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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21832848

THE QUEEN

and

SCOTT ANNING

(Sentence)

BARR J

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON FRIDAY 6 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Scott Anning, on 3 June you entered a plea of not guilty to the single count in the indictment that between 15 May 2015 and 12 May 2016 at Alice Springs you stole stock and cash to the value of \$46,898, the property of Kittle Group Pty Ltd.

On 7 June 2019, some three to four days into the trial, the indictment was amended and you were re-arraigned in the presence of the jury. You entered a plea of guilty to the single count that in the same time period, you stole stock and cash from Kittle Group Pty Ltd. The jury was then discharged. The amended indictment did not specify the amount alleged to have been stolen, but the admitted facts specified an amount of \$23,968.

You were born on 2 November 1982, so you are now close to 37 years old. You are a long-term resident of Alice Springs.

I want to say something now about the facts of your offending.

You admit the truth of the Crown facts, which were tendered and read out in court on 7 June. I find the facts proven as follows.

The victim of your offending was the company Kittle Group Pty Ltd, a family-owned company. At the relevant time, the company was operated by Robert Kittle, Ben Kittle and Wendy Kittle. Megan Kittle was also a shareholder in the company.

The company had two distinct business arms: Complete Steel Sales and Complete Fencing. The Complete Steel Sales side of the business sold steel products to trades people and retail customers. The Complete Fencing arm of the business built fences for local businesses and private customers.

On 11 May 2015 you commenced employment with Kittle Group as the sales manager. You held a significant position of trust. You were responsible for ordering stock, processing customer transactions and sales across both arms of the business and conducting stocktakes.

Between 15 May 2015 and 12 May 2016 you employed two reasonably sophisticated methods to steal stock and cash to the value of \$23,968. The first method involved you deleting a total of 33 sales transactions while performing a corresponding stock write-off. This allowed you to steal stock or cash to the value of \$12,726.

The second method involved you issuing 32 credit notes to customers for goods and services that had not been purchased by the customer. This allowed you to steal stock or cash to the value of \$11,242.

You went on leave from 6 to 26 April 2016. During your absence, company direction, Ben Kittle, stepped into the role of sales manager. He became suspicious that you had been defrauding the company. This was because customers were

coming into the business wanting to deal only with you. One customer came into the business with an invoice to collect goods, where the invoice was not entered in the system.

The relationship between you and company directors, Ben Kittle and Robert Kittle, soured in 2016. They both confronted you about a difference of opinion in relation to profit margins and some animosity in your working relationship with them. It became clear that the relationship was no longer tenable and the directors terminated your employment.

Ben Kittle subsequently began examining the Reckon account-keeping system. He noticed a large amount of stock that had been written off. As a result, he notified police. RGL Forensic Accountants were engaged and subsequently conducted an investigation.

On 9 May 2018 you voluntarily attended the Alice Springs Police Station. After receiving legal advice, you declined to participate in a formal police interview.

On 5 June 2018 you were summonsed to appear before the Local Court in relation to your offending. You were subsequently granted bail.

It is agreed that you have fully complied with your bail undertaking.

In terms of prior offending, you have a conviction for aggravated assault recorded on 23 June 2010 for an offence committed in March 2010. You were sentenced to the rising of the court. That outcome suggests that the offence was in the very low range of seriousness.

I want to say something now about your background and personal and subjective matters.

You have been in a de facto relationship with your partner, Ellen, since at least July 2014. You do not have children together. However, you have a son from a previous relationship, who is now 13, a few months short of turning 14.

He has experienced chronic and severe emotional behavioural difficulties since early childhood and has been formally diagnosed with Attention Deficit Hyperactivity Disorder combined type. That is with both attention or/and hyperactive impulsive features. He also has been diagnosed with Oppositional Defiant Disorder and mixed Anxiety Depressive Disorder and Intermittent Explosive Disorder.

His mental illness is related to significant adjustment difficulties after you and his mother separated when he was 4 years old. Although your son is intelligent, his mental illness has led him to disengage from school or to be expelled from school; in fact, from a number of schools.

He experiences social difficulties, has aggressive outbursts, has problems adjusting to new or changing circumstances and suffers depressive episodes with

high levels of worry and anxiety. He has engaged in self-harming behaviours, suicidal ideation and used explicit sexualised language. He has been receiving treatment and support from the Mental Health Child and Youth Team in Alice Springs for the last five years.

You have been actively involved in your son's treatment. You see his psychiatrist approximately every three months and his mental health clinician each week or so. It would appear that your son's relationship with his mother and her partner has broken down. Your son has been in your full-time care since the beginning of 2019 school year.

A medical report provided by your son's psychiatrist and mental health clinician referred to his markedly improved emotional regulation, self-management and behavioural control. His school attendance has increased steadily over the last 18 months, with remarkably few explosive outbursts, school suspensions and emergency incidents in 2019 compared with 2018.

His treatment team has been able to trial a reduction in some of his medications. It is noted that these improvements appear to correlate with your son being mainly in your care since 26 January this year, and more broadly, in the context of a stronger relationship between son and father.

Your son's psychiatrist, Dr Cleworth, and his mental health clinician, Mr Kenworthy, write as follows in their joint report.

"In our view, Mr Anning is currently the backbone of support for his son for home and school and is vital for his son's ongoing mental healthcare and wellbeing. We have observed him take an increasing proactive role as a concerned parent. He has unfailingly ensured safe and regular administration of his son's medication, helped him to assess the effectiveness of treatment and provided daily structure, emotional support and understanding.

"We would foresee serious impacts on his son's mental health and functioning if Mr Anning were removed from his home and family to serve a custodial sentence. The sudden absence of the primary caregiver would be enormously distressing and confusing for the son at a vital stage in his development. A change would feasibly escalate the son's risk of acting-out behaviour, including aggression, violence, deliberate self-harm and suicidal ideation."

Your partner, Ellen, has provided a letter, in which she expresses doubt that she could look after your son in the event that you were sent to prison. Not only does she have a demanding job which requires long hours of work, but she says that your son has no respect for women and is almost a foot taller than she is. She would be uncomfortable disciplining him without your back-up.

Your counsel had tendered a number of other character references for you. One reference; that of Mr Fior, is clearly written out of self-interest. He says that he would

be very concerned for his business if you were sentenced to prison. There is another aspect about his reference that I find disturbing. He has apparently adopted an explanation for your offending, which seeks to blame the victim. I quote from his reference.

“Approximately a year later, I rang Scott to order some steel. Scott explained that things had not worked out the way he had expected with the Kittle Group. Scott could not overcharge his loyal customers, but he was repeatedly asked to do, then ultimately let go.”

That reference may be compared with the evidence in the character reference provided by Tim Young, a director of Bluedust NT, who writes:

“During his time at Complete Fencing, he continued to provide a great level of service. His quotes and pricing were competitive with other suppliers, service was reliable and materials et cetera were received within specific lead times. I was surprised when he was let go in 2016.”

A marked contrast with the suggestion that you were overcharging your loyal customers, Mr Anning.

But Mr Young's letter tends to dispel the narrative that you were required to quote “uncompetitively” during the time you worked with Complete Fencing. Rather, as far as he was concerned, your quotes and pricing were competitive with other suppliers.

Notwithstanding those last observations of mine, it is clear you do have a strong employment record and that you are well-regarded by your customer base for your ability and experience in the business of steel supply in Central Australia. I consider that your prospects of rehabilitation are good.

I want to say something now about my analysis of your offending.

As the Crown facts made clear, your stealing was not the product of a single moment of madness. Just four days after you started work with Kittle Group in May 2015 you started to steal money from your employer. Your employer was a family enterprise and could ill afford to lose the money which you stole. Your offending caused considerable stress to the directors of the company, who were at a loss to understand why the company was losing money in spite of an apparently normal or healthy turnover.

I have read the victim impact statements of Ben Kittle, Wendy Kittle and Megan Kittle. They all had to deal with the impact of your dishonesty in the context of the death of the late Robert Kittle. Your offending had a deep impact on people who trusted you in their family business.

However, I need to make an observation in fairness to you. The distress caused to the Kittles was in relation to a much greater financial loss than the \$23,968 to

which you have pleaded guilty. While it may be a difficult and artificial exercise, I cannot take into account the full extent of their distress in all the circumstances. However, I consider that your significant position of trust enabled you to steal from your employer, using reasonably sophisticated methods. You were cynical, you were cunning and you were deceitful.

Moreover, you did not cease your dishonest practices of your own accord. You did not further offend because you could not. Your employment was terminated for other reasons.

You have given no reason for your offending. There is no suggestion that you were suffering financial hardship. When your counsel was asked why you had offended, he replied and I quote, "He deeply regrets his conduct but offers no reason for it."

You told the writer of the home detention report that you were unwisely making bad choices. To me, that is a meaningless statement.

It was stated in your letter, which is exhibit D8 that you sincerely regret your actions and any effect it had on the Kittle Group and its directors. It is hard to assess that statement in all the circumstances. You have not repaid any of the money that you admit you stole.

You are entitled to a discount for pleading guilty. However, any discount applicable to your plea must be assessed in the context that you did not enter a plea of guilty until the morning of the fifth day of your trial. Notwithstanding that the Crown had charged you with stealing property to the value of almost \$47,000, you could at any time have admitted to stealing the amount of almost \$24,000, to which you ultimately pleaded guilty and then contested the balance.

In the circumstances, I propose to allow a discount of 15 per cent or thereabouts. I take as my starting point a term of imprisonment of 2 years; however, I will take off four months for your plea of guilty.

I convict you and sentence you to a term of imprisonment of 1 year and 8 months.

The sentencing options identified by me are a sentence of imprisonment but partially suspended or a home detention order.

I agree with the prosecutor that your offending would normally deserve a sentence of actual imprisonment. The matters that I read out earlier, including your artful deceit of your employer, really cries out for a term of actual imprisonment to ensure that the sentencing objectives of punishment and general and specific deterrence are given full effect.

In other words, the sentence would have to reflect that fact that you breached your trust. It would have to serve as a deterrent to other people placed in similar

positions to ensure that they do not offend. However, there are countervailing factors which I have read out at length in court today that relate to your son and his situation.

I feel compelled to act on the reports of your son's psychiatrist and his treating clinician. And in prospect of perhaps being compelled to proceed in that way, I did receive a report as to your suitability for home detention. You have been assessed as suitable and your proposed residence also is suitable.

In the circumstances, I have decided to impose a home detention order. The formal order I make is as follows.

I make an order suspending the sentence of imprisonment of 1 year and 8 months on your entering into a home detention order pursuant to s 44(1) of the *Sentencing Act*.

Pursuant to s 44(2), I specify the premise at 37 Elliott Street, Braitling as the place where you are to reside and remain.

Further, I specify ten months as the period that the order is to remain in force. So you will be subject to a ten-month home detention order.

Pursuant to s 44(3) of the Act, I impose the following conditions. I will read those out now.

Listen carefully, Mr Anning.

1. You will be subject to supervision by a Probation and Parole officer and you must obey all reasonable directions.
2. You must report to a Probation and Parole officer as soon as practicable after leaving court.
3. Upon complete of the necessary formalities at court, you must return immediately to 37 Elliott Street, Braitling unless directed otherwise by a Probation and Parole officer.
4. You must not leave 37 Elliott Street, Braitling except at the times and for the periods prescribed or as otherwise permitted by a Probation and Parole officer.
5. You must not possess or consume alcohol and you must submit to testing as directed by a Probation and Parole officer or a police officer.
6. You must not possess or consume a dangerous or restricted drug and you must submit to testing for drugs as directed by a Probation and Parole officer.

7. You must not possess a firearm without the permission of the Commissioner of Correctional Services.
8. You must wear or have attached an approved monitoring device in accordance with the directions of a Probation and Parole officer and allow the placing or installation in and retrieval from the premises at 37 Elliott Street, Braitling of such machine, equipment or device necessary for the efficient operation of the monitoring device.
9. You must have not associate with any person specified in a direction given to you by a Probation and Parole officer.

So if you breach the home detention order, you will be brought back to court and unless it were unjust to do so, I would have the option of re-sentencing you, and if I were to re-sentence you for breach of the home detention order, I would well likely impose a partially suspended sentence of imprisonment.

So there is a strong incentive for you to abide by the conditions of the home detention order for the next ten months.

In relation to an order for compensation or restitution, I was strongly minded to make such an order in the circumstances, particularly now that you have the benefit of a home detention order, which will enable you to maintain your employment, but out of respect for the directors of the Kittle Group, who specifically asked the prosecutor not to make such an order, and they have received some financial reimbursement from their insurer, I have decided not to make an order for restitution.

Thank you.

Mr Lapinski, is there anything further?

MR LAPINSKI: No, your Honour.

HIS HONOUR: Anything further from you, Mr Elferink?

MR ELFERINK: Yes, your Honour, just one quick question in relation to my client's ongoing employment. Perhaps I missed it, but I understand that he will be able to continue working?

HIS HONOUR: Well, he will, but he will need to work out with Community Corrections exactly what his hours of work are and accept their directions as to the times and the periods when he may be absent from home. The other thing is, because he will be subject to electronic monitoring, he can then be queried as to why he was at a particular location, and he will need to ensure that that correlates with his work roster.

He has also agreed, in his discussions with Corrections, that he will provide his work schedule to his Probation and Parole officer so that he can be checked. So

yes, the conditions are engineered to enable him to maintain his employment, but the precise periods and the purposes for which he may be absent from his home detention will be subject to discussions with his Probation and Parole officer.

MR ELFERINK: Thank you, your Honour. It was for abundance of caution. I have nothing further.

HIS HONOUR: Thank you.

Does that raise any issues for you, Mr Lapinski?

MR LAPINSKI: No, your Honour.

HIS HONOUR: Thank you.

I will adjourn now, thank you.
