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SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v MANIFOLD**Crockett, Marks and Hampel JJ****2 December 1993****SENTENCING – SOCIAL SECURITY FRAUD – \$47,140 OVER FIVE YEARS – NO PRIORS – EARLY PLEA OF GUILTY – WHETHER ACTUAL IMPRISONMENT APPROPRIATE.**

M., a housewife and mother, improperly obtained \$47,140 over a period of five years. When detected, M. entered an early plea of guilty, had no prior convictions and had been a substantial contributor to community works. The trial judge sentenced M. to 2 years' imprisonment to be released upon a recognisance after serving 12 months. On application for leave to appeal—

HELD: Application granted. Appeal allowed. Varied to be released after serving 2½ months' imprisonment.

CROCKETT J: [1] The applicant was indicted in the County Court at Melbourne on an indictment that contained two counts. The charging of two offences arises merely for a technical reason connected with the change at the relevant time to the description of the social service payment which, it was said, had been fraudulently received by the applicant. Effectively she was charged, as between December 1987 and July 1992, with and pleaded guilty to the offence of having claimed and received a sole parent's pension to which she was not entitled.

After hearing a plea for leniency, the judge sentenced the applicant on Count 1 to sixteen months' imprisonment and on Count 2 to twenty-four months' imprisonment. Those sentences were to be served concurrently, making an effective term of twenty-four months' imprisonment. The judge proceeded to fix a recognisance release order period of twelve months. He directed initially (although it was subject to some later incorrect amendment) that the sentences commence on 17th September 1993. By so doing, he took account of four days' pre-sentence detention which had been served by the applicant. The effect of this order was to impose a two-years' term of imprisonment upon the applicant, with what effectively amounted to a suspended sentence after the service of the first twelve months' imprisonment.

The applicant now seeks leave to appeal against the sentences so imposed. She has done so on a number of grounds but principally on the ground that the sentence is manifestly excessive. **[2]** The fraud perpetrated by the applicant against the Commonwealth realised in her hands a sum of \$47,140.79. The perpetration of the offence occurred in these circumstances: The applicant came to live in this country in 1976. Two years later she married her first husband. She and her husband separated on 1st August 1979. She then received a sole parent's pension. There were two children of the marriage, a boy and a girl. The girl was born on 24th December 1979. She had what proved to be a terminal illness, with respect to which it was hoped that surgery might successfully cure. To enable that surgery to take place, the applicant and her daughter, as a result of public subscription, were able to travel to the United Kingdom where surgery took place. However, it failed to save the life of the applicant's daughter, who died on 27th March 1987. The applicant in the meantime continued to receive a sole parent's pension at the single parent plus one dependent child rate, she having informed the department of the death of the female child.

Then, in September 1987, she married her second and present husband. I say "present husband", but it appears that there is an estrangement between them which the Court was told amounted to the permanent breakdown of the union. The applicant gave birth to three children by her second husband. It is in respect of those children that she received illegally the supporting parent and dependent child pension after having married for the second time as she failed to notify the Department of Social Security of that marriage. During the currency of the marriage, the applicant's second husband was in employment for most of the time. When he was not, he was

in receipt of worker's [3] compensation. The result was that he was capable of being, and in fact was the provider for the family. The applicant applied for and was granted the family allowance supplement for the three children born to her and her second husband. In her application, she applied in the name of her second husband but failed to disclose the fact that she was already in receipt of social security benefits in the form of a supporting parent's benefit in the name of her son by the first marriage. She was reported to the department by an informer and, as a result, was questioned by officers of the Department of Social Security. In giving her explanation for those failures, she said, "It was just so easy for me to put the form in and I just let things snowball until I couldn't get out of it. I couldn't put the brakes on. I was getting deeper into trouble and I was relieved it was all over It was so easy to do, and when the pension came into the bank we had a bill to pay."

The applicant has been in custody pursuant to the sentence imposed on her since 17th September 1993, four days of which, as already indicated, were by way of pre-sentence detention. The Court has had a considerable number of matters urged upon it with a view to the Court's varying the order to enable the immediate release of the applicant. Among those mitigatory features upon which emphasis has been placed is the fact that the applicant entered an early plea of guilty, or at all events notified the authorities of her intention so to do. She had no prior convictions. She had, the evidence showed, been a substantial [4] contributor to community works. There was also the psychological effect which the death of her daughter had upon her and consequent distortion or warping of her judgment in matters of the kind that have led to her presence now before the Court. There was also considerable emphasis placed upon the obvious need for the family to have her free to discharge the duties and responsibilities of a housewife and mother. In consequence, it was contended that justice would be done if there were an earlier release than that ordered by the judge. Significantly the Crown did not oppose the adoption of such a course.

The Court is of opinion that the matters urged upon it are sufficient to justify, indeed require, the adoption of such a course. Accordingly, we propose to grant the application and treat the appeal as instituted and heard *instanter* and allowed, to the extent that the sentence below will be varied with regard to the length of the recognisance release order period so that the sentence will read as follows:

On Count 1 the applicant is sentenced to sixteen months' imprisonment; on Count 2 to twenty-four months' imprisonment. In each case there will be fixed a recognisance release order period of twenty-one months and fourteen days. Also in each case the sentences imposed will commence on 21st September 1993. The surety for the recognisance release order is fixed at \$500. The order for restitution made by the judge will stand. [5] Direct that the four days' pre-sentence detention be reckoned as part of the sentence served. Direct that the non-parole period be 77 days. Ms O'Brien, will you make sure your client understands fully the significance and the obligations concerned in entering into the recognisance?

MS O'BRIEN: Yes, Your Honour, I have told her.

CROCKETT J: The applicant may be released. You are free to go now.

APPEARANCES: For the Crown: Mr B Young, counsel. Commonwealth DPP. For the applicant Manifold: Mr B Bourke with Ms F O'Brien, counsel. Ryan Carlisle Thomas, solicitors.
