

IN THE SUPREME COURT OF VICTORIA
 COURT OF APPEAL
 CRIMINAL DIVISION

BETWEEN

STEVE ILIOPOULOS

Applicant

v

THE QUEEN

Respondent

APPLICANT'S WRITTEN CASE (SENTENCE)

A. SENTENCES WHICH ARE THE SUBJECT OF THE APPLICATION FOR LEAVE TO APPEAL

1. The Applicant was tried before His Honour Justice Kaye in the Supreme Court at Melbourne in relation to 14 dishonesty offences. On the 2 May 2016, the jury convicted him of 12 of those charges and acquitted him of two. On 9 August 2016 the applicant was convicted and sentenced as follows:

Charge	Offence	Maximum	Sentence	Cumulation
1.	Obtain financial advantage by deception	20 years *CCE offence	4 months	1m on charges 8,6, 7 & 14 and 3, 9, 10, & 13
2.	Obtain financial advantage by deception	Acquitted		
3.	Obtain financial advantage by deception	20 years *CCE offence	6 months	1m on charges 8, 6, 7 & 14 and 1, 9, 10 & 13
4.	Obtain financial advantage by deception	Acquitted		
5.	Obtain financial advantage by deception	20 years *CCE offence	18 months	3m on charges 8, 6, 7, 14, 1, 3,10 ,11,12 & 13
6.	Obtain financial advantage by deception	20 years *CCE offence	6 years	18 m on charge 8
7.	<i>Attempted</i> obtain financial advantage by deception	10 years *CCE offence	5 years	15m on charges 8 & 6
8.	Obtain financial advantage by deception	20 years *CCE offence	7 years (base)	Base sentence
9.	Obtain financial advantage by deception	20 years *CCE offence	9 months	1m on charges 8, 6, 7 & 14 and 1, 3, 10 & 13

10.	Obtain financial advantage by deception	20 years *CCE offence	6 months	1m on charges 8, 6, 7 & 14 and 1, 3, 9 & 13
11.	Obtain financial advantage by deception	20 years *CCE offence	15 months	2m on charges 8, 6, 7,14 ,1, 3, 9, 10, 13 & 12
12.	Obtain financial advantage by deception	20 years *CCE offence	18 months	2m on charges 8, 6, 7,14, 1, 3, 9, 10, 13 & 11
13.	Obtain financial advantage by deception	20 years *CCE offence	6 months	1m on charges 8, 6, 7 & 14 and 1, 3, 9 & 10
14.	Obtain financial advantage by deception	20 years *CCE offence	3 years	3m on charges 8, 6 &7
Total effective sentence		11 years		
Non-parole period		7 years		
Pre-sentence detention		276 days		
Other relevant orders				

B. SUMMARY OF RELEVANT FACTS

2. The Applicant, Steve Iliopoulos was the CEO of the Viking group of companies. The Prosecution case was conducted on the basis that the Applicant was party to a joint criminal enterprise to commit dishonesty offences against various financial institutions, principally the Commonwealth Bank via the provision of false documents. The other parties to this joint enterprise including the chief financial officer Loukia Bariamis and the Chief Executive Officer, Bill Bariamis. There was no contest that the relevant documents contained falsehoods. The defence was conducted on the basis that the accused lacked knowledge of the falsity of the documents provided in support of the applications for credit.
3. While this was a complex and lengthy trial, for the purpose of the sole ground of appeal upon which the Applicant relies, the sentencing remarks of his Honour Justice Kaye provide an adequate summary of the facts. ¹

¹ *DPP v Iliopoulos and Bariamis* [2016] VSC 447 at [1] – [42] inclusive.

C. GROUND OF APPEAL

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).

D. SUMMARY OF ARGUMENT

4. It was common ground that the Applicant was to be sentenced as a continuing criminal enterprise offender (CCE) under part 2B of the *Sentencing Act* 1991, with respect to all charges he was convicted of by jury verdict. Once that is established, the maximum penalty of the offence charged is doubled and the Court is obliged to apply the increased maximum. Notwithstanding that fact, the maximum penalty remains only one of a number of considerations in determining the appropriate sentence. The Court must take all relevant circumstances into account in determining the sentence.² Further, the Court retains a discretion as to whether a greater (or 'differential') sentence should be imposed where the maximum penalty on a charge is increased because it is a CCE offence.

5. The rationale underpinning part 2B of the *Sentencing Act* 1991, is outlined by Vincent JA (with whom Phillips CJ and Cummins, AJA agreed) in *Arundel* at [19]:

In making these statements, I am not unmindful of the differences in the provisions concerning serious violent offenders, serious sexual offenders, serious drug offenders serious arson offenders and continuing criminal enterprise offenders. To some extent those differences demonstrate the point. For example, in the case of serious sexual offences, many of the qualifying offences have not existed for many years and in relation to others, their elements have changed. There is no need to dwell upon these differences which can be seen to reflect the disparate forms of offending to which the provisions are applicable. What is evident is that a number of categories of repeat offenders, who in different ways have been perceived as constituting a special risk to the community, have been created. Persons who fall within these categories are regarded as potentially liable to the imposition of a significantly increased maximum term of imprisonment should they continue to offend in relevantly similar fashion.

6. His Honour continued at [20]:

I would add that there is clearly a broader notion of the protection of the public also underlying these sets of provisions. Persons who by the commission of the required number of relevant offences have a demonstrated propensity to engage in serious criminal activity of a designated kind have been perceived as constituting a significant threat to the community which is entitled to protection through the sentencing process should they continue to offend

² *Arundell* [2003] VSCA 69 at [28].

And continued at [22]:

Parliament has, through the enactment of Part 2B, expressed an intention to deter those who demonstrate preparedness to engage in repeated predatory behaviour, affecting through the commission of offences of the kind presently under consideration, the economic welfare of individual victims and the general community. That propensity may become apparent in the case of the commission of a relevant offence on or after 1 July 1998 when regard is had to other similar offences whether committed before or after that date.

7. The Prosecution outline of plea submissions dated 2 June 2016 at [5] sets out the basis for the CCE status, though there is no invitation by the Prosecution (either in written form or orally during the plea) to have the applicant sentenced to a greater term of imprisonment in reference to the higher maxima. The prosecution did though concede that a substantial measure of concurrency should be ordered on the attempt charge as against the other offending.³ It is of note that, though obviously serious offending, the attempt was one whereby the Applicant had attempted to shift the debt from one financial institution (the Commonwealth Bank of Australia) to another (Westpac).
8. 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.
9. In his detailed reasons for sentence, at [48], the learned sentencing judge says

The offending, in respect of which both of you have been convicted, is particularly serious. Because of the amounts involved in each of those offences, Part 2B of the *Sentencing Act 1991* has the effect that both of you are to be sentenced as a continuing criminal enterprise offender in respect of each those charges. As a consequence, the maximum sentence, for charges 1, 3, 5, 6 and 8 to 14, is 20 years' imprisonment, and the maximum sentence, for charge 7, is 10 years' imprisonment.
10. Nothing more was said on the topic, though his Honour considered the notion of imposing a proportionate sentence at [87] in this way;

Because of the number of charges of which both of you have been convicted, and in particular in the case of you, Steve Iliopoulos, it is necessary to allow a significant amount of concurrency as to the sentences that I impose in respect of each of those charges, in order that the total effective sentence is not disproportionate to your offending, and that that sentence is just and appropriate in all the circumstances.

³ Plea transcript at Tp11.3-21.

11. His Honour's desire to impose a proportionate sentence is clear. Indeed, aside from the sentence imposed on charge 7, all other sentences appear to be very much guided by the 'pre CCE' maximum. This conclusion is fortified by reference to [53] of his sentencing remarks;

In the present case, the offending engaged in by both of you did not involve the aggravating features, common in many fraud cases, of defrauding innocent members of the public.

12. On charge 7, though, the attempt, the pre-inflated maximum was 5 years. That was the sentence actually imposed.
13. If the learned sentencing judge was intending to impose a 'differential' sentence on charge 7 in accordance with the CCE maximum, it is submitted that the applicant ought have been given an opportunity to respond.
14. The remarks of Vincent JA in *Arundel* (at [28]) are apposite here:

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.

15. As are the comments made at [38]:

As I do not consider that there is on the material before the Court an adequate justification in the present matter for differentiation between the penalties imposed for identical offences on the basis of the variations of the amounts involved, I propose that the sentences imposed on counts 3, 10, 11, 12 and 15 be set aside....

16. It is submitted that the sentence on charge 7 discloses specific error and the Applicant should be resentenced accordingly.

D. NECESSARY TRANSCRIPT

17. The transcript of the plea has been provided.

E. OTHER

18. The applicant seeks an oral hearing.

A handwritten signature in black ink that reads "Trevor Wright". The signature is written in a cursive style with a long horizontal line extending from the start of the word "Trevor".

T.E Wright QC
Senior Counsel for the Applicant

A handwritten signature in blue ink that reads "M.E Dempsey". The signature is written in a cursive style with a large, sweeping initial "M".

M.E Dempsey
Counsel for the Applicant

Date: 6 September 2016