IN THE SUPREME COURT OF VICTORIA
COURT OF APPEAL
(CRIMINAL DIVISION)

S APCR 2016 0179

THE QUEEN

Respondent

and

STEVE ILIOPOULOS

Applicant

RESPONSE TO APPLICANT'S WRITTEN CASE (SENTENCE)

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Prepared by:	Solicitor's code: 7539
JOHN CAIN	Telephone: (03) 9603 7666
Solicitor for Public Prosecutions	Direct: (03) 9603 7451
565 Lonsdale Street	Reference: 1301553
Melbourne Vic. 3000	R. Furletti

Part A and B: Particulars of Conviction and Sentence, Relevant Statutory Provisions and Maximum Penalties

1. The Applicant was charged with 14 dishonesty offences. On 2 May 2016 the Applicant was convicted by a Supreme Court jury verdict of 12 of those charges. He was sentenced on 9 August 2016.

Charge on Indictment	Offence	Maximum	Sentence	Cumulation
1.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	4 months	1 month
2.	Obtaining a financial advantage by deception [s 82(1) of the	Acquitted		

Charge on Indictment	Offence	Maximum	Sentence	Cumulation
	Crimes Act 1958]			
3.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	6 months	1 month
4.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	Acquitted		
5.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	18 months	3 months
6.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	6 years	18 months
7.	Attempting to obtain a financial advantage by deception [s 321M of the *Crimes Act 1958*]	10 years (CCE Offence) [s 82(1) & 321P of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	5 years	15 months
8.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	7 years	Base
9.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	9 months	1 month
10.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	6 months	1 month
11.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act*	15 months	2 months

Charge on Indictment	Offence	Maximum	Sentence	Cumulation
		1991]		
12.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	18 months	2 months
13.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	6 months	1 month
14.	Obtaining a financial advantage by deception [s 82(1) of the *Crimes Act 1958*]	20 years (CCE Offence) [s 82(1) of the *Crimes Act 1958* & s 6I(1) of the *Sentencing Act 1991*]	3 years	3 months

Total Effective Sentence:	11 years
Non-Parole Period:	7 years
Pre-Sentence detention declaration pursuant to s 18(1) of the *Sentencing Act 1991*:	276 days
Other relevant orders: Nil	

Part C: Summary of Relevant Facts[1]

a) Introduction

2. The offences arose out of representations made to financial institutions to provide lending facilities and hire purchase finance to the Viking Group of Companies, of which the Applicant was the CEO at the relevant time. The charges were treated as belonging to two groups, namely, charges relating to obtaining financial lending facilities ('the finance charges'), and charges relating to the obtaining of hire purchase finance in respect of equipment purchased by the Viking Group of Companies ('the equipment charges').

3. The finance charges alleged that the Applicant had committed the offences charged in a joint criminal enterprise with Vasilios (Bill) Bariamis (BB) and Loukia Bariamis (LB) (wife of Bill

[1] *DPP v Vasilios & Iliopoulos* [2016] VSC 447, [3]-[52].

Bariamis). The Applicant was alleged to have committed the equipment charges himself, although it became common ground that Loukia Bariamis was heavily involved in the commission of those offences. It was common ground that the relevant documents contained falsehoods, but the defence was conducted on the basis that the Applicant lacked knowledge of these falsehoods. It was, however, accepted by defence that the documents did contain false information.

b) Loukia Bariamis

4. In 2013 LB pleaded guilty in the Supreme Court to three charges of obtaining a financial advantage by deception from the Commonwealth Bank of Australia ('the CBA'), those charges being the equivalent of charges 6, 8 and 14 in the indictment in this case. On her plea, LB gave an undertaking to cooperate with the prosecution in this matter.[2]

5. LB was a certified public accountant, a registered auditor, and a tax agent. From the early 1990s, she was a member of the accounting firm Greenfield Fox. During that time the Applicant became a client of LB. In 2004 and 2005, LB perpetrated an extensive fraud on the Australian Taxation Office ('ATO'), totalling the amount of $1.8 million. Her criminal activities were entirely unknown to all of her clients, including the Applicant. Her fraud was detected by the ATO in June 2005 and she was subsequently charged with tax offences and sentenced in the County Court in 2013.[3]

c) Steve Iliopoulos and the purchase of Viking Fleet Service

6. The Applicant was a mechanic by trade. In 1999, he commenced to work with a company called Viking Fleet Service (VFS), a small business involved in the repair of trucks and prime movers. The Applicant entered into an agreement with the owner to purchase the business over a period of years, concluding in 2007. In the meantime, LB assisted the Applicant to refinance lending facilities for the business.

7. The business of VFS expanded and LB commenced to work for the Applicant in an accounting capacity. In 2007, the Applicant negotiated to purchase Perth Freightlines Pty Ltd

[2] *DPP v Bariamis* [2013] VSC 457 (6 September 2013).
[3] *DPP v Bariamis* [2013] VCC 1032 (28 June 2013).

(PF), a large freight service business.

8. In order to finance the purchase of PF, VFS borrowed $5,000,000 from the CBA. The application for finance was based on accounting and tax documents prepared by LB for a number of entities associated with VFS. In order to conceal the fact that she had compiled those documents, LB prepared them as if they had been compiled and prepared by Alex Vovos of Meridian Financial Services. LB claimed that the Applicant was a party to the production of the false accounting documents to the CBA, but the jury acquitted the Applicant of the charge arising out of that application (charge 2).

9. Around that time, the Applicant became the CEO of the Viking Group of Companies. LB assumed the role of CFO. She assumed responsibility for the production of financial and accounting documents relating to the business.

d) Vasilios (Bill) Bariamis

10. In August 2008, BB joined the Viking Group as its executive general manager (GM), responsible for the operational and strategic side of the business.

e) Growth of the Viking Group (charge 4)

11. The business of the Viking Group grew and diversified very rapidly. Its business was divided among a number of different corporate entities.

12. As a result of its rapid growth, Viking Group experienced chronic cash flow shortfalls. In July 2009, the Applicant and LB applied to the CBA for the provision of further financial lending facilities to the Viking Group. The CBA agreed and increased the formalised lending facilities by a sum of $2.55 million. The application was based on the same documents as the previous application for the financial lending facilities for the purchase of PF (charge 2), and alleged that the Applicant and LB were parties to a joint criminal enterprise to obtain the additional financial lending facilities from the CBA by deception (charge 4). The jury acquitted the Applicant of that charge.

f) Receivable Fund Facility

13. One of the facilities provided by the CBA was a receivable finance facility. Under that facility, the bank provided finance to three members of the Viking Group, namely PF, Viking Transport and Logistics, and VFS, for 80% of those companies' current debtors, up to a prescribed limit. Debts owed to those companies by related entities in the Viking Group were excluded by the facility. In order to access finance under that facility, Viking provided a statement to the CBA setting out the invoices in respect of which it sought funding. At the end of each month, the CBA reconciled that document with the aged debtor trial balances of the companies.

14. In order to deal with the increasing cash flow problems of the Viking Companies, LB created a system by which debts owed to the three Viking companies by related entities in the Group were, in the documentation provided to the CBA, replaced by fictitious debts owed by other unrelated entities. LB also falsely inflated the amounts that were owed to the Viking companies by their debtors. Additionally, entirely false or fictitious debtors were created.

g) Finance Charges (Charges 6, 8 & 14)

15. In October 2009, the CBA approved a further application by the Viking Group for additional financial facilities, totalling $12.15 million. The application was based on falsified aged debtor trial balances for the three Viking companies. Those documents fraudulently inflated the amounts owed by debtors to each of those three companies by $5.5 million. In addition, the application was based on falsified accounting documents for entities in the Viking Group that purported to have been prepared by Alex Vovos of Meridian Financial Services, but had actually been prepared by LB. The Applicant was convicted of that charge (charge 6). BB was acquitted of charge 6.

16. The ongoing cash flow problems of the Viking Group were the subject of three meetings between officers of the CBA, the Applicant, BB and LB in June and July of 2010. In October 2010, the CBA approved a further application on behalf of the Group for additional financial facilities in the sum of $13.9 million. That application, and the meetings which preceded it, were the basis of charge 8, of which the Applicant and BB were both convicted.

17. That charge was based on aged debtor balances falsely inflated by a sum of $7.2 million. In addition, charge 8 alleged that the increase in financial facilities was based on a false representation made to the CBA that VFS was the exclusive supplier of heavy vehicle maintenance services to Aldi stores in Victoria. That representation was contained in a document entitled 'Viking Group — Divisional Strategic Overview 2010-2011', which BB had sent to an officer of the CBA in July 2010. BB made a presentation on that document in the course of one of the meetings with bank officers on 22 July 2010.

18. The Viking Group still continued to experience liquidity problems. At a meeting on 17 November 2010, the bank approved a further $4 million increase in the credit facilities based on the same documentation and information that formed the subject of charge 8 (Charge 14). The Applicant and BB were both convicted on charge 14.

h) Refinancing with Westpac (charge 7)

19. Charge 7 arose out of an attempt by the Applicant, BB and LB to re-finance with Westpac the lending facilities provided by CBA to the Viking Group between 6 July 2010 and 30 March 2011. Westpac provided a more flexible, and accessible, receivables finance facility than CBA, which was important to the alleviation of the chronic cash flow difficulties experienced by the Viking Group.

20. The application to Westpac commenced with a meeting between the Applicant, BB and LB, and officers of the Westpac Bank on 6 July 2010. Following that meeting, and a further meeting in August 2010, a number of financial and accounting documents were provided to Westpac, principally by BB. Those documents included financial accounts of a number of entities in the Viking Group prepared by LB, which falsely purported to have been prepared by Alex Vovos of Meridian Financial Services. In addition, BB provided to Westpac a copy of the Divisional Strategic Overview document of the Viking Group. That document contained statements that VFS was the exclusive supplier of heavy vehicle maintenance services to Aldi stores in Victoria, and that it had substantial business generated by a contract with Boral Resources (Vic) Pty Ltd and by a contract with Linfox. Those false statements, and the falsified accounting documents purporting to have been prepared by Alex Vovos, constituted the deceptions alleged in charge 7. The Applicant and BB were convicted on this

charge.

21. An officer of Westpac noted that there was an inconsistency between the closing balances for one year, and the opening balances for the succeeding year in the accounts that had been prepared by LB. LB could not explain that inconsistency without disclosing the fraud. Accordingly, negotiations stalled. In early 2011, steps were taken to revive the application, but they did not proceed further, before a receiver was appointed to the Viking Group in early April 2011.

i) Equipment Charges (1, 3, 5, 9, 10, 11, 12, 13)

22. The equipment charges involved the procurement of hire purchase finance to a member of the Viking Group in respect of equipment purchased or owned by it, by providing to the finance company false invoices that purported to demonstrate that the Viking Company had acquired the particular piece of equipment at a price that was well in excess of the actual amount paid for it. In each case, the false invoices were created in the name of Knights Motors, a business owned by the Applicant's brother, Konstantinos Iliopoulos. Knights Motors is not in the business of selling vehicles and the Applicant's brother did not provide his permission or authority for the Applicant to use the name of Knights Motors to produce those invoices.

23. It was alleged that for each charge, it was the Applicant who directed an employee or officer of Viking to create and produce the false invoices to the finance companies.

24. Charge 1 related to the hire purchase by Viking Asset Management from Westpac of two Maxi cube trailers for the sum of $135,300 based on a false Knights Motors invoice. In fact, the equipment had been purchased by Viking Asset Management for $51,223.

25. Charge 3 concerned a hire purchase finance agreement entered into by Viking Asset Management with Adelaide Bank in the sum of $282,131.90 based on false Knights Motors invoices. In fact, the vehicles had been purchased by Viking Asset Management directly from PF as part of the arrangement by which Viking acquired the business of that company. Before the purchase of the business, the Applicant had obtained a valuation stating that the proper market value of the equipment was $187,000.

26. Charge 5 concerned a hire purchase agreement entered into by Viking Asset Management with the CBA respect of seven pieces of equipment for $795,000, again based on false Knights Motors invoices. In fact, two of the vehicles had been purchased by Viking as part of the acquisition by it of the business of M 1 Logistics in 2008. In addition, another of the vehicles had been purchased from an organisation called Paccar Trucks, and it was already the subject of a finance arrangement with Westpac. It is unknown where the remaining equipment was purchased from. Additionally, the Applicant signed a statutory declaration that he had never been a bankrupt (when in fact he had) and the equipment was not subject to any other finance agreement.

27. In October 2010, as part of the facility agreement that was the subject of charge 8, the CBA agreed to re-finance equipment that Viking had already purchased out of its own funds. Under the arrangement, Viking was entitled to sell equipment to the CBA, and to then lease it back from the bank.

28. Charges 9 and 10 each related to hire purchase agreements entered into by Viking Asset Management with the CBA on 29 October 2010 pursuant to that arrangement. Charge 9 concerned the sale and lease back of two Volvo loaders in the sum of $353,265. Charge 10 concerned a sale and lease back arrangement in respect of a 2008 Volvo loader in the sum of $218,350. On each occasion, the transactions were supported by false Knights Motors invoices which significantly inflated the purchase prices of the vehicles concerned.

29. Charges 11, 12 and 13 concerned hire purchase arrangements entered into by Viking Asset Management with the CBA, based on Knights Motors invoices sent by LB to the CBA on 28 October 2010. Charge 11 concerned two loaders that were financed by the bank in the sum of $652,850. Charge 12 concerned four items of equipment financed in the sum of $740,850. Charge 13 related to the finance of two items of equipment in the sum of $279,200. Again, each of the transactions were supported by false Knights Motors invoices, which grossly inflated the purchase price of the equipment concerned.

Part D: Grounds of Appeal

30. Ground 1 – The learned trial judge erred by imposing a differential sentence on the charge of attempt to obtain financial advantage by deception (charge 7).

a) Introduction:

30.1. The Applicant was convicted on 12 out of 14 charges after running a lengthy trial. He fell to be sentenced as a continuing criminal enterprise ('CCE') offender in relation to each charge for which he had been convicted. As a consequence the maximum penalty for each of those offences doubled.

b) Sentence on charge 7:

30.2. In relation to charge 7, this meant that the maximum penalty increased from 5 to 10 years imprisonment. The learned Sentencing Judge imposed a sentence of 5 years imprisonment on this charge. His Honour directed that 15 months of this sentence was to be served cumulatively on the sentence imposed on charge 6 and 8.

30.3. While the learned Sentencing Judge imposed the maximum penalty for an offence of attempting to obtain a financial advantage by deception, had the CCE provisions not applied, the order for cumulation was modest in all the circumstances. This was a relevant factor in assessing the exercise of the discretion by the learned Sentencing Judge in this case.

30.4. Charge 7 was a serious offence, as the Applicant concedes,[4] involving an attempt to obtain approximately $53 million. It involved a series of meetings, correspondence and ultimately an application for an increase in the finance facilities for a number of companies in the Viking Group.[5] The finance facilities which the Applicant sought to re-finance with the Westpac Bank totalled $53 million.[6]

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[4] Applicant's Written Case (Sentence), at [7].
[5] Summary of Prosecution Opening at [86] – [91].
[6] *DPP v Iliopoulos & Bariamis* [2016] VSC 447 at [49].

30.5. A court sentencing for CCE offences has a discretion whether a greater / differential sentence ought be imposed due to the increased maximum penalty. It is correct that the prosecution submissions, in both oral and written form, did not seek that the Applicant should be sentenced to a greater term of imprisonment in reference to the higher maximum penalty. Such a submission was not made and was unnecessary. The learned Sentencing Judge was informed that in relation to each offence the maximum penalty had doubled, due to the operation of the CCE provisions. By advising the learned Sentencing Judge of this fact, the prosecution were informing His Honour of the increased sentencing scope that existed due to the CCE provisions.

30.6. As was noted by Redlich JA in *R v. Grossi*[7], another case dealing with the CCE provisions:

> The maximum penalty prescribed by Parliament for an offence provides authoritative guidance as to its relative seriousness and is prescribed for the worst class of the offence in question. The increase will be relevant whenever the increase shows that Parliament regarded the previous penalties as inadequate. Even in cases where the new maximum is only of general assistance, it becomes the "yardstick" which must be balanced with all other relevant factors. But it does not necessarily follow that offences should attract an increased sentence because the maximum penalty has been increased. Thus, in *Arundell*, Vincent JA, with whom the Chief Justice and Cummins AJA agreed, regarded the absence of any reasons to explain the difference in the penalties imposed as raising a serious doubt as to whether proper regard had been given to what differential, if any, was required between those offences which were subject to an increased maximum penalty and those which were not. **But that is not to say that the amount involved in a continuing criminal enterprise count will not in a particular case provide a sufficient justification, without more, for the imposition of an increased penalty**.[8] (Bold for emphasis)

30.7. The maximum penalty was of course a significant consideration, but was just one of many relevant considerations in the sentencing task that confronted His Honour.

30.8. His Honour was keenly aware of the increased maximums and of the need to impose a proportionate sentence in all the circumstances of this case.[9]

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[7] (2008) 23 VR 500.
[8] (2008) 23 VR 500 at [45].
[9] *DPP v Vasilios & Iliopoulos* [2016] VSC 447, [48] & [87].

30.9. The prosecution did submit that there should be substantial concurrency between the attempt (charge 7) and the other charges before the court. This was given effect to, by the learned Sentencing Judge, in the orders that were made for cumulation concerning charge 7.

30.10. As the Applicant correctly acknowledges, 'aside from the sentence imposed on charge 7, all other sentences appear to be very much guided by the 'pre-CCE' maximum.'[10] This is significant in considering the exercise of learned Sentencing Judge's discretion in relation to the sentence imposed on charge 7 alone. Despite the fact that the Applicant had increased maximums for all 12 offences he fell to be sentenced for, a differential sentence was only imposed in relation to 1 of those offences. This demonstrates a measured and moderate approach to the increased maximum penalties by the learned Sentencing Judge.

c) Reliance on Arundell:

30.11. The Applicant relies heavily on Vincent JA's judgement in *Arundell*.[11] It is submitted the passage in *Arundell* is clearly distinguishable from the current case. In *Arundell* Vincent JA observed:

> The more difficult question which arises in this matter is whether the exercise of the sentencing discretion by his Honour miscarried, by what appears to have been, the effecting of an automatic increase in the penalties imposed on those counts as a consequence. As I have earlier indicated, there was no discussion of the manner in which the provisions of Part B should apply in the particular circumstance. The sentencing judge did not address the matter in his remarks and the sole basis of distinction between the penalties imposed on the various counts appears to have been whether the amount involved fell on one side or the other of the figure of $50,000. In the absence of any reasons to explain the difference in the penalties imposed, I consider that serious doubt must exist as to whether proper regard was had in the circumstances of the particular matter before the Court in the determination of what, if any, differential was required between the sentences handed down for the offences subject to an increased maximum penalty and those which were not.[12]

30.12. The issue highlighted by Vincent JA in *Arundell* was that the 'sole basis of distinction between the penalties imposed on the various counts appears to have been whether the

[10] Applicant's Written Case (Sentence), at [11].
[11] [2003] VSCA 69.
[12] [2003] VSCA 69 at [28].

amount involved fell on one side or the other of the figure of $50,000.'[13] In *Arundell* the applicant faced 13 charges of obtaining property by deception. On 5 of those charges the applicant was to be sentenced as a CCE offender. On the 8 charges of obtaining property by deception, where the CCE provisions did not apply, the applicant was sentenced to 36 months imprisonment. On the 5 charges of obtaining property by deception, where the CCE provisions did apply, the applicant was sentenced to 48 months imprisonment. As Vincent JA noted, there seemed to have been a uniform and arbitrary increase in the penalty imposed on the 5 CCE offences by virtue of the fact those provisions applied. The learned Sentencing Judge in that case did not offer any explanation for the uniform increase across the board. Vincent JA concluded the learned Sentencing Judge in that case had fallen into error by virtue of this approach.[14]

30.13. The approach of the Sentencing Judge in *Arundell* was very different from the approach of the Sentencing Judge in this case. As the Applicant concedes, the only differential sentence imposed was on charge 7 and this was an offence involving an attempt totalling $53 million.

d) Implicit complaint there was a denial procedural fairness:

30.14. The Applicant complains that if the Sentencing Judge was intending to impose a differential sentence the Applicant ought to have been given an opportunity to respond.

30.15. There is no specific ground of appeal alleging an error by the Sentencing Judge by failing to accord the Applicant procedural fairness. In any event, it is submitted there is no substance to this complaint.

30.16. The Sentencing Judge, prosecution and defence were all aware that the CCE provisions applied such that the maximum penalties increased. The Applicant had an opportunity to and did address His Honour on this issue. As the Applicant's Written Case confirms:

[13] [2003] VSCA 69 at [28].
[14] [2003] VSCA 69 at [10], [28] – [29].

> The Applicant, in his written submissions on the plea dated 9 June 2016 at [15] – [16] confirmed that no issue was taken with the CCE status and the Court was reminded of the absolute discretion to not impose a differential sentence in the circumstances.[15]

30.17. The Applicant did have an opportunity to address the increased maximum penalties in this case, and such an opportunity was taken during the plea.

e) Conclusion:

30.18. It is submitted that the Sentencing Judge did not make any error in sentencing the Applicant in this case.

DATED: 23 December 2016

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Jason Gullaci

Counsel for the Respondent

[15] Applicant's Written Case (Sentence), at [8].