



# Sentencing Remarks & Judgments

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IN THE DISTRICT COURT

CRIMINAL JURISDICTION

ADELAIDE

FRIDAY, 17 MAY 2019 AT 9.41 A.M.

BEFORE HIS HONOUR JUDGE SLATTERY

NO.DCCRM-17-2082

R V COLIN ANDREW JAMES WEETRA AND KIM MARIE GRAHAM

HIS HONOUR IN SENTENCING SAID:

Kim Marie Graham, you have pleaded guilty to two counts of failure to act honestly in performance of your duties in contravention of s.26(1) of the Public Sector (Honesty and Accountability) Act 1995.

Colin Andrew James Weetra, you pleaded guilty to aiding and abetting or procuring those breaches in contravention of s.267 of the Criminal Law Consolidation Act 1935.

The maximum penalty for these offences is four years imprisonment and/or a \$15,000 fine.

It has been agreed that you are both entitled to a discount of up to 10% sentencing reduction due to your guilty pleas pursuant to s.40(3)(e) of the Sentencing Act 2017.

I will give you both the full 10% discount.

Mr Weetra, I am also required to deal with the application for enforcement of a breach bond pursuant to s.113 of the Sentencing Act 2017. You entered into two separate unrelated suspended sentence bonds in the Elizabeth Magistrates Court on 7 April 2016 and 14 September 2016. Both matters dealt with driving under disqualification or supervision offences. You have breached the bonds by committing the offences charged. Both of those bonds carry a term of imprisonment of 21 days.

I turn to the circumstances of the main offending.

At the material times, the subject of the two charged counts, Ms Graham, you were a public officer employed by the Department for Correctional Services with a specific focus upon support for Aboriginal prisoners and their families.

You had access to all the prison records held on the department's databases, but generally your access would be confined to information about Aboriginal persons. This was because of the more restricted nature of your role in dealing with Aboriginal offenders.

Following unrelated allegations, telephone intercepts commenced on your telephone in February 2017. It was then discovered that you had regular contact by phone and in person with your co-accused Mr Weetra and at the material times Mr Weetra was associated with an outlaw motorcycle gang, the Hells Angels.

In relation to the first count you, Ms Graham, took access to the department's records and provided information to Mr Weetra about non Aboriginal persons unconnected to your work. Subsequent conversations between Mr Weetra and yourself infer that the request for this information came from you, Mr Weetra.

In relation to the second count Mr Weetra made a request to you, Ms Graham, on 13 April 2017 for information about a person whose name had been written down on a piece of paper and delivered to your daughter. Ms Graham, you followed this up with your daughter and asked her to text the name to you. She did so at 4.05 p.m. that day.

Once the name was transmitted, you then accessed the electronic files of that named person within ten or 11 minutes of receiving the text transmission. At 4.51 p.m. on the same day you sent a text message to Mr Weetra disclosing the address of the person identified and as recorded in the database.

Following an investigation overseen by the Independent Commission Against Corruption both you and Mr Weetra were arrested. At the time of your arrest, you were searched by investigators and were found to be in possession of handwritten notes including information about a person in respect of whom an inquiry had been made by Mr Weetra.

You and Mr Weetra pleaded guilty to the above offences, but disputed the factual basis of the plea. A disputed facts hearing was held to determine whether the aggravating feature, namely, whether at the relevant times of conveying this information to Mr Weetra, you, Ms Graham, were aware that Mr Weetra was a member of an outlaw motorcycle gang and that he was using the information to further his association with them. In relation to the first count, I found that the aggravating feature was not proven beyond reasonable doubt, but in relation to the second count I found the aggravating feature proved beyond reasonable doubt.

Ms Graham, you are an Aboriginal woman of Nurranga and Kurna heritage, as was your father. Your mother was not Aboriginal. Your parents were married in Victoria in 1969. You were born in 1971 and you are the eldest of seven children with three brothers and three sisters. You have the same father but share different mothers. When you lived with your parents in Prospect, your father worked periodically in Darwin commuting bi-weekly. Your mother struggled to raise you and your siblings by herself at the time when your father was away. As a result of your mother's parenting struggles she left you and your siblings with your grandparents and left a note to your father stating that she was leaving him and her children. Following the departure of your mother, your father became a heavy drinker. Your extended family stepped in to support your father. When you were 10 your mother returned. You, your brother and two of your sisters then moved in with your mother and her boyfriend.

You witnessed your mother's boyfriend sexually abusing your two sisters and while you did the right thing and reported this abuse, you were not believed and branded a liar by your mother. The result

of this was a fracture within your family and a complete disconnect between you and your mother that remains to this day. You were subsequently sent back to your father's home and this was a traumatic time for you.

As your father was unable to care for you, you lived with various aunts and uncles. At the age of 12 you were sent to live in Ipswich, Queensland for a year and in that time you attended Leichhardt State School and you excelled in netball and won many awards in that sport.

You returned to Adelaide to live with your father and brother. At the time, your father was working at Telecom but was battling an alcohol problem, was drinking heavily and at times would not return from work for days at a time. You did not always have the items needed in the home and most of the household money was spent on alcohol.

Your father's alcoholism made him aggressive and physically and emotionally abusive towards you and your brother. You also witnessed your father's violence towards his succession of girlfriends. You ran away from home and hid overnight to avoid witnessing this domestic violence. You were emotionally abused by your father because he said that you reminded him of your mother and the effect of this abuse has left lasting emotional scars on you.

You eventually were able to move to Port Victoria to live with your grandparents. Your grandfather taught you to drive and also taught you to fish and shoot. You spent time with your extended family and you enjoyed being with your cousins especially during the holidays. At the age of 16, you secured employment at the Port Victoria Hotel. This was a good time in your life.

At 18 you moved back to Adelaide. You attended Aboriginal College. When you were 19 years of age you secured employment at the Aboriginal Legal Rights Movement. You worked there between 1991 and 2003 in various administrative and secretarial roles as a criminal field officer.

During this time, you had both of your daughters, Stacey and Tayla.

In 2010, you began working for the Electoral Commission as a receptionist and also for Uniting Communities as a personal assistant to a chaplain and a senior executive officer. You fulfilled this role until 2013 when you began working at Yatala Labour Prison as an Aboriginal liaison officer. You had the support of your partner, Trevor, both financially and emotionally.

In February 2015, your seven-year-old nephew, Yarrin, died unexpectedly. You returned to be with your family at this time of immense grief. At that time, two relatives attempted suicide. It was also at that time that you began using methamphetamines to cope with your grief. Unfortunately, it was Trevor who began supplying you with the methamphetamines and then became known to you that he was a low level methamphetamine dealer. As a result of the use of this drug, your and Trevor's relationship, as well as your own personal lives, deteriorated.

You were arrested in May 2017. You say that you felt that you let everyone down; your family, your community and yourself.

In 2017 in September, you reunited with a man called Peter with whom you had a relationship many years ago. He is involved in health foods and farming. You have begun a committed relationship with him. He is health-focused and anti-drugs. I am told that you have not used drugs since your arrest and your reuniting with Peter has helped you to stay focused and maintain a healthy lifestyle.

You have travelled to Western Australia to work in Peter's fruit shop for a period of six weeks. That has helped you to turn away from drugs and follow up a healthier lifestyle.

You are currently undertaking a certificate in civil construction at Thebarton and this course entails involvement in the building of new roads, fences and animal enclosures. You envision that there will be a prospect of work for you after that course.

Your counsel did not make lengthy or detailed submissions regarding your relationship with your co-defendant, Mr Weetra, except to say that you met him when you were 18 years of age. You would spend time together with Mr Weetra, your brother Mark and your uncle. It has been suggested by your counsel that your interest in Mr Weetra at the time of your offending was not part of any criminal activity but, rather, a romantic one.

Your offences are particularly egregious considering your position within the prison system and your right to have access to highly sensitive information. Your behaviour was contradictory to the positive programs you were running for Aboriginal prisoners in the Mobilong Prison and the Women's Prison. Your counsel submitted that your offending puts a terrible blight in the work you did in corrections. You were within the most trusted positions within corrections and you abused that position by putting at risk the very people within your own high level of responsibility.

Your role within the prisons was a valued and necessary role to indigenous offenders, their welfare, rehabilitation and their maintenance of links with their families and communities while in custody. Your role was important in achieving positive outcomes for indigenous offenders when they were released back into the community.

As a result of your actions in releasing prisoners' details, restrictions have been placed on the area where you worked and has negatively affected its ability to effectively do its job.

You have no antecedent history.

Ms Graham in sentencing you I have had regard to aspects of personal and general deterrence for offences of this kind.

You had a duty pursuant to s.26 of the Public Sector (Honesty and Accountability) Act as a public officer to act honestly.

In sentencing you I will use s.26 of the Sentencing Act 2017 and fix one sentence for your offending.

Pursuant to s.11 of the Sentencing Act I have taken into account the nature, circumstances and seriousness of these offences that you have committed and the effects that they have had upon the prison community.

I also take into account your character and your general background as a hardworking parent and productive and contributing member of your community.

You come before this court with no prior offending.

I also consider that your attempts to get your life back on track are genuine. I consider that the likelihood of you reoffending is low.

I accept the submission made by your counsel that you regret your actions and you are attempting to re-engage in community projects.

I sentence you to a term of imprisonment of 10 months. In applying the agreed 10% discount this brings your sentence to nine months. Pursuant to 96(1) of the Sentencing Act I may, if I find good reason exist to do so, suspend the sentence on the condition that you enter into a bond to be of good behaviour and comply with the conditions of this bond.

In exercising my discretion there are several matters I must take into account. These include the seriousness of the offence. I will also take into account your return to study in civil construction, the support that you have provided to your daughters and your granddaughter and the support that you have had from your partner, Peter, and your re-engagement with him.

I do find that good reason exists to suspend the sentence on the condition that you enter into a bond to be of good behaviour for two years in the amount of \$500.

The conditions of the bond include but not limited to that you be under the supervision of a community corrections officer for a period of one year, that you not consume any drug that is not medically prescribed or otherwise legally available, and that you submit to testing directed by the community corrections officer.

Mr Weetra, you are 50 years of age. You were raised by your mother and had little to do with your father. You were the eldest of three other siblings. You have two younger brothers and a younger sister. You had a younger brother who took his own life when he was 15. This event was traumatising for you and has followed you the whole of your life.

You attended Raukkan Primary School and Meningie Area School. You attended high school. You left school at the age of 16 in year 11 to take a job in boat building. You did this for 12 months. You then began work as an upholsterer and you were offered an apprenticeship. You also took up boxing and turned professional at 17. You did this for 10 years participating in fights in Australia, Fiji and Korea. When you were 27 you decided to end your boxing career and return to your mother who was ill at the time. You returned to care for her and assist in your family's dairy farm. You devoted your life to your grandmother and together you and your grandmother nursed and cared for your mother until her death in 2000 when you were aged 30.

Prior to her death you managed to remain, for the most part, out of serious criminal trouble aside from some minor infractions. However, after your mother's death, you turned to substance abuse and what followed was serious criminal offences.

Despite the substance abuse and your legal problems you managed to become involved in the Aboriginal Sobriety Group and took a role there teaching boxing at the city gym for many years. Your criminal history has been interspersed with hard work within the Aboriginal community.

A constant in your life has been the relationship with your partner, Ms Warrior. You and Ms Warrior have a daughter aged 27 and you are the father-figure of Ms Warrior's other children. Throughout all of these events, Ms Warrior has stuck by your side and it has been a relationship which has not been an easy one on her. She does not approve of your criminal behaviour. When you are at odds with the law it is a period when the two of you are at odds with each other. It is your submission, through your counsel, that your offending in this matter happened at a time when your personal life was in crisis.

You have a long and well-documented list of antecedents and these include serious offending.

While on home detention bail in 2017 for an unrelated matter you went into housing with the Aboriginal Prisoners and Offenders Support Service. Whilst there, you went from being a general resident into a leadership role as a voluntary housing coordinator between October 2017 and December 2018.

I received a letter from Mr Khan dated 17 July 2018 describing your role and the great strides that you made whilst in that position. Your position was dissolved at a board meeting, however you still

maintain some of your responsibilities. You have gained further employment at Raw Recruitment Services and this was confirmed by a letter from Mr Allan Jones of 19 July 2018. You have obtained a number of certificates in order to work within that role.

I received and read a letter from Mr Sansbury dated July 2017. He spoke very highly of you. I have also received a letter from Ms Ruthe Miller, your case manager at APOSS dated 18 December 2018. Despite your managing to maintain some semblance of a working life, you were also heavily involved in the lifestyle associated with outlaw motorcycle gangs. That association led to this offending.

I have taken into account the references of Mr Sansbury and Ms Miller. The prosecution submitted that the references were dated and provided before you were found to be in breach of bail for drug consumption and that your counsel submissions are entirely inconsistent with your behaviour.

In late 2018 and early 2019, two of your cousins passed away and that has greatly affected your wellbeing. To cope with the stress in your life you turned again to substance abuse. I am told that you are determined to put your life together and you deeply regret the decisions that you have made that have brought you here. I am told that one of your biggest regrets is that your incarceration has meant that your daughter, who was the victim of domestic violence, remains largely without your help.

Mr Weetra, in sentencing you I must give paramount consideration to the need to reflect the principles of general and personal deterrence in any sentence that I impose. Because of your antecedence in relation to the second count, the aggravating feature, your sentence will be proportionally higher than your co-accused Ms Graham. I will use s.26 of the Sentencing Act to fix one sentence on both counts.

As with Ms Graham, I have taken into account the nature, circumstances and seriousness of the offence you committed and the effects on the prison and wider community pursuant to s.11 of the Sentencing Act.

I sentence you to 12 months imprisonment. Taking into account the agreed 10% discount and the 56 days you have earlier spent in custody, your sentence is reduced to 8 months and 30 days. In dealing with the breaches of bond of 7 April 2016 and 14 September 2016, you have admitted breaching the bonds. The breaches include the offences that you pleaded guilty to and set out above.

In relation to both breaches I order that the suspended sentence be revoked and that you serve the sentences imposed for each bond and the 21 days each, cumulatively. This sentence of a further 42 days is to be served cumulatively with the first sentence. This gives you a total sentence of imprisonment of 10 months and 12 days. I backdate that sentence to the date that you surrendered into custody, namely 16 April 2019. I do not find that good reason exists to suspend your sentence.

As no home detention address was available I have not been required to consider and I would not consider a home detention sentence.

Ms Graham, are you prepared to enter that bond?

PRISONER GRAHAM: Yes, your Honour.

BOND ACKNOWLEDGED

ADJOURNED 10.04 A.M.