
 - (b) Hisense would be given the bank account details of the customer's bank account into which the claim should be paid; and
 - (c) That account would be operated by the Consumer Complaints Body.
- 9 You informed Hisense management that:
- (a) You would match the client name or reference number on the email or reference number to verify the directive;
 - (b) You would then forward the email to the Managing Director and the Finance Director for approval; and
 - (c) On approval, the Finance Director would transfer the funds to the bank account nominated in the email directive.
- 10 Between 2018 and 2020 the number of claims and payments escalated significantly, with payments directed to certain bank accounts rather than directly to consumers. In 2019 you told the incoming new Managing Director that consumer law had changed significantly, including that claims could now be made retrospectively.
- 11 You falsified documents, namely a Hisense compensation payment application form, by falsifying payee and bank account details. Each payment made by Hisense was on the basis of a falsified email directives that you provided to management. It was then paid into a bank account in your name or your family member's name, for your own benefit.

- 12 Between 15 August 2014 and 18 January 2021, you induced Hisense to make payments to bank accounts belonging to you by fraudulently representing that:
- (a) A consumer of Hisense had made a complaint or warranty claim in relation to a product or service of Hisense;
 - (b) That complaint or warranty claim had been upheld by a Consumer Complaint Body or regulator;
 - (c) The Consumer Complaint Body or regulator had made a decision requiring Hisense to compensate the consumer; and
 - (d) The deposits being made into the relevant bank accounts were as directed by the relevant Consumer Complaints Body or regulator.
- 13 These fraudulent claims led to a total of over \$3 million being paid into 35 separate bank accounts at your direction. The various bank accounts were in the name of you, your husband, your son and your daughter. Analysis of the accounts shows credits identified as 'Hisense expenses' being paid into these accounts.
- 14 The prosecution opening details the particulars of your offending as it relates to each rolled up charge, from paragraphs 13 to 22, setting out each individual transaction, the dates and amounts. The individual deposits for each charge are set out in Schedules A-H.
- 15 On 4 January 2022 you were arrested and participated in a record of interview. You made a number of admissions. You admitted that the emails were fraudulent. You stated that you had breached your own trust as well as that of your employers. You denied the money had been used for lifestyle, holidays or personal bills and stated that your family were not involved in any way. All \$3 million was gambled, using online casinos.

16 The police investigation was not finalised until civil proceedings initiated by Hisense had concluded. On 8 November 2021 a civil judgment was awarded against you.¹

Gravity of offending

17 The charges you have pleaded guilty to are serious, as indicated by their maximum penalty. I accept the prosecution submission that, on a proper assessment, your offending is objectively serious. In respect of each charge, I am required to have regard to the overall extent of your offending. An assessment of the seriousness of any given offence of obtaining financial advantage by deception will involve a number of considerations, including the value involved.

18 Your offending was relatively sophisticated, calculated and planned, involving the creation of false records and the falsification of documents. The offending was prolonged and ongoing, constituted by a number of different acts, spanning over an eight year period. You were a senior and trusted employee, in a position of trust, which you breached. The amount of each transaction is outlined in the schedules and the totality of your offending is significant.

19 Your Counsel pointed out that there is no victim impact statement and that your victim was a large corporation as opposed to an individual or an organisation in receipt of public funds. This was noted as relevant to an assessment of victim harm but I did not understand it to be relied upon as a mitigating factor, which clearly it is not.

20 I accept that your gambling addiction provides the context for your offending. To this extent, I accept that your offending was not motivated by 'pure greed' or a desire to fund some other criminal activity.² I accept that all the money you misappropriated was used on gambling.

¹ In the amount of \$3,373,526.16.

² *R v Grossi* [2008] VSCA 51; *R v Koumis* [2008] VSCA 84.

- 21 In the privacy of your own home you used your personal computer to access virtual casinos and play slot machines, undetected for years. You provided police with the details of your online gambling account which recorded that, for the period between 2017 and 2021 you gambled over \$4 million.
- 22 Gambling offered you a temporary relief and escape from your circumstances and your chronic distress, along with the false hope of recouping your losses and paying back your debts. Of course, as your Counsel submitted, it does not excuse your offending or reduce your moral culpability, which I assess as high. However, it goes some way to explain why a woman like yourself, that is, a relatively mature woman, otherwise responsible and well regarded, with no prior criminal history, offended in such a thoroughly dishonest way. As consultant psychologist Ian Mackinnon opines:

...in the absence of her problem gambling, Ms Myron would probably not have committed any acts of deception and she may well still be employed by Hisense³.

Plea of guilty

- 23 Your plea of guilty was entered at the earliest opportunity and entitles you to a significant discount in sentence. Your plea of guilty indicates a willingness on your part to facilitate the course of justice. It has high utilitarian benefit and has avoided the need for significant resources that would have been involved in the preparation of a full brief of evidence and/or a committal or trial. Your plea of guilty will also attract a more pronounced amelioration of sentence in accordance with the *Worboyes*⁴ principles.
- 24 I also accept that your early plea of guilty is indicative of remorse. This is also consistent with the admissions you made in your interview with police and reflected in your letter of apology and the various character references tendered on your behalf⁵. In his report Mr Mackinnon indicates that you are struggling to fully admit

³ Exhibit 2, page 7.

⁴ *Worboyes v The Queen* [2021] VSCA 169; *Rossi v The Queen* [2021] VSCA 296.

⁵ Exhibits 5 and 6.

to yourself, let alone others, the full extent of your offending and problem gambling, because of your overwhelming sense of shame and remorse which threatens to 'overwhelm [your] psychological integrity'⁶. It appears that you need to develop further insights, but I do accept this is developing and you are taking responsibility for your offending. Your nephew states:

...she is remorseful for her actions and for betraying the trust of her former colleagues, and she is remorseful for the way it has impacted her family⁷.

Personal circumstances

- 25 As to your personal circumstances, you are now 58 years old. You were born in Greece and migrated to Australia with your parents when you were three. Your brother was later born here.
- 26 In Australia your father was employed as a factory worker and small business operator and your mother worked in the family's small businesses.
- 27 Your childhood was marred by significant physical and emotional abuse. Growing up your father was an abusive alcoholic, who displayed regular aggressive outbursts. Your mother was also aggressive, unpredictable and physically violent towards you. When you were 15 years of age, you also experienced additional trauma, as referred to in Mr McKinnon's report, at page two.
- 28 As for schooling, you completed up to Form 10 and left at the age of 16. You struggled during your high school years on account of being bullied for your ethnic background. After leaving school you completed a hairdressing course at your father's direction. You went on to complete a vocational receptionist course and later pursued a career in office administration.
- 29 At the age of 19 you married and in more recent times in 2019 you separated from your husband. You have a son aged 37 and a daughter aged 36.

⁶ Exhibit 2, pages 6-7.

⁷ Exhibit 5.

30 In 2003 your mother was diagnosed with multiple sclerosis. While your relationship with your mother was a complex and challenging one, she moved into your family home during this period. You continued to work in full-time employment at Eastlink and assumed full-time caregiving responsibilities for her. You had previously also cared for, and nursed your father, who died within a short period after being diagnosed with cancer. In 2012 your mother's needs escalated and she required additional care and so was placed in a nursing home. This caused you great anguish and guilt. Your mother has since passed away.

31 In 2006 your son developed a generalised anxiety disorder and was then diagnosed with Bell's palsy in 2009. You supported him throughout this period. You continue to support him, and your daughter in law who suffers from depression, by taking on a very active caregiving role for your grandchild, who is now aged three.

32 In 2019, your daughter suffered trauma arising from a workplace incident and was diagnosed with depression, anxiety and adjustment disorder. She has been unable to work since that time. Her symptoms include severe anxiety, as referred to in the report of her treating psychologist Mr Francois Joubert, of 25 April 2023. Mr Joubert also refers to the very close relationship between you and your daughter. He considers that your incarceration would have a detrimental impact on your daughter's mental health; in that 'her anxiety and general mental stress would be affected, and her support structure would be diminished'. In her letter to the Court, your daughter provides further insights into your close bond. She states:

...my mother is who I go to when I need to talk about how I am feeling or when I feel that I need to end it all⁸.

33 On your behalf it was submitted that you are someone who has always put others first and neglected your own needs. The character references tendered on your behalf collectively speak of you in this manner. You are referred to as a 'hardworking and reliable individual', a 'dedicated mother' and 'loyal wife', 'the

⁸ Exhibit 5.

matriarch for her family', 'a selfless person', 'a positively contributing member to society', and 'resilient, loving'⁹.

34 Your ex-husband also provides a letter which offers insights into your personal challenges and vulnerabilities. He speaks of the impact on you of losing both your parents. He refers to your son's battle with anxiety and how the 'responsibility' for this, at the time, fell 'solely' on you. He refers to you as 'the kind of person who didn't burden others with [your] troubles, including me'. He reflects upon his own poor behaviour towards you and his neglect. He states,

...in the last decade, she lost interest in everything. She worked and slept. Her health deteriorated and she relied on anti-depressants and sleeping pills to help her get through the days¹⁰.

35 In sentencing you I take into account your personal circumstances and your family relationships and the significant stressors you have experienced.

36 In respect of your family, it was not submitted that the impact of hardship on them gives rise to exceptional circumstances, which is a high threshold. It was however submitted that any period of imprisonment, if imposed, would be significantly more burdensome for you given your close relationship with your family, your daughter's current psychological vulnerabilities and your caregiving responsibilities for your granddaughter. As you told psychologist Ms Sharon Majerovic your major concern is how your family will cope if you are imprisoned¹¹. I accept this is a relevant consideration and I take it into account in the manner advanced on your behalf by your Counsel.

Mental health assessment

37 As I've already stated, you were assessed by psychologist Mr Mackinnon and he prepared a report dated 1 February 2023.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Exhibit 4.

38 In his assessment Mr Mackinnon found that at the time of offending you were suffering from symptoms that met the clinical criteria for Complex Post-Traumatic Stress Disorder and Gambling Disorder.¹²

39 Mr Mackinnon observed you to be a 'highly psychologically damaged individual' suffering with Chronic Post-Traumatic Stress Disorder in addition to chronic depression, anxiety and unresolved grief and in need of long term, specialist mental health treatment. Complex Post-Traumatic Stress Disorder is a form of PTSD that often arises in response to multiple traumas rather than one distinct event.¹³

40 At page six of his report, he states:

In my opinion, likely antecedents and contributing factors to Ms Myron's **CPTSD** were the physical and emotional abuse perpetrated on her by her parents, which she apparently suffered during her formative years, and then many years of caring for her unwell and dying parents, until their deaths. Given that Ms Myron had extremely ambivalent feelings towards her parents, she appears to have suffered, and continues to suffer, with significant **complicated and unresolved grief**.

In my opinion, symptoms associated with Ms Myron's **CPTSD** that she reported. evinced and may be inferred include: **anxiety**, depression, psychosexual problems, flashbacks, rumination, intrusive thoughts, avoidance behaviour, an insecure sense of self, chronic interpersonal difficulties, sensitivity to environmental cues and triggers, sleep disturbance, nightmares and labile moods.

41 On your behalf, it was submitted, and accepted by the prosecution, that limbs five and six of *Verdins*¹⁴ have application in your case. On my assessment of the materials and the opinions expressed by Mr Mackinnon I also accept that these principles are enlivened in your case and I take them into account in the sentencing synthesis.

42 In Mr Mackinnon's opinion, if imprisoned you are likely to find the inherently threatening nature of the prison environment extremely distressing and [are] likely to suffer an intense elevation of [your'] chronic PTSD and associated anxieties,

¹² Exhibit 2, page 7.

¹³ Ibid, pages 5-6.

¹⁴ *R v Verdins* [2007] VSCA 62.

possibly leading to a resurgence of suicidal ideation and requiring intensive mental health treatment.¹⁵

Prospects of rehabilitation

43 I accept that you have good and positive prospects of rehabilitation.

44 In my assessment I take into account that you are a mature woman with no prior criminal history. There is also no subsequent offending alleged against you.

45 You have a supportive family and extended family and friends. They speak positively of your good character and generosity and contributions. Many of them refer to the shock they experienced upon learning of the charges, which is also reflective of your previous character. A former colleague and friend of some 15 years, states:

I can honestly say I have found [Aphrodite] to be one of the most trustworthy, hardworking and honest individuals I have ever met.¹⁶

46 In Mr Mackinnon's opinion, your offending is related to your gambling addiction and not reflective of any inherently antisocial criminal characteristics. While you still harbour a strong level of denial in respect of your offending, I accept your counsels submission that this is complex and is more likely reflective of your inability to reconcile what you have done with who you are. As Mr Mackinnon suggests, you will benefit from further exploration and ongoing treatment for your gambling disorder. He considers that you possess a high level of determination to make rehabilitative progress and that you possess many positive resources, such as family supports and a solid work history, to achieve this.

47 I also take into account in my assessment of your rehabilitative prospects that you have engaged in regular psychological treatment since your offending. Ms Majerovic confirmed you had attended upon her on approximately five occasions.

¹⁵ Exhibit 2, page 7.

¹⁶ Exhibit 5.

You have engaged well during therapy and have gained a better understanding of your behaviours and the strategies needed to manage your anxieties.

Sentencing purposes

- 48 The purposes for which sentences may be imposed are just punishment, general deterrence, specific deterrence, rehabilitation, denunciation and protection of the community. In light of my assessment of your circumstances and your prospects of rehabilitation, I consider specific deterrence and community protection are of reduced significance to the sentencing discretion. Given the lengthy offending period however they remain relevant.
- 49 I take into account the sentencing guidelines referred to in s5 of *the Sentencing Act* 1991, where relevant in your case. I have also taken into account the delay in the finalisation of your case.¹⁷
- 50 Further, I have taken into account the general sentencing landscape for such offending. I have been provided with comparable cases.¹⁸ While they have assisted me, there are differences and each case turns on its circumstances. For example, in the recent case of *Kruger v The King*¹⁹ the amount of money stolen was greater, though there had been some restitution. While there was an early plea of guilty, it was partly diminished because of subsequent hearings relating to a change of plea application and it was entered prior to the *Worboyes* considerations. The case of *DPP v Munn*²⁰ involved very serious offending on a grand scale but the amount involved was less and there were also important mitigatory factors the accused/respondent was able to call upon.
- 51 The prosecution submit that a term of imprisonment structured by way of a head sentence with a non-parole period is required. Your Counsel submits that a

¹⁷ *R v Cockerell* [2001] VSCA 329 per Chernov JA; Exhibit 2.

¹⁸ *Apted v The Queen* [2021] VSCA 151; *Leimonitis v The Queen* [2018] VSCA 198; *Shiel v The Queen* [2017] VSCA 359.

¹⁹ *Kruger v The King* [2023] VSCA 149.

²⁰ *DPP v Munn* [2019] VSCA 267.

combined sentence, that is a term of imprisonment with a Community Corrections Order is capable of reflecting and balancing all relevant sentencing purposes. Guided by the Court of Appeal in *Boulton*²¹, I accept that a CCO is capable of being a highly punitive sentence and can be imposed in cases of relatively serious offending. However, given the circumstances and gravity of your offending I consider that the retributive and deterrent purposes of punishment must take precedence. On a close and careful assessment of your case, I have concluded that the only just and appropriate sentence is one of imprisonment, structured by way of a head sentence.

- 52 In fixing both the head sentence and non-parole period I have taken into account the principles of parsimony, proportionality and totality. It is a fundamental sentencing principle that a court must not impose a sentence any more severe than the minimum necessary to meet all sentencing purposes and requirements. The principle of totality in particular will be reflected in the orders for cumulation and concurrency that I will make.
- 53 In determining your sentence, I have also synthesised the powerful mitigating factors advanced on your behalf. Further, I consider that some mercy should be extended to your circumstances. As the court stated in the case of *R v Osenkowski*²²:

...there must always be a place for the exercise of mercy where a judge's sympathies are reasonably excited by the circumstances of the case.

Sentence

- 54 On each charge you are convicted and sentenced as follows”
- (a) Charge 1 – eight months’ imprisonment;
 - (b) Charge 2 – 18 months’ imprisonment;

²¹ *Boulton v The Queen* [2014] VSCA 342.

²² *R v Osenkowski* (1982) 5 A Crim R 394.

- (c) Charge 3 – 18 months' imprisonment;
- (d) Charge 4 – 22 months' imprisonment;
- (e) Charge 5 – 22 months' imprisonment;
- (f) Charge 6 – 31 months' imprisonment;
- (g) Charge 7 – 31 months' imprisonment; and
- (h) Charge 8 – eight months' imprisonment.

55 Charge 6 is the base sentence.

56 The orders for cumulation are as follows:

- (a) Charge 1 – one month imprisonment;
- (b) Charge 2 – three months' imprisonment;
- (c) Charge 3 – three months' imprisonment;
- (d) Charge 4 – three months' imprisonment;
- (e) Charge 5 – three months' imprisonment;
- (f) Charge 7 – four months' imprisonment; and
- (g) Charge 8 – one month imprisonment;

57 That arrives at a total effective sentence of 49 months' imprisonment, or four years and one month imprisonment.

58 As for the minimum non-parole period, having regard to your circumstances and the circumstances of the offending, I consider that justice requires that you serve a period of two years and two months' imprisonment before being eligible for parole. In setting this period I am mindful that the requirement of general deterrence must be reflected in both the head sentence imposed and the non-

parole period.²³ I have taken into account that a term of imprisonment for a first time offender of relatively mature years is a significant sanction, particularly in your case given your precarious mental health and the circumstances that will weigh upon you while you are serving your sentence. I have also taken into account my assessment of your favourable prospects of rehabilitation

- 59 Pursuant to s6AAA I indicate that but for your plea of guilty I would have imposed a total effective sentence of six years and six months' imprisonment with a non-parole period of approximately four years and six months' imprisonment.

²³ *DPP v Bulfin* [1998] 4 VR 114.