

DIRECTOR OF PUBLIC PROSECUTIONS

v

ANTHONY DIENI

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JUDGE: RIDDELL  
WHERE HELD: Melbourne  
DATE OF HEARING: 2 June, 23 June, 3 August, 13 August 2020  
DATE OF SENTENCE: 4 September 2020  
CASE MAY BE CITED AS: DPP v DIENI  
MEDIUM NEUTRAL CITATION: [2020] VCC 1377

**REASONS FOR SENTENCE**

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Subject: Criminal Law – Sentence – Attempt to Pervert the Course of Justice – Trafficking Drugs of Dependence – False Accounting – Possession of Firearms  
Catchwords: Drug Counsellor – Evidence on oath – Undertakings to Court – Breach undertaking – Trafficking with co-offenders – False Urine Screens – Mild Neurocognitive Disorder – Major Depressive Disorder – Age – Ill Health  
Legislation Cited: *Crimes Act 1958 – Firearms Act 1996 – Sentencing Act 1991*  
Cases Considered: *R v Verdins* (2007) 16 VR 269 – *Tognolini v The Queen* (2011) VR 104 – *DPP v Middleton* [2018] VSCA 23 – *DPP v Oksuz* (2015) 47 VR 731 – *Carter v R* [2020] VSCA 156 – *Pantazis v The Queen* [2013] VSCA 59 – *R v Hong Minh Dang* [2009] VSCA 183 – *DPP v Bourke* [2020] VSC 130  
Sentence: 14 years imprisonment. Non Parole period 9 years imprisonment

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Ms Robyn Harper	Office of Public Prosecutions
For the Accused	Mr Julian McMahon SC and Ms Rosalind Avis	Paul Vale Criminal Law

HER HONOUR:

### **Summary**

- 1 Anthony Dieni, you were the coordinator of, and a counsellor at St Paul's Rehabilitation Prevention service. In that role you dealt with and had as your clients many vulnerable people, placed on Court orders with conditions aimed at addressing their drug addiction and need for rehabilitation. You gave evidence in the Courts of this State, promising to counsel them and undertaking to report any breaches to relevant authorities. Those were empty promises.
- 2 Not only did you fail in your obligation to the Courts and other authorities, you failed in your promise to help your clients, instead encouraging them to flout conditions, to exchange clean urine for their own to avoid detection of ongoing drug use, and to mislead the authorities. You created an atmosphere where they were beholden to you, inducing them to traffic drugs to you which you in turn trafficked to your grandson and other associates.
- 3 Yours were calculated and deliberate actions which undermined the administration of justice. You used your position to manipulate, mislead and undermine court processes and outcomes and to receive illicit drugs from clients and their associates. Your offending is an egregious breach of trust of your position and responsibility.
- 4 This offending is a most serious example of Attempting to Pervert the Course of Justice and is deserving of denunciation and condign punishment.
- 5 In addition to that offending, you falsely accounted for \$448,805.76 of monies donated to St Paul's. You submitted false documents to Consumer Affairs Victoria and made declarations with a view to gain for yourself, rather than the charity. You had the benefit of those funds over and above the salary you were drawing. That offending spans a 5 year period.

6 Further, on the date of your arrest you were found in possession of two loaded  
firearms, one of which was unregistered.

7 You have pleaded guilty to 6 charges of Attempt to Pervert the Course of  
Justice which span a period from December 2016 to September 2017 during  
which time you were 69 years old. You have also pleaded guilty to 2 charges  
of Trafficking in a Drug of Dependence, 1 charge of Possess General  
category Longarm, 1 charge of Possess Unregistered General Category  
Handgun and to 1 charge of False Accounting.

### **Background**

8 The background to your offending is as follows. Archdeacon Emeritus Philip  
Newman founded St Paul's Rehabilitation and Prevention in Strathmore in  
1984 and was initially the sole member of the charity. Archdeacon Newman  
met you when he was your local parish priest and you sought his guidance for  
your alcohol dependency. You said you wished to help others with addiction  
and became involved with the St Paul's charity.

9 Archdeacon Newman formally registered St Paul's as an incorporated  
association in July 1987. It was listed as a drug and alcohol rehabilitation  
charity with the Australian Charities and Not-for-profits Commission. Its stated  
objective was to help people become drug free while residing in their home  
environments and in addition to educate young people about the risk of drug  
taking.

10 You had no qualifications in counselling but held yourself out as the sole  
"counsellor" for the charity and you operated like a case worker. You also  
attended at various schools, giving talks to students.

11 The charity was initially funded by Newman personally but as it grew, it sought  
and received donations, grants and the benefit of fundraisers.

12 After the charity was established, medical professionals were approached to

assist in mentoring you and in referring clients to other services. You were not a medical practitioner or in any way licenced to prescribe or supply medication.

- 13 In your role you regularly engaged with persons on Bail and Community Correction Orders in the Magistrates', County and Supreme Courts of Victoria, supporting defendants in their applications for Bail or sentencing hearings.

## **Summary of Offending**

### **Attempt to Pervert the Course of Justice**

- 14 In May 2017 the Independent Broad-based Anti-corruption Commission (IBAC) commenced investigating your activities. Telephone intercepts were made of your phone and those of your associates. Covert physical surveillance was conducted. The investigation during 2017 revealed the extent of your deception and led to your arrest and remand into custody in September of that year.

- 15 Turning to the specifics of your offending in more detail.

### **Charge 1 - Attempt to pervert the course of justice**

- 16 On 22 December 2016 you gave evidence at Melbourne Magistrates' Court in support of 23 year old Jake Grae in his application for bail.

- 17 You gave evidence on oath that he would be required to see you twice weekly as part of the rehabilitation program with St Paul's. You told the Magistrate that you had spoken to Grae and told him that his participation in the program would require him to attend appointments as required and provide a drug test when asked. You stated that if Grae failed to comply you would have no hesitation in contacting the informant. You gave an undertaking to the court that you would report any breaches of bail conditions to the informant.

- 18 Grae was granted bail subject to several conditions including; 'to comply with

all of [your] lawful directions and to participate in the program offered at St Paul's'.

19 At your instigation, between 26 June 2017 and 12 September 2017 on five separate occasions Grae supplied and agreed to supply over 3.5 grams of methylamphetamine and over 8 grams of cocaine to you.<sup>1</sup>

20 You knew that Grae was trafficking in drugs of dependence which you failed to report to the informant. Your participation in that trafficking had a tendency to pervert the course of justice as you were actively engaging in drug trafficking with him. That was not only an offence, but was in clear contradiction to the court ordered bail agreement requiring you to provide rehabilitation to Grae, and for Grae to participate in that rehabilitation. It was in breach of your sworn undertaking to the court.

21 Further to this, on a number of occasions you knew of and encouraged Grae to use substitute urine during a number of urine drug screens. In July 2017 he told you he had submitted another person's urine which tested positive for methadone. You and Grae discussed the need to swap it. You said *"I'm going to have to fucking pull a fucking shifty and after I show it to you, destroy it."*

22 You said to him *"There is only one way we can beat this, and that's to get a lot of clean tests through."* You told him if challenged in court as to the destruction of the test, he should say it was a false reading and so he destroyed it.

23 Grae told you he had used the same person's urine for three other tests which came up clean. He told you he would organise urine from a different third party to make sure future tests were clean.

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<sup>1</sup> 26 June 2017 - cocaine 7.0 grams; 26 June 2017 - methylamphetamine 3.5 grams; 1-2 August 2017 - cocaine, unknown quantity; 6-9 August 2017 - cocaine, unknown quantity; 6-9 August 2017 - methylamphetamine, unknown quantity; 9-12 August 2017 - cocaine, 1 gram; 24 August 2017 - methylamphetamine, unknown quantity

- 24 You organised for a doctor attached to St Paul's to provide Grae with documentation for urine testing which was to be 'unsupervised' contrary to usual practice. The purpose was obvious – to enable Grae to use third party urine instead of his own.
- 25 The provision of that urine was to conceal from testers and ultimately from the court, the presence of drugs of dependence in Grae's urine.
- 26 Third party urine was supplied by him on three occasions between 13 June and 17 July 2017. He submitted that as his own, and you and he cooperated to enable him to do so, to ensure his ongoing drug use was not revealed to the court. Your actions concealed the commission of an offence by Mr Grae and the breach of his bail conditions. Those actions had the tendency to pervert the course of justice.

#### Charge 2 - Attempt to pervert the course of justice

- 27 On 26 April 2017 you gave sworn evidence at Broadmeadows Magistrates' Court to support 39 year old Patricia Martin in an application for bail.
- 28 It was proposed that, if bailed, Martin would attend intensive supervised drug rehabilitation with you. In evidence you stated Martin's participation would require her attendance at your office at least once a week and to undergo drug screening tests.
- 29 You stated that you would contact the informant should she fail to comply with any conditions. That included a promise that you would report any failed drug test. You also stated you would warn her if she was associating with people who use drugs or who are drug dealers. You said that you would have no control over Martin trafficking drugs but would support her rehabilitation from drug use.
- 30 You told the Magistrate that you had a responsibility to the court, and for your own reputation, to *'do the right thing by the court'*.

- 31 Ms Martin was granted bail with various conditions including that she attend on you for rehabilitation at St Paul's, and that she must not possess or use drugs of dependence. Despite this, on several occasions, you did not report when Martin failed to complete drug tests, or returned positive drug tests. You told her you needed to make sure she *'gets out of court as easy as possible'*.
- 32 On 10 July you told her you had received a positive drug test, but could justify that as being a false reading.
- 33 You did not report a conversation on 16 July wherein she told you she had been using drugs, instead offering to organise a clean urine test for her. For that purpose you contacted Ms Vivien Eden, the receptionist at the medical practice used by St Paul's. You told Ms Eden to give enough urine to cover two tests.
- 34 You then organised a prescription for Martin for panadeine forte which would justify the presence of opiates which you anticipated would appear in Ms Eden's urine.
- 35 Martin told you her testing was unsupervised and you advised her to swap the urine from one bottle to the other. You told her *'you owe me one'* and that *'silly bastards... get themselves into trouble and then they rely on me.'* In the same conversation she agreed to sell you cocaine.
- 36 That evening, 16 July 2017, you met Martin's associate Abdul Elabed at a hotel in Taylors Lakes where he provided you with 1 gram of cocaine on Martin's behalf.
- 37 You spoke to Martin following that exchange, requesting that she provide you with more cocaine to supply to your grandson. You told her it was his birthday on the 30<sup>th</sup> of the month and you needed *'7 cases of coke'*, a reference to 7 grams of cocaine. You told her you would make payment separate from her program fees. You told Martin that you and she would discuss Martin's

situation further when you meet in the morning, *'because I don't like to say things over the phone'*.

38 You had a separate conversation with your grandson telling him your 'friend' being Martin, was going to give you 7 for 14, being 7gms of cocaine for \$1400.

39 The next day, 17 July you told Martin *'Vivienne has the goodies for you'*. Martin collected the urine and submitted it to pathology.

40 You contacted Martin several times asking when she would have the drugs for your grandson. In those conversations you also spoke to her about the strategy for Court.

41 You made comments to her such as that *'what I say.. might surprise you but it will make sure that you walk out of there as easy as possible.'* You told her you would ask that she not even receive a community based order on the basis she was voluntarily working with you.

42 She finally met with you on 21 July 2017 and supplied you with 7 grams of cocaine. That exchange was observed by physical surveillance operatives.

43 On 22 July 2017 when Martin's case returned to Broadmeadows Magistrates' Court you gave dishonest evidence saying she had provided clean urine tests and had participated well in the program. You misled the court that she had remained drug free during the period of her bail.

44 Your evidence concealed Martin's continuing use and supply of drugs of dependence and her failure to engage with drug and alcohol counselling.

45 The overall effect of your conduct regarding Ms Martin was to deny the sentencing court the full facts and circumstances of her case and caused the court to finalise it on a misleading and deceptive premise. The series of acts you engaged in had the tendency to pervert the course of justice.

### Charge 3 - Attempt to pervert the course of justice

46 On the 7 June 2017 30 year old Christopher Raydan appeared in Melbourne Magistrates' Court where he was sentenced to a Community Corrections Order for a period of 20 months. The order included the condition that Raydan undergo treatment and rehabilitation for drug abuse or dependency as directed and to return to the Melbourne Magistrates' Court on 8 September 2017 for judicial monitoring.

47 You were arranged to provide this treatment and rehabilitation. However, you concealed from Corrections Victoria that Raydan had not been attending appointments, was using methamphetamine and was trafficking in illicit drugs. In return for this, Raydan provided you with money and drugs.

48 To account for positive drug tests, you told Corrections Victoria that Raydan was taking prescribed opiates. You told Raydan that you and he would *'need to get the story right for the (Magistrate)'* and that the Magistrate *'wouldn't know if he was using dexamphetamine'*, saying *'you leave that up to me'*.

49 You told him to be careful what he told Corrections, and to *'stick to the story'* which you had concocted. In the same conversation you told him in coded terms, that you needed drugs for your grandson and a female, saying *"If you want to take that off the fee, take it off the fee"* meaning the fee for your rehabilitation services. You reiterated *'now don't forget, you've seen me once a week, and I haven't tested you because you're going to come up positive anyway... we're just going to have to convince the magistrate'*.

50 The following day you and Raydan met in Taylors Lakes for the purpose of him providing you with illicit drugs.

51 On 5 September Raydan contacted you saying he had the rest of the money for his rehabilitation program. In the same conversation you spoke to him in coded terms about obtaining some more drugs, asking if he *'had some of the*

*lollies you gave me,.... My friend loves them'. He said he could get some and you replied "...I stand by you always."*

52 The same day you told Corrections that Raydan had never missed an appointment with you, and was drug free. You told the case worker that you did not test Raydan because medication he was on meant the test would come up positive. You later told Raydan of that conversation.

53 On 7 September after Raydan was unable to meet with you to provide drugs, you arranged to meet him at the Melbourne Magistrates Court before his court appearance so that he could give you drugs then.

54 On 8 September 2017 Raydan attended Melbourne Magistrates' Court in relation to the judicial monitoring and a breach of a Community Correction Order. You met him at court and he provided you with an envelope.

55 You collaborated with him to provide Community Corrections with false information regarding his participation in rehabilitation in order to conceal the fact that Raydan had not participated in rehabilitation with you and was dealing in illicit drugs.

56 After receiving the Corrections' report the Court found the breach proven but made no further order against him. Your actions in misleading Corrections Victoria and thus the Court, had a tendency to pervert the course of justice.

#### Charge 6 - Attempt to pervert the course of justice

57 You were engaged to support 30 year old John Violatzi in his application for bail to be made in the Supreme Court on 26 June 2017. 53 year old Lambrose Violatzi is the father of John Violatzi.

58 On the morning of the bail application 26 June 2017 you had a phone conversation with Lambrose Violatzi. You requested that in return for your assistance for his son he provide you with drugs. You told him that you would

not charge him the \$500 for the court appearance. You stated *“I’m the type of fella, you help me out, I help you out.”*

59 You gave evidence on oath before a Justice of the Supreme Court. You stated that John Violatzi would be required to attend two counselling sessions a week and would be drug tested at random.

60 When asked under oath whether you would give an undertaking to the court that you would advise the informant if John Violatzi returned a positive drug screen or failed to attend appointments, you stated *‘Absolutely, your Honour’*.

61 You were asked to provide a further undertaking that should John Violatzi not comply with any of your lawful directions or bail conditions, you would report that breach to the informant and you again responded *‘Absolutely, your Honour’*.

62 John Violatzi was granted bail, with conditions including to undertake any assessment, treatment and counselling recommended by you, to submit to random supervised drug screening, and to abide by your lawful directions, and in addition not to associate with his girlfriend Chloe who was his co-accused.

63 Following the court appearance, Lambrose Violatzi handed you approximately \$600 in cash. Later that day you discussed with him the supply of drugs you had previously requested, arranging to meet the following day. You told Lambrose Violatzi that, contrary to the evidence you had just given to the Supreme Court, you would only require John to attend on you once a week.

64 Between 26 June 2017 and 22 July 2017 John Violatzi failed to participate in rehabilitation with you as required by the court. You allowed him to breach conditions of his bail and worked with him to conceal the breaches by ensuring he did not submit drug tests if the results would be positive for drugs of dependence.

65 You actively offered to facilitate a breach of bail conditions by offering to

organise contact between John Violatzi and his co-accused Chloe saying ‘... who you associate with is your business, and I don't interfere with that, even though I know you shouldn't be associating with her, if you were to meet up with her I would not be against that. As a matter of fact if I could organise to meet at a restaurant and have dinner and a chat in my presence, I'll even do that to help you out’.

66 You told Violatzi that if he goes to court with a good report from you, his ‘chances of getting a CCO are very good’. You discussed with him the importance of deleting text messages or to use another person’s phone or SIM card in order to avoid detection of your conversations with him. You told him that you buy old Nokia phones and swap the SIM cards, further stating ‘You never ever talk on the phone...if I had to hazard a guess that my phone is monitored from time to time, I'd say I'd be right...but I never say anything that can incriminate myself or anyone else, and If I ask for something, and sometimes, a couple of friends, I do ask for something, I always use different language and they know what I'm talking about. Nothing that can be pinned against me as a criminal matter’.

67 A week after the Supreme Court Bail application, on 3 July Lambrose Violatzi told you that his son John had smoked methylamphetamine in breach of his bail conditions. Rather than report any breach you then said John wouldn't be able to do a urine test, but you would sort it our somehow, saying ‘I can keep a blind eye today, as long as he's able to give me a test this week sometime’.

68 After being told by John’s mother that he was breaching his bail by speaking to his girlfriend, you said you would breach him unless he was able to provide a clean urine.

69 On 7 July John Violatzi provided a urine sample to Melbourne pathology. It was negative for drugs. That is the only urine provided by John Violatzi during the period of his bail.

- 70 On 9 July Violatzi told you had had been using drugs. You did nothing.
- 71 On 22 July you told him *"I don't want to breach you because I think you're a nice bloke."* On the same day you spoke to his legal representatives about his upcoming court date of 2 August, saying *'what's the point of breaching him when his matter is in a week.'*
- 72 Between 26 June and 22 July 2017 you were aware of several breaches of John Violatzi's bail conditions. You allowed him to breach his bail conditions and worked with him to conceal those breaches, ensuring he did not submit drug tests if results would be positive. You offered to facilitate a breach by arranging for him to see his girlfriend.
- 73 You failed to report any of the breaches to the informant, thus concealing the commission of an offence and failing to honour your sworn undertaking to the Supreme Court of Victoria. Your conduct had the tendency to pervert the course of justice.

#### Charge 7 - Attempt to pervert the course of justice

- 74 In March 2017 31 year old Abdul Elabed received a term of imprisonment after a hearing at the Melbourne Magistrates' Court. He lodged an appeal to the County Court and on 30 May 2017 he was granted bail with conditions which included a curfew, and that he was not to use drugs of dependence. The appeal was listed for 28 July 2017. He became your client through his relationship with Patricia Martin.
- 75 Several times before 21 June 2017 Elabed submitted urine tests. You then told him that you were not going to test him for a week, and that he could use drugs of dependence if he wanted to. Elabed in fact declined that offer.
- 76 On 22 July Elabed was pulled over, in breach of his curfew. You then advised him how to avoid a breach by having his employer write a letter saying he was required to work outside his curfew hours.

- 77 On 28 July you attended with Elabed in the County court. Elabed advised the court that he was unable to fund representation and the matter was adjourned to October. The following day you spoke to him saying: *'Look at the fucking shifty I pulled yesterday with you, If I hadn't pulled that shifty with you yesterday...99% certainty that cunt would have locked you up'*.
- 78 On 30 July you met with an unknown third party at a hotel in Taylors Lakes and collected clean urine from that person. You rang Elabed saying *"I have your drink mate"*.
- 79 You arranged through Patricia Martin for Elabed to attend on you at St Paul's the following morning and collect that sample. You told Martin *'I can't promise that we will win the appeal, but if he does what I tell him, chances are greatly increased'*.
- 80 On 31 July you met with Elabed at St Paul's and provided him with the clean urine which he then submitted for testing as his own.
- 81 You assisted Abdul Elabed to breach the conditions of his Bail by advising him when you would and would not require drug tests, advising him how to deal with a breach of his curfew and organising a third party to provide urine so that he could submit that in substitution for his own. These actions which were facilitated by you had the tendency to pervert the course of justice.

#### Charge 8 - Attempt to pervert the course of justice

- 82 On 31 December 2016 29 year old Nicholas Georgiou appeared in Melbourne Magistrates' Court where he applied for Bail.
- 83 Bail was initially opposed by the prosecution due to concerns regarding Georgiou's drug use. You gave evidence on oath during the application saying that you had assessed Georgiou and would *'be able to look after'* him. You indicated you would provide one on one counselling with Georgiou twice a week, stating in evidence, *'I work too hard for my name and reputation, and I*

*will not allow anything to interfere with that. If any drug tests come back positive, or he fails to attend any appointments, I won't hesitate to contact the informant'.*

84 You gave an undertaking that should Georgiou not comply with your lawful direction, or if he returned a positive drug test you would contact the informant. The Magistrate advised Georgiou that if he breached any conditions he would be remanded into custody.

85 Whilst on bail Georgiou failed to attend appointments with you, and trafficked in drugs of dependence with you by agreeing to supply you with cocaine and methylamphetamine in exchange for money.

86 On 24 June 2017 you spoke with Georgiou saying that you would need to justify why he shouldn't be imprisoned. You told him the Magistrate would consider whether he had complied with his rehabilitation program.

87 On 30 June Georgiou failed to attend an appointment with you. You told him to do a drug test but *'only if it's clean'*. He failed to attend again the next week but you told him *'as long as I get clean tests from you, you are safe.'*

88 On 5 July 2017 you told Georgiou you had been covering for him and looking after him, both in relation to Georgiou missing appointments and also in advising him when to schedule drug testing appointments to ensure negative results. In the same conversation you told him that in return you needed a favour and in coded terms requested that Georgiou provide a 'ball' or 3.5 grams each of methylamphetamine and cocaine.

89 On 7 July you told him again that you were *'keeping a blind eye'* regarding his compliance on bail. You told him that you would back him up 100 per cent and that *'the Magi (Magistrate) will believe whatever I tell him.'* In the same conversation you asked again for drugs, in coded terms. You said you needed them urgently.

- 90 On 4 August Georgiou missed his appointment with you. You spoke with him, telling him he was doing well and that *'you are going to walk out of there with a community based order, no problems mate.'* You said *'you know what I've told (the magistrate), he'll believe whatever I fucking tell him mate.'*
- 91 Between 31 December 2016 and 21 August 2017, no breaches of bail were reported to the informant.
- 92 On 21 August 2017, you accompanied Georgiou to Sunshine Magistrates' Court. Submissions were made that he be sentenced to a Community Correction Order given he had remained drug free as evidenced by clean drug screens submitted since the start of 2017. Georgiou was sentenced to a Community Correction Order.
- 93 The overall effect of your conduct was to deny the sentencing court the full facts and circumstances of his case and caused the court to proceed to finalise Mr Georgiou's case on a misleading and deceptive premise which had the tendency to pervert the course of justice.

## **Trafficking**

### Charge 4 - Trafficking in a drug of dependence (cocaine and methylamphetamine)

- 94 Between 20 June 2017 and 12 September 2017 you trafficked cocaine on more than ten occasions to your 25 year old grandson Anthony Dieni Jnr. totalling not less than 13.5 grams<sup>2</sup>. Those actions are part of the basis of Charge 4.
- 95 Between the same dates you trafficked methylamphetamine on three occasions to Glenn Farrugia and Pria Fiddler totalling not less than 2 grams<sup>3</sup>. Those actions are also part of the basis of Charge 4.

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<sup>2</sup> 7 July 2017 – half a gram; 14 July 2017 – 1 gram; 17 July 2017 – 1 gram; 21 July 2017 – unknown quantity; 29 July 2017 – half a gram; 29 July 2017 – further half a gram; 3 August – 1 and a half grams; 4 August 2017 – 1 gram; 10 August 2017 – half a gram; 17 August 2017 – 3.5 grams; 22 August 2017 – half a gram; 26 August 2017 – 1 gram; 6-7 September - 1 gram; 9 September – 1 gram

<sup>3</sup> 26 June 2017 - 0.3-0.4 gram to Fiddler; 2 July 2017 – 0.3 gram to Farrugia; 8 September 2017 – 1.7grams to Farrugia

## Charge 5 - Trafficking in a drug of dependence (Diazepam, Oxycodone, Alprazolam)

96 Between 20 June 2017 and 12 September 2017 you trafficked diazepam on five occasions to Vivian Eden, Pria Fiddler and unknown others in an amount not less than 350mg.<sup>4</sup> Those actions are part of the basis of Charge 5.

97 Between the same dates you trafficked oxycodone on at least 4 occasions to Vivian Eden and Pria Fiddler in an amount not less than 3460mg<sup>5</sup>, as well as trafficking alprazolam on at least six occasions to Anthony Dieni Jnr. and unknown others in unknown quantities.<sup>6</sup> Those actions are also part of the basis of Charge 5.

## **False Accounting**

### Charge 9 - False Accounting

98 Archdeacon Emeritus Philip Newman founded St Paul's in 1984. The charity was initially funded by him personally but as it grew, he sought and received donations, grants and the benefit of fundraisers.

99 After the charity was established medical professionals Dr Marsh and Dr Sturup were approached to assist. Neither had involvement in the financial administration of St Paul's. Others associated with the charity over the years included Ugo Fazio, an associate of yours who distanced himself from St Paul's in 2006.

100 Archdeacon Newman formally registered St Paul's as an incorporated association in July 1987. Consumer Affairs Victoria (CAV) manages the registration of such Associations. Requirements include the lodgement of annual statements on behalf of the Association. You took over all

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<sup>4</sup> 26 June 2017 – 10 Valium tablets to Eden; 2 August 2017 – unknown quantity to Fiddler; 4 August 2017 – 1 box of diazepam/Valium to Fiddler; 18 August 2017 – unknown quantity to Georgiou; 1-4 September 2017 – 50 x 5mg diazepam tablets intended for Eden.

<sup>5</sup> 18 July 2017 – 4 x 20 or 8 x 10mg OxyContin; 2 August – unknown quantity to Fiddler; 16 August 2017 – unknown quantity to Eden; 7-11 September 2017 – unknown quantity to Eden

<sup>6</sup> 28 July 2017 – unknown quantity to A. Dieni Jnr.; 30 July 2017 – unknown quantity to A. Dieni Jnr.; 2 August – unknown quantity to Fiddler; 6 August 2017 – unknown quantity to Fiddler; 7-11 September 2017 – 3 boxes of Xanax 120mg to Eden; 8 September 2017 – 'a couple of zanies' to Brad for A. Dieni Jnr.

administrative functions of St Paul's in approximately 1997.

- 101 It was the understanding of Archdeacon Newman, Doctors Marsh and Sturup and Ugo Fazio that you were paid as an employee of St Paul's. You listed mortgage payments on financial reports, together with vehicle leasing expenses and phone expenses which were accepted as covering your living expenses.
- 102 Donors to St Paul's were of the view that St Paul's had small salary costs and incidentals. Their donations were for the primary purpose of advancing the work of the charity. They were not aware of the extent that money was directly taken by you.
- 103 You were the only person with the power to distribute funds for wages, car leases, phones, stationery and the like. It was assumed the amounts declared by you to have been deposited into the St Paul's account, less your entitlement, were used for the benefit of the charity.
- 104 Over the 7 year period between 2011 and 2017, which is the limit of the financial analysis available, the charity sourced a total of \$1,087,895.79 primarily through donations and direct transfers, cash and cheque deposits. Of that total amount, \$1,084,463.24 was withdrawn from the account. \$349,158.26 was deposited into accounts belonging to you and your wife; \$76,950.00 was withdrawn in cheques made out to cash; \$10,402.50 was paid to Civic Compliance for your traffic infringements; and \$11,645.00 was paid to the travel company Helloworld for travel undertaken by your wife.
- 105 In contrast in the Consumer Affairs annual financial statements you declared your total entitlements each financial year to be between \$46,261.00 and \$81,435.00. Between January 2011 and June 2017 the overall entitlements declared totalled \$370,460.<sup>7</sup>

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<sup>7</sup> January 2011 to June 2012 \$81,435.00; July 2012 to June 2013 \$46,261.00; July 2013 to June 2014 \$54,757.00; July 2014 to June 2015 \$61,212.00; July 2015 to June 2016 \$66,875.00; June 2016 to July 2017 \$59,920.00

106 The documents submitted to CAV by you were false and the declarations were made with a view to gain for yourself. The benefit derived was the undocumented receipt and use of \$448,805.76.

## **Firearms Offences**

### Charges 10 and 11 - Search Warrant offences

107 On 12 September 2017 Victoria police and members of IBAC executed a s.91 'IBAC' search warrant at your home address in Keilor Lodge. Residing at that address was you, your wife, Maria Dieni and Anthony Dieni junior.

108 You informed investigators that there was a shot gun under your bed. In that location investigators found a loaded FABARM model EURALFA 23 gauge break open shotgun. That is the basis of Charge 10, possession of a general category longarm.

109 You told investigators that the shot gun belonged to a former client who was remanded in custody and whose mother had asked you to take the shotgun from her premises. You did not provide the name of the former client. It was subsequently established that the shotgun had been reported to police as stolen in 2016.

110 In the bottom drawer in the bedroom inside a space bag box, investigators located a loaded Browning Fabrique Nationale .22 calibre semiautomatic handgun that was not registered. That is the basis of Charge 11, possess a general category handgun.

111 Inside the top drawer in the office investigators located a deal bag with blue symbols on it containing a white crystal substance and a small zip lock bag containing a small quantity of white crystal substance. Those drugs are part of the facts founding Charge 4 trafficking in a drug of dependence namely methylamphetamine.

112 On that day you were arrested. You declined to be interviewed and were remanded into custody.

113 That is a summary of the facts upon which I am to sentence you. They are contained in a more fulsome version in the 49 page Prosecution Plea Opening.

### **Sentencing Principles and Objective Gravity**

114 The offence of Attempting to Pervert the Course of Justice is a serious offence, reflected in the statutory maximum of 25 years imprisonment. It is serious for a number of reasons.

115 First and foremost, it is an offence which strikes at the heart of the justice system. It has the capacity to undermine and manipulate that system, causing unjust outcomes.

116 The type of behaviour you engaged in mislead three different Courts of this State. It mislead police who were involved in charging various individuals later given bail. It mislead Corrections Victoria who have responsibility for monitoring the performance of offenders on Community Correction orders. It misled prosecuting authorities and those representing individuals.

117 Of necessity and in the facilitation of the criminal justice system, each one of those organisations must be able to rely on people in positions of authority and responsibility who are giving evidence or providing information. That is particularly so when a person holds himself out as assisting offenders and thereby assisting the courts to make an assessment of an offender's efforts towards rehabilitation.

118 Second, the offence of attempt to pervert the course of justice is often difficult to detect. Here, it was uncovered with the use of telephone intercepts and covert surveillance.

119 In my assessment, the objective gravity of your offending over those six charges places it at the upper range of seriousness.

120 Each charge is serious in its own right, representing a range of deceptive conduct and behaviours committed over a period of weeks or months. I do not accept the submission of your Counsel that considered alone, a single charge would not have resulted in imprisonment. Taken together, the offending as a whole is extremely serious.

121 I make that assessment taking into account the following matters.

122 First, you gave evidence on oath on multiple occasions. You gave evidence on oath in bail applications to the Supreme Court in the matter of Violatzi, and to the Magistrates Courts in the matters of Grae, Martin and Georgiou. Each time you gave evidence outlining a program of rehabilitation which you clearly did not intend to impose. Each time you gave undertakings on oath to inform police informants of any breaches of bail.

123 The Judge and Magistrates relied on your evidence. It formed a critical plank in those applications, as reflected in the conditions ultimately imposed. The breach of those undertakings is extremely serious.

124 On the very day you gave evidence in the Supreme Court you were organising Violatzi's father to provide you with illicit drugs.

125 You also gave false evidence on the plea of Patricia Martin at Broadmeadows Magistrates Court, and attended with Raydan at his hearing at Melbourne Magistrates Court and Georgiou at his plea at Sunshine Magistrates Court where submissions were made about their compliance with your program based on your false reports. You supported Elabed in seeking an adjournment in this Court.

126 Second, you did not simply fail in your undertaking, you deliberately set about advising and encouraging your co-offenders as to how they might go about

- avoiding their obligations and avoiding any breaches.
- 127 You did that in a variety of ways, namely, by telling them when you would and would not require them to undertake urine testing; by actively organising the provision of urine from third parties which they could then substitute for their own to avoid detection of drug use; you actively encouraged Violatzi to breach his bail by having contact with his girlfriend and co-accused, which you offered to facilitate; you advised Elabed how to dishonestly deal with his breach of curfew; you encouraged Raydan in the telling of a false story to Corrections Victoria to account for positive drug screens; you organised provision of medical authorisation which you knew would include allowing for unsupervised urine screening; you organised provision of medical prescriptions which would falsely explain positive urine testing; you did not counsel the offenders; and you then requested in each and every case that your client supply you with illicit drugs.
- 128 The breach of trust here is breathtaking. It is a breach of trust to the relevant Court, to the prosecuting authorities and to those meant to be under your care and guidance.
- 129 Third, and most compelling in my assessment of the objective gravity of your offending, you were a person embedded in the legal system. Persons who work as counsellors working to rehabilitate people who have committed criminal offences, are adjunct to the criminal justice system. They are allies in the pursuit of combatting crime by way of reclaiming those who are addicted to drugs. Instead of working with the system, you were a mole, undercutting it from within. It was a monumental betrayal of your role.
- 130 Fourth, you created an atmosphere whereby your co-offenders were beholden to you. The content of the telephone calls shows that your requests for the co-offenders to provide you with drugs were made in conversations which were intertwined with conversations about their legal matters. Your comments

“You help me out I help you out” is a clear example of the dynamic.

131 In your relationship with each of your co-offender you held the power. You held the power to breach them, to report those breaches to police or to Corrections Victoria. You held a power which they would understand could result in their return to custody.

132 Fifth, your offending was deliberate and calculated. It was done in full knowledge of the way in which Magistrates and Judges rely on evidence given to them. In particular in the busyness of the Magistrates’ court, where there is more limited capacity to fact check each and every piece of evidence given, it was done with brazen disregard for the truth.

133 Sixth, your offending was sustained and repetitive. The Prosecution summary is broken up into sections referable to co-offenders. However, a consideration of the chronological order of these events shows that these conversations, interspersed with appearances at Courts, and with episodes of drug trafficking, were happening day in day out during the period covered by the indictment. Your Counsel sensibly conceded that your behaviour did not start on the day of the first telephone intercept. I could not and do not draw any conclusion as to how long you had been operating in this manner, however by the time of the charged period this behaviour was your modus operandi. It was your modus operandi day in day out over a period of 10 months.

134 Seventh, by your behaviour and encouragement of those persons under your supposed guidance, you also embroiled them in charges of attempting to pervert the course of justice.

135 Eighth, you failed each and every one of those co-offenders listed on the indictment. You had the capacity to assist them reclaim their lives as you had once done, but your actions in fact had a tendency to encourage them back into criminal activity.

136 Your Counsel submitted that in your case there was no specific goal or endgame to your offending. That is to say, unlike cases where an attempt to pervert the course of justice is carried out to avoid a trial, or avoid being charged, or to persuade a witness not to give evidence for example, it was submitted there was no particular benefit here. I disagree. The benefit here was two-fold, one in obtaining drugs, and two in your own self-aggrandisement.

137 Your moral culpability in relation to the charges of attempt to pervert the course of justice, for the reasons I have already outlined is extremely high.

138 Turning to the other offences. You received drugs from your co-offenders which you then trafficked to a number of your associates. Trafficking drugs, in particular methylamphetamine and cocaine is serious offending with a maximum penalty of 15 years imprisonment. Those drugs are a scourge on our community. People who facilitate their movement must be sternly dealt with.

139 I accept your Counsel's submissions that the amounts trafficked are at the lower end. Ordinarily offences of trafficking in those amounts could have been dealt with in the Magistrates' Court. However, I do not accept that this is trafficking at a low end. It is the circumstances of the trafficking here which elevate its seriousness. The fact you were acting in the role of drug counsellor, supposedly facilitating the recovery of your co-offenders from drug addiction, makes this an objectively serious example of this offending.

140 Your trafficking was to a number of different people. It was protracted and repetitive. On one occasion you organised for your co-offender to supply you with drugs at the Melbourne Magistrates Court. The surreptitious pressure you placed on persons beholden to you, means your moral culpability is higher. Receiving and then passing on drugs from persons who you were meant to be rehabilitating is serious.

- 141 Your moral culpability in trafficking to your 25 year old grandson is extremely high in my view. I reject your explanation that you were trying to wean him off drugs. The fact you were organising 7gm of cocaine for use at his birthday contradicts that claim, as does the regularity and repetition of your supply to him.
- 142 In relation to the false accounting, the amount of monies for which you did not properly account is high, being over \$440,000. The maximum penalty for that offence is 10 years imprisonment. There is no evidence to establish the true amount of money to which you were entitled, given the paucity of records kept. By and large that money was donated or fundraised by persons who must have been of the belief that it would be used for the furtherance of the charity.
- 143 Two firearms were found at your premises. The possession of weapons shows how enmeshed you were with the criminal milieu. There is no evidence to support your claim that a client's mother gave you one of the firearms, and perhaps that is unsurprising. The fact that you kept that weapon and your own firearm both loaded and easily accessible is most concerning. I accept there is no evidence either one was used. The maximum penalty for possessing a general category longarm is 120 penalty units or 2 years imprisonment, and for possessing a general category handgun, 600 penalty units or 7 years imprisonment.
- 144 Principles of general deterrence, denunciation and just punishment are paramount in the sentencing process here. That is so particularly for the charges of Attempting to pervert the Course of Justice. Those principles are also applicable to the other offending.
- 145 The sentence I impose must deter other persons from acting as you did. It must denounce your behaviour on behalf of the Courts and the community and it must see you justly punished.

146 Sensibly it was not argued that this offending could be met by anything other than a term of imprisonment.

### **Personal History**

147 Turning to your personal history. I have received a number of reports which outline your history in some detail.

148 In summary, you were born in Italy on 13 October 1947. You are the eldest of two siblings and you are now 72 years old. Your family moved to Australia in 1952 when you were 5 years old. Your father was a carpenter and concreter. He died in 2005 from liver cancer and your mother in 2015 from a heart attack. You do not have an amicable relationship with your younger sister.

149 You described your childhood as 'very bad', referring to your parents as ignorant, never planning for the future. You say you ran away at age 11, living in King's Cross for several weeks.

150 You have had very limited formal education, leaving school in about 1960 when you were about 13 years old after you failed to complete Form 2.

151 After leaving school you worked in a foundry in North Melbourne. For a short period of time, you worked with your father in carpentry. You then worked in a petrol station pumping petrol, then at Avis Rental Vehicles washing cars before moving into sales. Whilst working at Avis you met your wife, Maria who was working as a seamstress in a factory nearby.

152 You were 19 years old, and she was 16 years old. Her family did not approve of the relationship and you eloped. You have had almost no contact with your wife's family over the course of your marriage. You have been married for 54 years. Together you have one son, four grandchildren and one great-grandchild.

153 After you were married, you started working for Daro Office Equipment. You

- were a successful salesman. You had a company car and during this time bought your first house.
- 154 In your late adolescence and early 20s, you began to consume an increasing amount of alcohol. You would visit neighbours under the guise of being friendly, knowing that you would be offered grappa or homemade wine. You report stealing alcohol from local bottle shops.
- 155 While working at Daro your alcohol use increased significantly and became uncontrolled. You were drinking after work with colleagues and this escalated to daytime drinking.
- 156 Your managing director gave you three months leave on full pay to stop drinking but you were unable to do this and eventually lost your employment. Your drinking escalated even further.
- 157 Over a period of five to six years you were admitted to hospital several times in relation to liver issues related to your alcohol consumption. Maria was working full-time with a small child. She started seeking help for you through Alcoholics Anonymous.
- 158 In the late 1970's, you were diagnosed with hepatitis of the liver. You were advised by doctors that if you carried on with your level of alcohol consumption then you 'didn't have long to go'.
- 159 You attempted short term rehabilitation programs with no success.
- 160 You have a criminal record for some minor offending around that time, but nothing relevant for my purposes.
- 161 In 1979, you were admitted to Ararat Mental Hospital. You remained an inpatient for a couple for weeks before you discharged yourself on the day of your 11 year old son's Catholic Confirmation. After the event, Maria gave you an ultimatum and convinced you to stay at home and to detox. She and your

- son cared for you during this time. You have abstained from alcohol since.
- 162 Soon after detoxifying at home, you attended St Paul's Church, Ascot Vale. Through St Paul's you gained support to abstain from alcohol, in addition to Alcoholics Anonymous.
- 163 You met Archdeacon Philip Newman and shared his concern about the long waiting lists for people to enter residential rehabilitation facilities and a lack of follow-up as outpatients.
- 164 You had young 'drinking friends' who approached you and asked for your support. The number of people seeking support grew to well over 100 and you would meet at St Paul's church. This was the start of St Paul's Rehabilitation Prevention.
- 165 According to the report of Neuropsychologist Dr Linda Borg, your son reports that your life turned around when you became involved with St Paul's. You assisted to develop a program for individuals with drug and alcohol addiction. At times you put money towards that program rather than towards your own family. Your son describes your addictive personality and your need to feel you are important. He says *"he put everything towards his work."*
- 166 Dr Tom Peyton, Psychiatrist and your friend for 30 years came to know you as you shared patients via St Paul's. He describes you as extremely committed to your work, competent and able to reach out and connect and bring your own difficult addiction experiences to clinically benefit your clients.
- 167 Asger Sturup, Psychiatrist was involved with Turana Youth Corrections facility in the 1980s. He came to know you through Reverend Newman. He says you made yourself available to clients when they needed to talk and have support, including visiting them at their homes and seeking his advice. You accompanied him to Malmsbury Prison where you would engage with young men and discuss their issues around alcohol and drugs. His involvement

stopped around 1993.

168 You told Psychologist Alison Mynard that after seven years of the program there were 180 people coming to seek support. You provided support groups as well as individual informal counselling and support.

169 I received a character reference from Bruce McDowall. His son developed a drug addiction in approximately 1995. The family made several attempts to find appropriate drug rehabilitation services however they were unsuccessful. Police were involved on an occasion and recommended contact with St Paul's rehabilitation program. In that context they met you. You supported their son through the cycles of detoxification, relapse and eventual recovery. He says they were impressed by your devotion and tenacity and that you never gave up on their son. In addition to their son visiting you in Strathmore, you attended at their home to check on his progress and needs. You also supported Mr McDowell and his wife to understand the process and to comfort them in times of severe stress. On occasion you personally intervened to assist them find their son in the city. Their son dropped out of the program however you apparently maintained your interest, keeping in regular contact with the family and offering advice. Mr McDowell says on hearing the charges against you they were disappointed. He says *"Serious as this is, it doesn't change the fact that Tony had been a great help to our family in a time of desperate need."*

170 I accept you must have provided similar support to other patients and other families in your time with St Paul's. I also accept that you attended schools to provide education to young people about avoiding drug use.

171 At times your work exposed you to physical violence and manipulation. You were assaulted, stabbed in the chest and at one time someone put an axe through your car windscreen. You link those events to the fact that you were dealing with people on court orders whom you subsequently breached. You

- say and I accept that you were genuinely fearful at times.
- 172 On Australia Day in 1997, you were Awarded the Medal of the Order of Australia (OAM) for “Service to the community through St Paul’s Drug Rehabilitation Centre for people with addictions to drugs and alcohol”.
- 173 How you progressed from those heights to your current nadir is difficult to fathom.

### **Psychological and Neuropsychological Evidence**

- 174 Psychologist Alison Mynard says “*Over the years, it appears that Mr Dieni’s judgement has been influenced by his long-standing enmeshed relationships with his clients and a sense of self-importance, within his role helping drug and alcohol addicted people.*” She describes you as inflated and with a grandiose sense of yourself. She says you have “*strong personality traits that are consistent with narcissistic personality disorder.*” You expect your expertise to be recognised as superior but with little training or qualification. You use namedropping to inflate your importance and exhibit a self-proclaimed ability to hand out medication without qualification, perceiving yourself as the primary person within the program and proclaiming to know the only way to help. She says you display a very strong sense of entitlement, regularly showing arrogant behaviours or attitudes which exaggerate your sense of your own importance or abilities. She says you developed a belief that your decision making was above the law.
- 175 Ms Mynard explains that underlying narcissistic personality disorder is a sense of underlying insecurity or vulnerability for which a person overcompensates. In your case she refers to underlying issues with your family of origin and your alcohol addiction leading to your clouded judgement and impaired sense of self over many years.
- 176 Ms Mynard notes that you had little education about professional standards,

ethics and only a basic professional understanding about dilemmas that you faced. That in some way accords with comments by Dr Peyton to the effect that a small program like St Paul's did not provide a lot of peer support or supervision. However Ms Mynard goes on to state *"it appears that as time wore on, Mr Dieni has ... placed himself in a role where he felt admired, needed and respected. However he was crossing the boundaries of professionalism ... justifying behaviour, losing integrity within the decision-making processes, [and] exhibiting ...a sense of self-importance and behaviours consistent with the Messiah complex."*

177 Those findings are reflected in the reports of Dr Linda Borg, neuropsychologist. She refers for example to your elements of grandiosity such as statements *"I am classed as a genius."* She says your responses to questioning revealed *"highly egocentric thinking as well as a tendency to seek an external locus to attribute blame"*.

178 Both experts opine that you lack insight into your offending. Any acknowledgement that using your position to obtain advantage was wrong was quickly downplayed or countered with justifications. Your reflections on the impact of your offending all focused on yourself. On the issue of remorse, you stated to Dr Borg *"I'm remorseful that I will lose my Order of Australia when I'm convicted."*

179 Family and legal practitioners raised concern over potential cognitive deterioration during the course of your legal proceedings. To that end Dr Borg was engaged to undertake a neuropsychological assessment. She assessed you in February 2020.

180 On testing she found localised deficits in the right parieto-temporal region and emerging deficits in the frontal region of your brain, but with preserved semantic function. She says *"... There is no doubt that some of the attentional dysfunction and consequent unreliability in memory would be*

*secondary to current elevations in depression and anxious symptomatology, with the possibility of underlying maladaptive Cluster B personality structures (namely histrionic personality traits) warranting further investigation.”* However she went on to say *“Lateralised deficits... are far beyond what can be accounted for by psychiatric dysfunction or personality instability alone.”*

181 After assessing you Dr Borg recommended a number of investigations with a view to establishing or excluding the presence of organic causes for your perceived cognitive impairment. In June 2020 you underwent a PET scan and MRI of your brain. The reports of those investigations along with a report from Consultant Physician and Geriatrician, Associate Prof Peter Lange, as well as the March 2020 Psychological assessment report of Ms Mynard were provided to Dr Borg.

182 The upshot of those investigations shows that there is no evidence of organic physical changes which would account for cognitive decline.

183 I heard evidence from Dr Borg on 3 August 2020 wherein she elaborated on both of her reports and findings. Ultimately she concludes that the lack of organic findings on the PET and MRI scans does not detract from her findings on neuropsychological assessments conducted in February 2020.

184 The available information according to her indicates the presence of moderate cognitive declines in multiple cognitive domains, namely complex attention, aspects of executive function and memory as well as visuo perception.

185 She concludes that in her expert opinion you meet the Diagnostic criteria under DSMV for a diagnosis of Mild Neurocognitive Disorder. The underlying aetiology remains unclear however on balance it is her view that an underlying neurodegenerative disorder, possibly in one or other forms of dementia is the likeliest cause.

186 Those findings were not challenged by the Prosecution. Under cross

examination Dr Borg agreed that hers is a working diagnosis at this point in time. She agreed that if not for these legal proceedings your cognitive deficits may not have become readily apparent. She agreed that in the opinion of psychiatrist Dr Peyton your mental state has markedly deteriorated since the onset of your current legal proceedings, with depressive and anxious themes, which he considered were accounted for by your situation. He reported times when you seemed to be struggling with memory and concentration and that those were intensified at times of acute psychological distress. He described you as 'deteriorating dreadfully'. None of those comments were contained in the report provided by Dr Peyton however I accept the report of the conversation by Dr Borg.

187 I accept Dr Borg's opinion. That is I accept that on the basis of neuropsychological testing, you have a Mild Neurocognitive Disorder. Further I accept that the likely cause of the disorder is a neurodegenerative disorder likely of a dementia type.

188 On the basis of Dr Borg's evidence those conditions have arisen over approximately the last two years.

189 I also accept that there is an overlay of psychological features in that you are also diagnosed with Major Depressive Disorder. It is not possible for the experts to determine when that condition began, however there is at least some reactive component to your current legal predicament.

190 I accept that there is also an interplay with your personality structure, in particular your rigidity of thinking which leads to perseveration.

### **R v Verdins<sup>8</sup>**

191 In summary on the basis of the expert evidence you are diagnosed with a Narcissistic Personality Disorder, Major Depressive Disorder and Mild

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<sup>8</sup> *R v Verdins* (2007) 16 VR 269

- Neurocognitive Disorder. It is the latter two conditions which founded submissions based on *R v Verdins*, specifically reliance on limbs 3, 4, 5 and 6.
- 192 Counsel specifically disavowed reliance on your Narcissistic Personality Disorder.<sup>9</sup>
- 193 Counsel specifically disavowed any reliance on Limbs 1 and 2 of *Verdins*. In other words it was not suggested that your moral culpability is in any way reduced by mental impairment or that the type of disposition would be affected.

### ***Verdins* – Limbs 5 & 6**

- 194 I accept the submission that your Mild Neurocognitive Disorder enlivens limbs five and six of *Verdins*. That is, I should take into account in my consideration of sentence that any time in custody is likely to be more onerous for you as a result of that cognitive impairment. I take into account based on the opinion of Ms Mynard and Dr Borg that there is potential for deterioration of your mental state in that context. I take that into account in my consideration of each component of the sentence I impose.
- 195 Specifically Dr Borg says and I accept that any deterioration in your mental health has the potential to exacerbate your underlying cortical vulnerabilities. Further, that given a neurodegenerative cause cannot be excluded and remains the primary differential diagnosis, there is a high probability that your cognitive and functional capabilities will continue to decline.
- 196 I make that finding taking into account the evidence of Dr Borg to which I have referred and also her evidence with respect to the typical features of decline experienced by a person with neurodegenerative disorders of a dementia type. She stated that broadly speaking, posterior cortical atrophy typically has a 10-15 year progression, and cortico-basal degeneration a progression over

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<sup>9</sup> That remained Counsel's position after the decision of *Brown v The Queen* [2020] VSCA 212 was delivered and the parties were offered the opportunity to make additional submissions.

- 8 years.
- 197 Typical decline features of posterior cortical atrophy involve issues with memory and word finding. At the latter stage of the second stage – so around the 10 year mark, planning, problem solving and reasoning ‘start to diminish further’. There may also be commensurate motor decline. In the event of cortico basal degeneration the decline is ‘a little bit more widespread’ and could include facial recognition, disinhibition and more impulsive behaviour as well as increased loss of executive function. Motor difficulties may be more apparent.
- 198 Dr Borg also referred to your personality structure creating its own issues for you in custody, namely that your impaired awareness and rigidity of thought may mean you are less likely to appreciate behaviour which may have a negative consequence. The rigidity of thought she attributes both to your personality disorder and the neurocognitive disorder. Further, with decline, your rigidity of thought may become stronger.
- 199 I accept that there has been some decline in your cognition over the past two years approximately, with associated observed changes by those around you. I accept that there is psychological overlay at play. Given your age and the findings on neuropsychological testing, I find that you will continue to decline. As the aetiology of your condition remains unknown, Dr Borg’s evidence was couched in terms which were necessarily speculative. It would not be possible for me to draw a firm conclusion about your future presentation. However I make some allowance for it in sentencing you.
- 200 I also take into account your Major Depressive Disorder as part of those conclusions, namely that it too is likely to lead to a decline of your mental state when incarcerated.

### ***Verdins – Limbs 3 & 4***

201 Your Counsel also submitted the expert evidence enlivens limbs 3 and 4 of *Verdins*, namely to moderate the applicability of general and specific deterrence.

### **General Deterrence**

202 I reiterate the importance of general deterrence when sentencing for offending of this type. In light of your age, Mild Neurocognitive Disorder and the matters I have referred to surrounding your decline both recent and expected, I will give some moderation in sentencing you, however general deterrence still remains an important sentencing consideration. That is so especially in relation to the charges of Attempting to Pervert the Course of Justice, though it is also relevant to each of the other offences here.

### **Specific Deterrence and Prospects of Rehabilitation**

203 In taking into account the need for specific deterrence in sentencing you, that is bound up with your prospects of rehabilitation. In my view your prospects of rehabilitation are poor. The psychological evidence bears out your lack of insight into the seriousness of your offending, coupled with your justifications, your lack of remorse, and your rigidity of thinking. Those factors suggest an inability to change.

204 However, I accept on a practical level you are already 72, you will be elderly on release from custody, you will be unlikely to work and certainly not in your previous field. For those reasons your opportunity to reoffend will be limited and in that sense I accept there is almost no role here for specific deterrence.

### **Pre-Sentence Detention**

205 You were remanded into custody upon your arrest on 12 September 2017. You were granted bail on 25 September, however were remanded again on 12 December 2017. You were again bailed on 25 June 2018. In total you had spent 210 days in custody.

## **Covid-19**

206 You were remanded by me on 23 June 2020. You therefore re-entered custody during the time of Covid-19. You spent 14 days in isolation and you are now subject to the additional restrictions in the custodial setting which have been brought about by the Covid-19 pandemic.

207 The custodial setting has become a more onerous one with Covid-19. You have been unable to have any visitors where your wife would have been visiting you as well as other family members.

208 Access to remote contact with family and friends via iPads and the like is limited due to demand. Education and rehabilitation programs are suspended and work is limited. There is reduced time out of cells with reduced access to such things as recreational and library facilities due to demand. There are lockdowns occurring and the virus has now reached prisons.

209 As with the broader community, prisons are places of heightened anxiety in the Covid-19 setting. Prisoners however are unable to make autonomous choices about social contact and distancing. How long restrictions in the broader community, let alone in the prison system, will remain is unknown. I take those matters into account.

210 In your case, that consideration extends further given your pre-existing mental health diagnoses as I have described. I take that into account.

## **Physical Health**

211 I also take into account the likely impact of incarceration on your physical health. You are a 72 year old man with a range of serious health issues. On 13th September 2018, you were diagnosed with cancer in your right lung. You underwent partial lung resection surgery in December 2018 with removal of the right lower lobe and a segment of the right upper lobe. Your oncologist Dr Herath stated in December 2019 that you are now in remission, however

your prognosis is now less than 50% of long term survival. No tumours or metastases were observed on the recent PET scan.

212 You also suffer from ischemic heart disease, type 2 diabetes and smoking related lung disease namely emphysema and bronchiectasis. According to Dr Herath you suffer shortness of breath, coughing at night which affects your sleep, and some chest wall pain.

213 I take those matters into account. I take them into account in that your physical burdens and the need for ongoing monitoring and management will make imprisonment more difficult for you than for a prisoner not suffering those ailments.

214 I also take them into account in the current setting of Covid-19. Your respiratory problems are particularly relevant. They make you more susceptible to serious consequences if you contract the virus. That must be a fact which provokes additional anxiety for you, and also for your wife of 54 years.

### **Age**

215 I am particularly aware that for an older offender in ill health, the sentence I impose will represent a significant portion of the rest of your life. I am acutely aware of the fact that given your age and health you may die in custody.

### **Physical Health of Maria Dieni**

216 I have been provided with medical material relating to your wife Maria. She is seen regularly at Royal Melbourne Hospital for complex autoimmune conditions. According to her general practitioner she has good long term survival prognosis, however she suffers frequently from severe abdominal pain and general ill health and is subject to a medication regime.

217 A person with autoimmune compromise in the current environment is also a

person at greater risk of serious illness due to Covid-19. It was not argued that her condition meets the high level of extreme hardship, however it is of course of real concern to you. In particular, leaving her in the community at the current time is of concern to you.

### **Pecuniary Penalty Order**

218 Similarly, I take into account the fact that the Prosecution have applied for a Pecuniary Penalty Order. That application may result in the forfeiture of your matrimonial home where your wife continues to reside. As your wife is elderly and physically frail, that is a source of concern to you. I cannot make and was not asked to make any specific findings in that regard. That fact has come about because of your offending and as such you bear the burden of those consequences. However I take that matter into account in a general way.<sup>10</sup>

### **Plea of Guilty**

219 I take into account your plea of guilty. You receive the benefit of that plea.

220 The value of a plea of guilty is increased in the current environment where the Covid-19 pandemic has caused considerable delay of all trials<sup>11</sup>.

221 The charges before me were originally the subject of three separate indictments. One related to the Attempt to Pervert the Course of Justice and Trafficking charges, the second to the Dishonesty and the third to the firearms located at your premises. The three indictments were listed for Trial in April 2019 one to follow the other. After a ruling by me to separate your trial from those of your co-offenders, the estimate of your trial for the Attempt to Pervert charges was 6 weeks, followed by a 3 week Trial for the dishonesty and several days for the firearms charges.

222 That series of Trials was eventually adjourned by me just prior to its

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<sup>10</sup> *R v Hong Minh Dang* [2009] VSCA 183 referring to *R v McLeod* [2007] VSCA 183

<sup>11</sup> *DPP v Bourke* [2020] VSC 130

commencement date due to issues around your health and around your legal representation. It was re-listed for January 2020. After a period of negotiation the matter resolved and you entered a plea of guilty to the current indictment on 18 December 2019.

223 It is not an early plea and it was not argued that it is a reflection of remorse, however it is plea of significant benefit. It has avoided a lengthy series of trials. There is great utilitarian benefit as it has saved the community that cost and time. It has also saved any cross examination of witnesses.

### **Parity**

224 With regard to the Attempt to Pervert the Course of Justice and Trafficking charges, a number of co-offenders have been sentenced on charges which overlap with yours. Several have been sentenced by me.

225 I am mindful of issues of parity when sentencing co-offenders. Parity is an aspect of equal justice. There should be no unjustifiable difference in sentences imposed upon similar offenders for similar offending.

226 The key words are, 'unjustifiable difference.' That is because parity takes into account considerations of the offending and roles played in joint offending as well as an offender's personal circumstances at the time of the offending and since. In that sense, equal justice may result in different outcomes, as it will here.

227 In this matter the characterisation of roles of each of your co-offenders varied slightly as reflected in the summary of facts I have outlined. A consistent theme however was that you were the principal offender, and that the power imbalance lay in your favour. You have not sought to dispute that characterisation.

228 Your co-offenders were involved only with you, with the exception of Martin and Elabed who had some involvement with each other. Their involvement

was for a more limited duration, and with a specific end in mind of avoiding a potential remand or jail sentence. Often they were put upon by you to supply drugs if not explicitly, at least inferentially, to avoid you breaching them.

229 As such, and as was conceded by your Counsel, parity is not strictly applicable, though I have had some consideration of the sentences imposed upon them.

### **Current Sentencing Practice**

230 I have had general regard to sentencing practices for this type of offending.<sup>12</sup> The offence of Attempting to Pervert the Course of Justice covers a wide range of factual scenarios and seriousness. As such, past sentences are of limited assistance. I have already found that your offending is very serious, in the upper range. There are no truly comparable cases, still less a clear pattern of sentences for such serious examples of this offending. I am required to impose a just and appropriate sentence for your offending and that is what I shall do.

### **Cumulation and Totality**

231 I accept that I must have regard to the principle of parsimony as it applies to the length of sentence, and to the principle of totality. You are to be sentenced for a range of several discrete offences. There will be a degree of cumulation of sentences to reflect the separate actions which found those individual offences.

232 In assessing the extent of cumulation appropriate for each charge of Attempting to Pervert the Course of Justice I have taken into account that although separate transactions with different co-offenders, they are overlapping both in nature and temporally. The opportunity for offending at its

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<sup>12</sup> E.g. See *Tognolini v The Queen* (2011) VR 104 and the table of cases referred to therein; *DPP v Middleton* [2018] VSCA 23; *DPP v Oksuz* (2015) 47 VR 731; *Carter v R* [2020] VSCA 156; *Pantazis v The Queen* [2013] VSCA 59; Judicial College of Victoria, Victorian Sentencing Manual, Chapter 8.1 (Table on perverting the course of justice sentences)

base level arose out of the same circumstances. The extent of cumulation will therefore be moderated to a degree.

233 There will be cumulation of a significant portion of the sentence I impose on the False Accounting charge. That is a charge reflecting entirely separate criminality which occurred over a 5 year period.

234 In making the orders for cumulation I have been mindful of the principle of totality. I am particularly aware that for an older offender in ill health, the sentence will represent a significant portion of the rest of your life. I am acutely aware of the fact that given your age and health you may die in custody. I have adjusted the non-parole period downward to reflect those factors including your neurocognitive disorder and probable decline.

235 The sentence I impose must reflect your serious criminality, however I have endeavoured in making orders for cumulation not to make it crushing.

### **Sentence**

236 In all the circumstances Mr Dieni I propose to sentence you as follows:

237 On Charge 1 of Attempting to Pervert the Course of Justice (co-offender Jake Grae) you are convicted and sentenced to 7 years imprisonment.

238 On Charge 2 of Attempting to Pervert the Course of Justice (co-offender Patricia Martin) you are convicted and sentenced to 7 years and 4 months imprisonment.

239 On Charge 3 of Attempting to Pervert the Course of Justice (co-offender Christopher Raydan) you are convicted and sentenced to 6 years imprisonment.

240 On Charge 4 of Trafficking in drugs of dependence namely cocaine and methylamphetamine you are convicted and sentenced to 2 years imprisonment.

- 241 On Charge 5 of Trafficking in drugs of dependence namely diazepam, oxycodone and alprazolam you are convicted and sentenced to 12 months imprisonment.
- 242 On Charge 6 of Attempting to Pervert the Course of Justice (co-offender John Violatzi) you are convicted and sentenced to 7 years imprisonment.
- 243 On Charge 7 of Attempting to Pervert the Course of Justice (co-offender Abdul Elabed) you are convicted and sentenced to 6 years and 6 months imprisonment.
- 244 On Charge 8 of Attempting to Pervert the Course of Justice (co-offender Nicholas Georgiou) you are convicted and sentenced to 6 years and 6 months imprisonment.
- 245 On Charge 9 of False Accounting you are convicted and sentenced to 4 years imprisonment.
- 246 On Charge 10 of Possess General Category Longarm you are convicted and sentenced to 1 month imprisonment
- 247 On Charge 11 of Possess Unregistered General Category Handgun you are convicted and sentenced to 3 months imprisonment.
- 248 I direct that the sentence of 7 years and 4 months on Charge 2 is the base sentence.
- 249 I make the following orders for cumulation. I direct that 12 months of the sentence on charge 1, 8 months of the sentence on charge 3, 6 months of the sentence on charge 4, 12 months of the sentence on charge 6, 10 months of the sentence on charge 7, 10 months of the sentence on charge 8 and 22 months of the sentence on charge 9 be served cumulatively on charge 2 and upon each other.

### **Total Effective Sentence and Non Parole Period**

- 250 The total effective sentence therefore is a sentence of 14 years imprisonment.
- 251 I direct that you are to serve 9 years imprisonment before becoming eligible for parole.
- 252 I declare that you have already served 283 days pre-sentence detention and that period should be reckoned as having been served under this sentence.
- 253 In relation to s.6AAA of the *Sentencing Act* 1991, but for your plea of guilty the sentence I would have imposed would have been one of 17 years imprisonment with a non-parole period of 13 years imprisonment.

### **Firearms Forfeiture**

- 254 I propose to make the firearms Forfeiture Order in the terms sought by the Prosecution.