

67/89

## COUNTY COURT OF VICTORIA

***R v ARDLEY***

Judge Ross

1 December 1988

**SENTENCING – WELFARE FRAUD – AMOUNT OF \$88,086.38 IMPROPERLY OBTAINED – DEFENDANT SENTENCED TO A TERM OF IMPRISONMENT.**

A. pleaded guilty to 3 counts of imposition and 3 counts of defrauding the Commonwealth. Over a period of 5 years, A. received double benefits, and for almost 2 years of that period, received triple benefits. The total amount improperly obtained was \$88,086.38. After setting out the nature of the charges, the penalties provided and the defendant's background, His Honour continued: ... [4]

**JUDGE ROSS:** ... Dr Alfred Lietmans of 399 Burwood Highway, Vermont South a psychiatrist, was called on your behalf and the main thrust of his evidence was directed to establishing that the injuries received at age five in the motor-car accident to which I have referred, left you with a condition which he described as "frontal lobe syndrome", which condition he stated was secondary to the head injury involving the right side of the brain. He said that this causes impulsiveness in action and behaviour, emotional liability and impairment of judgment. He said that even though you are aware of right and wrong, you can, nonetheless, make judgments almost from impulse. He felt that your behaviour in committing these frauds was directly influenced by this neurological condition.

The accused's counsel relied on this testimony and referred me to the decision of the Victorian Court of Criminal Appeal in *R v Anderson* [1981] VicRp 17; [1981] VR 155; (1980) 2 A Crim R 379. He relied on the proposition [5] that in the case of an offender suffering from a mental disorder "general deterrence should often be given little weight ... because such an offender is not an appropriate medium for making an example to others". I had to consider Dr Lietmans' evidence against the background of considerable audacity, ingenuity, and persistence that went into the commission of these offences. You must have made regular visits to Social Security offices to confirm your alleged unemployment. You opened a bank account at the Commonwealth Bank at Fairfield in the name of Adams, and an account with Westpac at Thomastown in the name of Grant, for the specific purposes of receiving deposits of Commonwealth benefits.

You were interviewed by an officer of the Department of Social Security in November 1987 and were sufficiently resolute of purpose to merely accept a reduction of Commonwealth benefits to single rate after lying to the officer about the absence of your wife. You had multiple changes of name by deed poll and your explanation to the police officer for these changes of name was a desire to elude creditors. I am far from persuaded that these are examples of impulsive behaviour. [6] John William Phillips of 47 Wilma Avenue, Mulgrave was called as a character witness on your behalf. In addition to attesting to your previous good character and capacity for hard work, he stated, in effect, that you had good organisational skills and your help to him in organising a truck contracting branch in the Albury district was invaluable. He described you as an ideal employee.

I have concluded that no case has been made out on your behalf that you be treated as having suffered from any mental disorder which in any material way affected your awareness of the criminality of what you were doing, or affected the weight that I should give to the aspect of general deterrence which attaches to any sentence that is imposed in this case. I am fortified in this conclusion by the decision of the Victorian Court of Criminal Appeal in *R v Gruia* (unreported, 3 December 1986, No 164/86). Your counsel submitted that, in all the circumstances, that I should, in giving weight to your background, the fact that you have no prior convictions, your plea of guilty, the desirability of not sentencing a first offender to a term of imprisonment and

your diminished mental responsibility, impose a non-custodial sentence.

Mr Kearne, who appeared on behalf of the Commonwealth, referred me to the decision of Olsson, J in *Laxton v Justice* (1985) 38 SASR 376; (1985) 16 A Crim R 46 and to the statements of principle which emerged from that case and which he submitted were apposite. He relied on the statements that this type of offence is now prevalent and difficult [7] to detect, this type of offence threatens the basis of our social security system and that a course of conduct of this type pursued over a long period of time is far more blameworthy than a single or short-term fraud.

The decision of the Court of Criminal Appeal in *R v McGown* (unreported, 4 December 1985, No 168/85) is also supportive of the proposition that in offences of this type salutary punishment is particularly necessary. In my view Mr Kearne's submissions are well founded. In all the circumstances and, I believe, giving due weight to the factors urged upon me by your counsel, I am unable to accept the submission that a non-custodial sentence is the appropriate penalty. I previously referred to the heavy penalties imposed by the legislature, particularly in relation to the offences of defrauding the Commonwealth and, I believe, it is my duty to impose sentences of imprisonment.

On Count 2 you are sentenced to a period of one year and four months' imprisonment and on that count I direct that you serve a minimum of ten months before being eligible for parole. In respect to Count 4 you are sentenced to a period of one year and four months' imprisonment and on that count I direct that you serve a minimum of ten months before being eligible for parole. On Count 6 you are sentenced to a period of one year and four months' imprisonment and on that count I direct that you serve a minimum of ten months before being eligible for parole. The sentences on Counts 2, 4 and 6 are to be served cumulatively. On Counts 1, 3 and 5 the sentence on each count is six months' imprisonment. The sentence on these counts are to be served concurrently with each other and [8] concurrently with the sentence on Count 2. The effective total sentence is four years' imprisonment with a minimum of two years and six months before you become eligible to be released on parole."

---