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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 22322736

WORK HEALTH AUTHORITY

and

PETER VAN DER PASCH

DEPUTY CHIEF JUDGE BIRCH

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 22 MARCH 2024

Transcribed by:
Epiq:

MS PHILLIS: Good afternoon. May it please the court, my name is Phillis. The matter of Work Health Authority v Peter Van Der Pasch.

HIS HONOUR: Yes, thank you.

MS PHILLIS: I act for Mr Van Der Pasch, who's seated here behind me.

MS CHEONG: Your Honour, my name's Cheong. I appear on behalf of the Work Health Authority.

HIS HONOUR: Thank you very much.

Just firstly, to all of you, I do apologise that you've had to wait all morning. The court's been fully occupied and this is the first opportunity I've had to suitable courtroom. I'll return to the offender's matter on 22322736.

Would you like to just come forward and sit next to your legal representative. This courtroom's not all that well set up.

I respect to the matter, the offender has entered plea of guilty in respect to two charges pursuant to s 32 of the *Work Health and Safety (National Uniform Legislation) Act 2011*. The maximum penalty for these types of category 2 offences is \$300,000.

It's worth commenting that the monetary penalties are set very high, because of the onus that's placed on employers in providing a safe working environment for their employees. And as you know, I've received a lot of material from the legal practitioners who appeared here on the last occasion.

The first is the agreed statement of facts, and I don't intend to repeat that today, because I'm sure you're fully aware of what that contains, as well as the photographs showing the accident that occurred on your way to Papunya, where the woodchipper was damaged, and of course, the other photographs relating to the incident that occurred.

I've also received the victim impact statements, which I've had, now, a good opportunity to read from Nathan Walker(?) and from Jessica Matheson(?). And each of those detail how they suffered from the accident that occurred and it's impacted upon them and their lives generally.

Although, I must say that each of them have been very generous in their support, nevertheless, for you, which is also reflected, I think, in the references that have been tendered on your behalf.

Each of the counsel have made written submissions to me, which I have marked exhibits 5 and 6 in the proceedings, to just make sure that all of the matters that have been placed before me are considered, if that's required in the future. I do take those submissions into account.

From the prosecution's point of view, noting that the nature of the prosecution, clearly, general deterrence is a relevant sentencing factor in this matter. You do come before the court as a man of prior good character, and specific deterrence is less relevant, except, obviously, from the fact of being an employer and ongoing in your business, so far as providing a safe workplace for your employees is concerned.

I have received your affidavit, which I've had a good opportunity now to read. Obviously, as a result of what occurred, it has caused you a lot of emotional distress as well and also financial loss. I note there was no objection from the prosecution in regard to exhibit D7, and I will accept that on the information that you provided and the financial loss that you've occasioned as a result of this matter.

The references which have been provided to me from Ms Eva-Stirk, who's the president of the Women's Museum of Australia and the Old Gaol, speaks very highly of you, as does each of the other references that have been given to me, including the reference from Dr Tyler(?) and, of course, the reference from Kim Hooper(?). I'm not sure if she's still a councillor(?). But each of those people speak very highly of you, which is consistent with your prior good character.

And I'm going to take that into account. Obviously, it weighs heavily in your favour. As does the fact that you've pleaded guilty to each of these offences, which is really important, because it's your acknowledgment of your wrongdoing and, of course, the court has not had to have a hearing in the matter.

Reading the victim impact statements, I'm sure it would have been very difficult for each of those people to have to come to court and give evidence about what happened, and your plea of guilty has obviously saved them from doing that.

I have had submissions from me - from your lawyers to me in regard to the penalty that should be imposed. Monetary penalties apply, so my sentencing discretion does not go outside the parameters of that. And obviously, the court could impose a maximum penalty, as I've mentioned, of up to \$300,000.

I don't intend to do that. One of the matters that I need to be satisfied of under the *Sentencing Act*, of course, is your capacity to pay a fine, and you've provided me with that information and I've also heard submissions from your legal representative about it.

In determining whether or not I should record a conviction or not, s 8 of the *Sentencing Act* does apply into that consideration. And I do take into account, as I've already mentioned, that fact that you are a man of excellent character. You have pleaded guilty to this offending. Obviously, the failure by you caused a significant impact upon both Mr Walker and Ms Madison(?). And I need to take that into account as well.

The offending obviously occurred due to your failure to comply with your duty to your employees, and general deterrence is a relevant matter also in determining whether or not I should record a conviction.

After considering the submissions from your legal representative and the prosecutor as well, I am satisfied that the circumstances of the offending require the court to record a conviction today, and I will do that.

In fixing the monetary amount, I note that submissions were made as to a specific amount by your lawyer, and the prosecution has tendered to me some comparatives, which are of some assistance in determining an appropriate amount of the penalty.

Therefore, in regard to these two counts, 3 and 4, you are convicted of each of them. I impose an aggregate fine, which means just one fine in respect of the two offences, of \$25,000.

Ms Cheong, on my reading of the Victims of Crime legislation, the victim levy would be \$150 on each charge. Is that correct?

MS CHEONG: That is correct, your Honour. Thank you.

HIS HONOUR: Yes.

And I impose a victim levy of \$150 on each charge.

Now, the issue as to costs that were raised by counsel on your behalf for the last occasion, do you want to say anything to me about that today? Obviously, s 77A and C of the *Criminal Procedure Act* governs the court's power to make orders in relation to costs.

MS CHEONG: Yes (inaudible) your Honour, I do press the application for costs on the basis that you have that discretion. And this prosecution is not, with respect, something that is in the norm, in terms of is your usual DPP or *Criminal Code* prosecution, and the cost of such a prosecution is distinctly different and is something that, if possible, the Work Health Authority would prefer recovery from the defendant when convicted and fined.

That's all I have to add to my counsel's previous submission. Thank you, your Honour.

HIS HONOUR: Yes, all right.

Ms Phillis, would you like to make some submissions to me about the issue of costs?

MS PHILLIS: I think - - -

HIS HONOUR: And of course, the criminal procedure regulations provide an amount.

MS PHILLIS: They do. I believe it's 1710 at the moment.

HIS HONOUR: Is it?

MS PHILLIS: That's my understanding. Did your Honour have a different figure?

HIS HONOUR: Well, I haven't had a look at it for a while, but it used to be 1500 - - -

MS PHILLIS: It's 1500 - - -

HIS HONOUR: - - - for the first day and 850 for the second.

MS PHILLIS: Yes. So it's 1500 monetary units, and I believe a monetary unit is presently - - -

HIS HONOUR: It's gone up now, hasn't it?

MS PHILLIS: It's \$1.14 for a monetary unit.

HIS HONOUR: Yes.

MS PHILLIS: I believe counsel made submissions on costs at the time of the sentencing hearing.

HIS HONOUR: Yes.

MS PHILLIS: So I'd - - -

HIS HONOUR: So what's the amount now for the second day?

MS PHILLIS: I haven't calculate - - -

HIS HONOUR: Do you know, Ms Cheong?

MS CHEONG: I do not know, I'm sorry, your Honour. I haven't come armed with that. I apologise.

HIS HONOUR: Yes, all right.

Well, I know that these types of prosecutions are not common, and that's obviously a very good thing. In my view though, to go outside the regulations, I need to be satisfied that the circumstances of the case are of an exceptional nature. Just because they don't occur regularly, in my view, don't make them particularly exceptional in nature, and I'm prepared to allow costs in accordance with the criminal procedure regulations.

MS CHEONG: Thank you, your Honour.

HIS HONOUR: And are the costs to be paid to the Work Health and Safety Authority?

MS CHEONG: The Work Health Authority, your Honour, yes, please.

HIS HONOUR: And I order that you pay costs to the Work Health Authority in the sum of \$2350.

MS CHEONG: Thank you, your Honour.

HIS HONOUR: Is there anything else arising from your point of view, Ms Cheong?

MS CHEONG: No. Thank you, your Honour.

HIS HONOUR: All right.

Ms Phillis?

MS PHILLIS: No. Thank you, your Honour.

HIS HONOUR: What arrangements does the offender have to made in regard to the payment of the fine and the costs? Is that through the Fines Recovery Unit?

MS CHEONG: Yes, that is right, your Honour.

HIS HONOUR: And that's because it's a statutory authority?

MS CHEONG: That's correct, your Honour. Thank you.

HIS HONOUR: All right.

All right. I'll ask the court officer to give you a notice that explains how you pay fines and costs, and how you contact the Fines Recovering Unit to make those arrangements. All right.

Anything else?

MS PHILLIS: Nothing further, your Honour.

HIS HONOUR: All right.

MS CHEONG: No, your Honour. Thank you, your Honour.

HIS HONOUR: Thank you very much. And again, I apologise for the delay.

Adjourn the court thanks.

ADJOURNED