QUEENSLAND COURTS

QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

DISTRICT COURT OF QUEENSLAND

APPELLATE JURISDICTION

JUDGE TREVIÑO KC

Appeal No 87 of 2024

V [redacted] **Appellant**

v.

QUEENSLAND POLICE SERVICE **Respondent**

CAIRNS

9.35 AM, TUESDAY, 22 OCTOBER 2024

DAY 1

JUDGMENT

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: These are my reasons in relation to the appeal of [redacted] and the Queensland Police Service. This appeal was heard immediately after the appeal in the matter of [redacted] and Queensland Police Service. My reasons for allowing this appeal should be read together with my reasons in the matter of [redacted] which I just delivered.

On 24 July 2024, [redacted] was convicted in the Mareeba Magistrates Court on his own pleas of guilty to a series of 18 offences, as follows: 13 offences of fraud, one offence of stealing, two offences of attempted fraud, one offence of unlawful use of a motor vehicle and one offence of contravening order about information necessary to access information stored electronically.

In respect of each offence of fraud and the two offences of attempted fraud, the appellant was sentenced to three years' imprisonment, suspended after serving 12 months, for an operational period of three years. Those terms were ordered to be served concurrently, and 63 days of presentence custody was declared as time already served. The appellant was convicted but not further punished on the remaining offences.

[redacted] was sentenced immediately after [redacted] by the same magistrate; he was represented by the same legal representative, and the same prosecutor appeared on behalf of the prosecution. His sentence proceedings were conducted in a truncated way. In an inauspicious beginning to his sentencing remarks, the learned magistrate indicated that he would repeat and rely on the remarks given in [redacted] matter.

In circumstances where [redacted] was not present for that earlier hearing, this was an error that rendered the proceeding unfair to [redacted] He was, of course, entitled to be present to hear submissions and remarks that were to be relied upon and taken into account in respect of his sentence. His exclusion from the earlier hearing in those circumstances is an obvious error that, of and by itself, would warrant the exercise of the sentencing discretion.

But in any event, upon review of the hearing and the sentencing remarks, it is plain that, in sentencing [redacted] the learned magistrate committed the same errors as were committed in [redacted] matter. The learned magistrate failed to correctly identify the appellant's involvement in the offending, give proper allowance for the appellant's pleas of guilty and lack of criminal history, give appropriate credit for the payment of restitution, and have any regard to the fact that the appellant's time in custody would be made more onerous by reason of his status as a foreign national without a visa.

It is readily apparent that [redacted] participation in the fraudulent scheme was, for all intents and purposes, the same as that of [redacted]. Like [redacted] he was not the controlling mind of the scheme, but simply an actor within it. He carried out tasks in furtherance of the scheme, similar to those of [redacted]

Further, his personal circumstances were, for present purposes, virtually identical to those of [redacted], except that he was a little younger – 34 at the time of the commission of the offences. He had pleaded guilty at the earliest opportunity. He had no criminal history. He had made an offer of restitution. He was a British national facing the prospect of deportation, and he had also spent 63 days in presentence custody awaiting sentence.

If anything, the errors made by the learned magistrate in [redacted]'s matter were even more pronounced than [redacted]'s matter. The same factual basis for sentence as had been submitted for [redacted]'s matter was asserted by the appellant's legal representative, and not challenged by the prosecutor in [redacted]'s matter. In his sentencing remarks, the learned magistrate rejected that agreed factual basis without providing any reasons for doing so, except that, to his mind, the submission that Mr [redacted] was not a prime mover of the offending did not pass "the pub test" – whatever that is supposed to mean.

No opportunity was given to Mr [redacted]'s representative to address his Honour on the matters which established the validity of the factual basis for sentence actually agreed on. Again, rather than engaging in a considered analysis of Mr [redacted]'s culpability, the learned magistrate instead emphasised, at the expense of all other considerations, the nature of the aggregate loss suffered by all of the victims, and the appellant's contribution to that loss.

Mr [redacted]'s pleas of guilty and lack of criminal history were referred to, but again, like in Mr [redacted]'s matter, it was not explained how those matters were factored in in mitigation of the penalty imposed. Nothing said by the learned magistrate indicated that he took the offer of restitution into account in mitigation. No reference was made to the burden faced by the appellant and having to serve out the custodial portion of his sentence in a prison in Far North Queensland, far from his supports and family in the United Kingdom, in circumstances where he is not a citizen or resident of this country and, upon release from the custodial component of the sentence, he faced the inevitable prospect of deportation.

The learned magistrate saw no reason why the sentence imposed on Mr [redacted] should not be the same as that imposed on Mr [redacted]. Having regard to the errors made and the broad similarity in their involvement in the offending and their particular circumstances, I can see no reason to differentiate between them in terms of the outcome of their appeals. Mr [redacted]'s counsel – sorry, Mr [redacted]'s counsel did not seek to abuse me of that view. Indeed, it was submitted that the result in Mr [redacted]'s matter should follow the result in Mr [redacted]'s matter. Therefore, for the same reasons, I allow Mr [redacted]'s appeal.

I will make the formal orders: (1) appeal allowed, (2) vary the sentence imposed on each of the 13 offences of fraud and the two offences of attempted fraud by setting aside the partial suspension of the sentence after serving 12 months, and in lieu thereof, ordering that each sentence of three years' imprisonment be suspended after

serving six months, (3) otherwise affirm the sentence orders made by the Mareeba Magistrates Court on 24 July of 2024. Well, thank you both for your appearance.

Any matters arising, Mr McDonald?

MR McDONALD: No, your Honour.

HIS HONOUR: Mr McMillan?

MR McMILLAN: No, your Honour. Thank you very much.

HIS HONOUR: Adjourn the court.
