

SUPREME COURT OF QUEENSLAND

CITATION: *R v Wulff; R v Oxenbridge; R v Myers; R v Walker* [2019]
QCA 183

PARTIES: **In CA No 51 of 2019:**
R
v
WULFF, Carl Christian
(applicant)

In CA No 47 of 2019:
R
v
OXENBRIDGE, Sharon Ann
(applicant)

In CA No 33 of 2019:
R
v
MYERS, Wayne Christopher
(applicant)

In CA No 61 of 2019:
R
v
WALKER, Claude John
(applicant)

FILE NO/S: CA No 51 of 2019
CA No 47 of 2019
CA No 33 of 2019
CA No 61 of 2019
DC No 1995 of 2018
DC No 1996 of 2018

DIVISION: Court of Appeal

PROCEEDING: Sentence Applications

ORIGINATING COURT: District Court at Brisbane – Date of Sentence: 15 February 2019 (O’Brien CJDC)

DELIVERED ON: 10 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 5 June 2019

JUDGES: Morrison JA and Lyons SJA and Boddice J

ORDERS: **1. In CA No 51 of 2019, application for leave to appeal**

refused.

2. **In CA No 47 of 2019, application for leave to appeal refused.**
3. **In CA No 33 of 2019, application for leave to appeal refused.**
4. **In CA No 61 of 2019, application for leave to appeal refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the four applicants were convicted on their own plea of guilty of official corruption – where the four applicants were sentenced to terms of imprisonment – where each applicant challenges their sentence on the ground that the imposition of a period of actual custody makes the sentences manifestly excessive – where it is contended that the sentences should have been wholly suspended – whether the imposition of actual custody on each applicant was a manifestly excessive sentence

APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – CONTENTION THAT JUDGE WAS MISTAKEN – where three of the applicants made further contentions that the sentencing judge erred in considerations made when sentencing – where it is contended that the learned sentencing judge erred in the application of the parity principle – where it is contended that the learned sentencing judge erred in failing to consider a material consideration in determining the length of the period to be served prior to suspension – where it is contended that the learned sentencing judge erred by comparing the criminality of one of the applicants with people other than the co-offenders, and conduct other than the co-offending – where it is contended that if a comparison between the criminality between people who were not co-offenders was permissible, the learned sentencing judge erred in his findings – whether the contentions of the applicants that the trial judge erred can be established – whether the sentences imposed by the learned sentencing judge were manifestly excessive

Criminal Code (Qld), s 87(1)(a)

Penalties and Sentences Act 1992 (Qld), s 13A, 13A(7)(b)

R v Gmeinder [2001] QCA 354, cited

R v Illin (2014) 246 A Crim R 176; [2014] QCA 285, cited

York v The Queen (2005) 225 CLR 466; [2005] HCA 60, cited

COUNSEL: J A Gregory QC for the applicant, Wulff
 B J Power for the applicant, Oxenbridge
 M J Copley QC for the applicant, Myers

S C Holt QC for the applicant, Walker
S Farnden with S Bain for the respondent

SOLICITORS: Fisher Dore for the applicant, Wulff
Fisher Dore for the applicant, Oxenbridge
Pat Murphy Solicitor for the applicant, Myers
McGinness & Associates for the applicant, Walker
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **MORRISON JA:** Each of Mr Wulff, Ms Oxenbridge, Mr Myers and Mr Walker seek leave to appeal against sentences imposed, upon their pleas of guilty, for official corruption, and in Mr Wulff's case, also for attempting to pervert the course of justice.
- [2] The sentences were:
- (a) Mr Wulff: four years and six months' imprisonment, suspended after serving a period of 20 months, and a cumulative sentence of six months' imprisonment;
 - (b) Ms Oxenbridge: three years' imprisonment, suspended after serving a period of nine months;
 - (c) Mr Myers: two and a-half years' imprisonment, suspended after serving a period of six months; and
 - (d) Mr Walker: three years' imprisonment, to be suspended after serving a period of nine months.
- [3] Each challenges the sentences on the ground that the imposition of a period of actual custody makes them manifestly excessive. In addition:
- (a) Ms Oxenbridge adds that the learned sentencing judge erred in the application of the parity principle;
 - (b) Mr Myers adds that the learned sentencing judge erred in failing to consider a material consideration in determining the length of the period to be served prior to suspension;
 - (c) Mr Walker adds that:
 - (i) the learned sentencing judge erred by comparing his criminality with people other than co-offenders, and conduct other than co-offending; and
 - (ii) in the alternative, if a comparison between the criminality between people who were not co-offenders was permissible, the learned sentencing judge erred in finding that:
 - A. his criminality was in general terms able to be equated to Myers; and
 - B. the overall criminality of Oxenbridge was comparable to that of Walker.

General overview¹

¹ In these reasons, for ease of reference only I shall refer to participants by their surnames.

- [4] Wulff was the Chief Executive Officer of the Ipswich City Council between July 2006 and December 2013. He entered into two arrangements under which he received corrupt kickbacks. The first was with Myers, a businessman providing corporate business advice through a company called Dinorden Pty Ltd. The second was with Walker, a consultant engaged to assist the Council in flood restoration work after the 2011 floods.
- [5] Under the arrangement with Myers, Wulff's wife, Oxenbridge, was purportedly engaged as a consultant to Dinorden, though it was never expected that she would do any consultancy work. In that way \$115,500 was paid to Bojangles Pty Ltd, a company controlled by Wulff and Oxenbridge. Fictitious invoices were issued to pretend that the payments were legitimate, and a fictitious consultancy contract was executed by Oxenbridge to pretend that she was going to provide consultancy work.
- [6] Under the arrangement with Walker, an agreement was made for Walker to pay Wulff a retainer of \$5,000 per month (excluding GST). Once again Wulff and Oxenbridge's company, Bojangles, was utilised and a fictitious agreement was entered into to pretend that Oxenbridge would be engaged by Walker's company as a consultant. Fictitious invoices were then sent so that the money could be transferred to Bojangles. In this fashion \$99,000 was paid for the benefit of Wulff and Oxenbridge. In addition, another \$5,000 was corruptly paid in cash by Walker to Wulff.
- [7] When it became apparent that the Crime and Corruption Commission was investigating, Wulff urged Myers to give false evidence to the Commission saying that the story of there being a legitimate consulting agreement would be "plausible" as long as they "hold the line". Wulff told Myers that Oxenbridge was "across it" and that the CCC would not rattle her at all.

Agreed facts

- [8] Because Wulff and Oxenbridge were at the centre of both corrupt arrangements, there were two schedules of facts tendered at the sentencing hearing which are applicable to them. The first is in relation to the arrangement with Walker.² The second is in relation to the arrangement with Myers.³ What follows is taken from those schedules.

Agreed facts re Myers

- [9] Wulff was the CEO of the Ipswich City Council between 4 July 2006 and 13 December 2013. The office of the CEO is provided for by s 194 of the *Local Government Act 2009* (Qld). The CEO is the Council's principal officer, exercising overall management responsibility for Council's operation.
- [10] The main functions of the CEO are to be the primary link between the elected Council and Council employees; to lead and manage Council's senior management team and all the Council's employees to meet the Council's objectives; and to ensure program outcomes are being met within set budgets and timeframes.

² Appeal Book (AB) 103.

³ AB 109.

- [11] Wulff was married to Oxenbridge, with whom he had been in a relationship for approximately 18 years. Over the period of offending, Oxenbridge was employed with the Civil Aviation Safety Authority (CASA) from late 2010 to early 2014, as a Manager of Business Support and Development. From early 2015 to late 2017, she was the National Manager, Policy and Projects for Operational Therapy Australia. She resigned from that position on 6 October 2017 and has not been further employed.
- [12] Myers was a self-employed business consultant, and the owner and sole director of Dinorden Pty Ltd, which provided corporate business advice to businesses of all sizes. He was previously a registered lobbyist.
- [13] Myers had been friends with the previous Mayor of Ipswich, Pisasale, for more than 10 years. Through him he met Wulff shortly after Wulff joined the Council and they gradually began to socialise together.
- [14] Myers met Innes, who owned a business called Landfill Logistics (LL) engaged in the business of locating areas that needed landfill and then sourcing the fill from other areas, at a business conference in Thailand in about 2010 or 2011. Innes attached himself to Myers at this conference, asking him if he had any connections with the Council. Innes stated that Myers told him that he had close relationships in the Council and that he could facilitate work with the Council.
- [15] Myers gave Innes details of some Council landfill contracts and the amount they were paying for fill. Innes knew he could legitimately supply fill at a much lower rate, but that he needed an “in” with the Council. Through Myers, Innes began to receive work from the Council which was initially one-off jobs or purchase orders.
- [16] In about May or June 2011, Myers facilitated a meeting at a café between Innes and Wulff, after which they began to meet regularly to discuss business.

Innes’ and Myers’ business arrangement

- [17] At about the same time (May or June 2011), Myers and Innes came to a verbal agreement that Innes would pay Myers approximately 30 per cent of his profit from any works he received from the Council. Innes did this to “grease the wheels” and encourage Myers to maintain his relationship with Wulff and Pisasale.
- [18] Myers stated that there was a verbal agreement in place for him to be paid 30 per cent of profits to maintain access for Innes at a higher level of Council, and to maintain good relationships there, as well as to assist him with other business development work including getting him into other south east Queensland councils. Myers relied on Innes telling him what each project was worth and he would then invoice Innes accordingly.
- [19] Between 23 May 2011 and 17 March 2016, Myers issued 25 invoices to LL totalling \$585,562.80. The last three invoices were not paid, so the total amount paid by Innes to Myers was \$523,322.80. The money that was ultimately paid to Wulff under the corrupt arrangement was disseminated from these payments to Myers.

How Wulff met Innes

- [20] Wulff's recollection was that he met Innes in mid-2012 when he engaged him to fill a coal mine at Swanbank. Innes indicated he could supply and place the required material at no cost to the Council. Following on from this, Wulff said that he formed the view that a more formal arrangement for the supply and disposal of fill material would yield substantial cost savings to the Council.

Lead-up to corrupt arrangement

- [21] Wulff organised for the Council's legal team to draft a contract which became known as the Fill Services Contract. In order to determine a successful contractor, a two stage process was undertaken, which was an expression of interest (EOI) followed by a request for tender. There were two responses to the EOI, one of which was LL. Wulff gave Myers the EOI to pass on to Innes prior to it being released.⁴ Myers told him he was working with LL and that they would likely be a respondent to the EOI and any later request for tender. Myers said, "This is huge opportunity, then Innes will pay me big time if I can be seen to get him work with [the Council]". Wulff took that to mean Myers would share any benefits with him. Wulff said he was attracted to the opportunity because he was in a precarious financial position at the time.
- [22] On 30 April 2013, following an evaluation panel, LL was awarded the Fill Services Contract. The contract provided no guarantee of any work; however it allowed LL to perform work for the Council without going to tender. LL still had to submit its pricing for any project against a quantity surveyors assessment of the value of the work. The first project that LL undertook was the rehabilitation of an old landfill site at Augustine Heights. The quantity surveyor's estimate was \$6.5 million, and LL's price was \$3.2 million.

The "kickback" arrangement between Wulff, Innes and Myers (through Oxenbridge)

- [23] Myers stated that in about April or May of 2013 he was having coffee with Wulff when Wulff said words to the effect of "what's in it for me?", in reference to his arrangement with Innes. Myers said he told Innes what Wulff said to him, and Innes said "It would be nice to keep [Wulff] happy".
- [24] At this time, Innes had become aware of an upcoming Council project called 'Road 10'. The project involved the building of a road adjacent to the Northern Sporting fields at Ipswich. He became aware of the project through Myers and began discussing it with Myers and Wulff.
- [25] Ultimately, Myers completed the submissions and Innes signed the document. Wulff as CEO signed off on the eventual contract.
- [26] There was disagreement in the police statements between Innes, Myers and Wulff as to whose idea it was that Wulff should benefit from Innes' arrangement with Myers. The nature of the arrangement itself was not disputed between the defendants. For both Wulff and Oxenbridge the quantum for this corrupt arrangement included the deck Innes had built at Wulff's house, \$115,500.00 transferred from Dinorden to Bojangles and \$15,000.00 transferred from Innes directly to Wulff. The quantum for Myers was the deck Innes had built at Wulff's house and \$115,500.00 transferred from Dinorden to Bojangles.

⁴ According to Wulff, this was at the pressure of Myers.

Innes' version

- [27] Innes said that Myers suggested to him it would be a good idea for Innes to keep Wulff “happy” and to build a deck for Wulff at his house at Brookwater.⁵ Innes hired a carpenter, Carter, to complete the work and he estimated it personally cost him between \$5,000.00 and \$10,000.00. Innes said that at no time did Wulff ask him for an invoice or offer to pay for the deck. Innes said it was implied he would pay for the deck as a kickback for Wulff for getting him the Fill Services Contract and the contract for the Road 10 project.
- [28] Carter was engaged by Innes to complete the stairs. When he told Innes the price for the stairs (\$7,273.00) he asked him for Wulff’s details to forward the quote. Innes told him that nothing was to go to Wulff and that all invoices should be made to Land Fill Logistics. He said that he and Wulff would sort it out later. Innes paid him three payments totalling \$5,500.00 for the work. Carter told police that after the job was completed and Wulff was in the news, Innes asked him to make out an invoice in Wulff’s name and state that he had been paid by Wulff. Carter declined to do so.
- [29] After Innes was awarded the Road 10 project Innes said Myers approached him and said, “There’s an opportunity here, win the work, do it at the right price, you’ll make [Wulff] look good. Paul⁶ will be happy. Everyone will be getting their piece and there’s no problem”. Myers told Innes he would have to pay Myers more to facilitate payments to Wulff. Innes was aware that was going to be facilitated from Dinorden to Oxenbridge’s business. The arrangement continued until Wulff left office. Innes said that after Wulff left the Council, Wulff sent him a text which said, “Where’s my money?” Innes gave Wulff \$15,000.00 in cash as a final kickback for him getting him work at the Council.

Wulff's version

- [30] Wulff said that in late 2012 early 2013, Myers was relentless in pushing him to assist in allocating work to Innes’ company. He said that Myers pressured him for an advanced copy of the EOI for the Fill Services Contract. He recalls Myers telling him, “This is a huge opportunity, and Innes will pay me big time if I can be seen to getting work with [the Council]”. Wulff said at this time his financial position was precarious and he therefore agreed to share in the benefits that Innes received. Wulff was a 50 per cent shareholder in a ‘Noodle Box’ franchise that was run under the company name of Bojangles. They then came to the arrangement that Bojangles would be engaged by Myers’ company Dinorden to do consultancy work, and in this way invoices would be issued and payments made with the appearance of it being a legitimate business arrangement.
- [31] In order to provide further distance between Wulff and the payments, it was then arranged that Oxenbridge would be the one to sign the contracts and engaged as the consultant.

Oxenbridge's version

- [32] Oxenbridge said Wulff told her that she had to sign the contact as at the time she was the sole director of the company trading as Strategic Consulting Services Pty

⁵ This fact was disputed by Myers.

⁶ A reference to Pisasale.

Ltd, which had previously traded as Brookwater Noodle Box. The name changed due to the impending sale of the Noodle Box business in September 2013. Oxenbridge signed the contract which nominated her as the consultant. She was aware when she signed it that she was not going to be doing any work as a consultant. Wulff told her that their financial position was not good at the time and she agreed to sign the contract due to a level of coercion by Wulff in relation to their financial state.

- [33] Oxenbridge said she regularly asked how this was tracking, and in mid-2014 Wulff advised her that a result of the near \$100,000 in consultancy fees they had received from Myers, and his termination payment from the Council, their financial position was stable.
- [34] Oxenbridge said that she did not have any meeting or phone conversation with Myers in relation to the consultancy agreement. She socialised with Myers and his wife on occasion but did not discuss business. Myers made payments to a business account that was in the names of Wulff and Oxenbridge, and operated by Wulff. She was aware that her husband drafted and sent emails from her account.
- [35] Oxenbridge said that following her direction to appear before the Crime and Corruption Commission (CCC) Wulff gave her a handwritten note that outlined aspects of the consultancy work supposedly done for Myers and suggested that she use that to explain the payments received from Myers. At that stage Oxenbridge refused to co-operate further and made admissions as to her involvement.

Myers' version

- [36] Myers said that Wulff came up with the idea as to how he would get a kickback from his arrangement with Innes. Myers could employ Oxenbridge as a consultant working for Dinorden. Innes agreed to pay Myers more so that he could pay Oxenbridge and not lose money himself. Myers initially negotiated with Wulff a monthly fee of \$10,000 and said that Wulff kept coming back until it was \$25,000 per month. Myers then drew up the contract to employ Oxenbridge as a consultant for six months from 6 August 2013.
- [37] As a consequence of the kickback arrangement invoices totalling \$115,500 were issued and paid from Dinorden to Bojangles as follows:

Invoice Date	Amount	Payment Date
26.08.13	\$27,500	05.09.13
17.09.13	\$27,500	26.09.13
25.10.13	\$27,500	14.11.13
29.01.14	\$11,000	04.03.14
17.03.14	\$11,000	02.04.14
24.04.14	\$11,000	12.05.14

- [38] Myers said that he had an expectation that consultancy work would be done and that the amount paid by invoice was reduced because Oxenbridge was not doing the amount of work anticipated.

CCC Investigation/Co-operation/Attempt to pervert the course of justice

Innes' covert recording

- [39] Innes was the first to co-operate with the CCC investigation. He agreed to record a conversation with Wulff at a café on 8 September 2017. During this conversation Innes asked Wulff if he remembered sending the EOI for the original Fill Services Contract to Myers. Wulff said he did not remember doing that, but it was “possible”. Innes raised this point again later and again Wulff said he did not remember providing the EOI to Myers.
- [40] When Innes asked Wulff if the CCC had spoken to him yet, Wulff said no but that “they will eventually, I am sure”. Innes also commented that he only gave Wulff one lot of cash and the “rest of it” was through Myers. Innes commented that Myers did not always transfer the money, to which Wulff said “no he didn’t, there was gaps, big gaps”. Innes further suggested to Wulff that investigators would want to look at records of work that was done by Oxenbridge for Myers. Wulff commented that Myers would not have any records and that he (Wulff) had them.

Myers' first covert recording

- [41] Myers contacted police via his legal representative after seeing media reports about charges and investigations taking place by the CCC. He met with Wulff twice after September 2017 and agreed to covertly record the conversations for the investigation.
- [42] At the start of the first conversation Wulff warned Myers to be careful of Innes because he thought he was “rolling over.” Myers asked what he should do if investigators looked at his records and saw payments to Oxenbridge when she had not finished working at CASA. Wulff commented that it was all “plausible” as long as they “hold the line”. Wulff told Myers that Innes mentioned the EOI for the Fill Services Contract that he was provided ahead of time. Wulff admitted to Myers that he thought he gave Myers a copy. Myers said he helped Innes write the tender and asked if Wulff was aware of that, to which Wulff said “Yeh”. Wulff again suggested to Myers that they “hold the line” on the fact that the deal was a legitimate consultancy by Oxenbridge and that they “did the work”.

Myers' second covert recording

- [43] On 27 September 2017 Wulff handed Myers a handwritten note setting out the “version” of the agreement that he and Oxenbridge would be relaying to the CCC if they were questioned.⁷ Several times throughout the conversation Wulff reiterated that they should stick to the story that it was a legitimate consulting agreement, and if they got their story in line then the CCC would not be able to “crack it”. Myers maintained during the conversation that he thought, or at least had convinced himself, that Oxenbridge was going to do legitimate consulting work for him.
- [44] In relation to the note, Wulff told Myers to “take that with you but destroy it. Look after it but I don’t want to ever know it was my handwriting. I can’t afford to go into jail”. He then said “If you have to make a few notes then throw it away, tear it into a thousand pieces, don’t just put it in the recycle bin”. Wulff said that

⁷ This was the subject of count 2, the attempt to pervert the course of justice, applicable to Wulff only.

Oxenbridge was “across it” (the story) and that “they” (the CCC) would not rattle her at all.

- [45] The version of events set out by Wulff in the note was that Myers was of the understanding that Oxenbridge would be leaving CASA “very soon”, but when she was still at CASA by the end of October, Myers indicated he was not happy to continue paying the retainer until Oxenbridge left. An agreement was made to finalise current projects based on payments already made and revisit the engagement once she left.
- [46] Myers gave the note to police.

Agreed facts re Walker

- [47] At the time of offending Walker was based in Melbourne but rented accommodation in Brisbane during the working week, returning to Melbourne on the weekends. He owned the consulting business, PCG, which assessed companies’ needs and presented their capabilities to their relevant market.

How Wulff met Walker

- [48] Walker met Wulff in about 2003 when Wulff was CEO of the City of Greater Dandenong and Walker had been engaged by a company called United Customer Management Services Partnerships (UCMS) to promote their services. UCMS provided outsourced call-centre services for local Councils throughout Australia. Walker was appointed as the Managing Director of UCMS and established a joint partnership with the Local Government Association of Queensland to promote a shared services initiative for common services like call-centres throughout Queensland Councils.
- [49] In 2006 UCMS, partnered with the Local Government Association of Queensland, entered into a contract with the Council (of which Wulff was then CEO) to deliver a certain customer service model. Sometime in 2007, after finalising that contract, Walker resigned from UCMS. However, he and his wife had begun socialising with Wulff and Oxenbridge. The Walkers attended the wedding of Wulff and Oxenbridge in Italy, and they holidayed together in Phuket among attending other social events.
- [50] Soon after the major floods in South East Queensland in January 2011, Walker contacted Wulff and Pisasale and advised them that he would be able to assist with the flood recovery. At that time the Council was negotiating with two major consulting companies to assist with the assessment of damage and the restoration of assets program. Walker had already approached one company, Coffey Commercial Advisory (CCA), with a view of putting it and the Council together.
- [51] Walker got in touch with CCA. He arranged for Wulff to meet with someone from CCA, and eventually the Council awarded the contract to undertake the flood recovery program to CCA, with the stipulation that Walker was to be involved as he had knowledge of the Council’s workings and had put CCA in touch with the Council.
- [52] As a consequence, Walker was contracted to CCA two days a week at the daily rate of \$2,500.00 (plus GST), and was provided with airfares, accommodation and transport. Walker acted as the direct conduit between the Council, CCA and the Queensland Reconstruction Authority.

Background to offending – the Hamilton unit arrangement

- [53] After his work with the CCA commenced, when Walker stayed in Queensland he stayed in hotels and then in a unit in Auchenflower. His accommodation expenses were paid by CCA, who passed the cost on to the Council. In late 2011, Wulff told Walker he had purchased an off-the-plan unit at Hamilton, however, he was \$85,000.00 short of the full purchase money. He asked if Walker could help him. Wulff offered Walker a 10 per cent interest in the property, to which Walker agreed.
- [54] Walker did not want his name on the property given the work he was doing with the Council, so they registered Walker's share in his wife's name. Walker then moved into the Hamilton apartment in March 2012. Walker entered into a rental agreement with Wulff as his lessor, for \$3,683.33 per month, which was paid by CCA and then billed to the Council as per Walker's contract with CCA.

Commencement of corrupt payments and taking over the CCA contract

- [55] In early 2012 Walker met Wulff socially on two occasions and each time he gave him an envelope containing \$2,500. He told Wulff he felt very blessed to be afforded the opportunity to be providing services for the Council and receiving a healthy income from that. He let Wulff know that if there was any way that he could help him further he would be happy to do so. He made it clear that he would be happy to pay Wulff some cash funds, which he accepted. At the same time he told Wulff that he did not want any negative impact to flow from his generosity. Wulff said he used this money for general expenses and did not bank it.
- [56] In about May 2012 CCA advised the Council that they were being closed down by their parent company, which was cutting costs. Wulff said this put the Council in a difficult position as CCA were critical to continuing Ipswich's flood recovery. Walker put a proposal to the Council for his company, PCG, to take over CCA's part of the contract. Wulff was not involved with this proposal; instead the CFO of the Council negotiated the novation and agreed with Walker on a reasonable reduction in contract rates for the staff based on a much lower overhead position for Walker than with CCA. This proposal was ultimately accepted. Walker's daily rate and expense arrangements remained the same (\$2,500 per day) except he increased his work days from two days to five to six days a week.

The "kickback" arrangement between Wulff and Walker (through Oxenbridge)

- [57] Wulff and Oxenbridge owned considerable assets, which were heavily leveraged. Following the global financial crisis their financial position was more precarious. This included their business Bojangles, which traded as the Noodle Box, which was struggling financially.
- [58] Following PCG's takeover of CCA's side of the contract with the Council, Walker and Wulff devised a plan whereby Walker would pay Wulff a retainer of \$5,000 per month excluding GST. They utilised the company structure of Bojangles to facilitate these corrupt payments. Under the agreement Oxenbridge was to be engaged by PCG as a consultant, and monthly invoices would be sent from Oxenbridge's email address to PCG, for \$5,000 plus GST. Oxenbridge did not render any services for these payments, nor was that expected. As a result of the arrangement Walker prepared a letter of agreement dated 25 May 2012.

[59] Subsequently, invoices were rendered and funds were then paid by PCG into Bojangles' business account, operated by Wulff and Oxenbridge. A total of \$99,000 was paid from PCG to Bojangles over 18 transactions between 14 June 2012 and 6 November 2013. This represents the quantum for Oxenbridge in relation to the charge.

Payments to Bojangles (Qld) Pty Ltd – CBA Account (064-000) 12538265				
<i>No.</i>	<i>Date</i>	<i>Bank Statement Reference</i>	<i>Account paid from</i>	<i>Amount</i>
1	14 June 2012	Internet Transfer PCG Inv	NAB 541509838 Claude John Walker	\$5,500.00
2	9 July 2012	Internet Transfer July Retainer	NAB 541509838 Claude John Walker	\$5,500.00
3	6 August 2012	Internet Transfer August Inv	NAB 541509838 Claude John Walker	\$5,500.00
4	7 September 2012	Internet Transfer Consulting Service	NAB 541509838 Claude John Walker	\$5,500.00
5	3 October 2012	Internet Transfer Oct Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
6	5 November 2012	Internet Transfer Nov Inv	NAB 541509838 Claude John Walker	\$5,500.00
7	5 December 2012	Internet Transfer December Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
8	7 January 2013	Internet Transfer Jan 2013 Consult	NAB 541509838 Claude John Walker	\$5,500.00
9	4 February 2013	Internet Transfer Feb 2013 Invoice	NAB 541509838 Claude John Walker	\$5,500.00
10	4 March 2013	Internet Transfer Mar 2013 Retainer	NAB 541509838 Claude John Walker	\$5,500.00
11	3 April 2013	Internet Transfer PCG April 2013 Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
12	6 May 2013	Internet Transfer Inv May 2013	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
13	3 June 2013	Internet Transfer June 2013 Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
14	1 July 2013	Internet Transfer June 2013 Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
15	5 August 2013	Internet Transfer PCG Aug 2013 Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00

16	27 August 2013	Internet Transfer Sept Inv	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
17	2 October 2013	Internet Transfer SCS – 0003	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
18	6 November 2013	Internet Transfer Inv SCS-0005	NAB 139820660 Professional Consulting Group Australasia Pty Ltd ATF CJ & G Walker Family Trust	\$5,500.00
Total				\$99,000.00

[60] In total \$104,000 was corruptly received by Wulff from Walker, including the initial two cash payments.⁸ This represents the quantum for Wulff and Walker regarding the charge.

Walker's version

[61] Walker stated that it was Oxenbridge who came to him with the suggestion of this consultancy arrangement. He said they initially had a conversation about inefficiencies at CASA and he expressed an interest in trying to implement an “improvement program” with CASA. He said she then called him and “offered her services”. At this time he realised that she wanted payments for nothing. He spoke with Wulff about the proposed arrangement and discussed the terms of a contract. He was uncomfortable with the arrangement and sought assurances that there was no chance of the arrangement “coming out”.

[62] He prepared a letter of agreement dated 25 May 2012 which set out the following:

- (a) Oxenbridge would assist in a role in the area of “Business Development Research and Strategic Planning”;
- (b) she was not to do work for the Council due to conflicts of interest;
- (c) she would undertake work on a needs basis; and
- (d) she would be paid \$5,000 a month with the expectation that she would perform 20-25 hours per month.

Wulff's version

[63] Wulff states that it was Walker who approached him and offered this kickback arrangement in order to expand his business and acquire more work with other councils in the area of flood and restoration. He said Walker offered to put him on a retainer arrangement through Bojangles, at a rate of \$5,000 per month plus GST. Wulff said he provided his wife's email address to use as he did not have a personal email account. He then sent an invoice each month from his wife's email account. He said no consultancy services were ever provided and the agreement was a ruse to cover the payments to his business. Wulff maintained that Oxenbridge did not know about this arrangement.

⁸ Oxenbridge was not a party to those two initial cash payments.

Oxenbridge's version

- [64] Oxenbridge told police that Walker instigated the agreement and that Wulff had told her the arrangement was for him to assist Walker in gaining consultancy work with other councils involved in flood restoration projects. Wulff told her that her name was on the invoices instead of Walker because he could not have his name as a consultant given the conflict of interest that arose due to him renting the apartment.
- [65] The corrupt arrangement ceased when it became public that Walker was renting the apartment owned by Wulff and Oxenbridge, and that the Council were reimbursing the rent. This led to the resignation of Wulff from the Council and a subsequent strain on the relationship between the parties. Walker and his wife wished to return to Melbourne when Walker's contract with the Council ended in June 2014. He spoke with Wulff about selling his wife's share of the unit in Hamilton and ultimately accepted \$75,000 from Wulff.

Arrest and charges

- [66] Innes provided a formal statement to the CCC on 28 September 2017.
- [67] On 5 October 2017 Wulff and Oxenbridge were arrested, charged and released on bail. Both declined to be interviewed by police at that time.
- [68] On 8 November 2017 Myers was charged and provided a statement to the CCC.
- [69] On 28 March 2018 Oxenbridge provided a statement in which she made admissions as to her role in this offence. She stated that the retainer arrangement and the conflict of interest in relation to the apartment caused her significant embarrassment and distress, and it was this that resulted in her resignation from CASA in January 2014.
- [70] On 17 April 2018 Wulff provided a statement in which he made admissions as to his role in the offence, confirming that the structure of payments was a ruse to cover payments to support their struggling business.
- [71] On 16 May 2018 Walker provided a statement in which he made admissions as to his role in the offence, and accepted that the arrangement entered into with Oxenbridge was "sham" arrangement for the purpose of "greasing the palms" of Wulff.

The applications for leave to appeal

- [72] I intend to deal with each applicant for leave to appeal, in the order Wulff, Oxenbridge, Myers and then Walker.
- [73] For each of Wulff and Oxenbridge, the two schedules summarised above are applicable. For Myers, only the facts in paragraphs [9] to [46] above are applicable. For Walker, only the facts in paragraphs [47] to [71] are applicable.

Application for leave to appeal by Wulff***Additional matters added without objection***

- [74] In the course of the sentencing hearing a number of matters were added to the factual background, without objection by the prosecutor.
- [75] A bundle of material was tendered containing character references, a psychologist's report and documents relating to Wulff's employment as at the date of sentencing.⁹ In addition Exhibit 5 was tendered, containing an offer by Wulff to the Crime and Corruption Commission, under which he proposed an education program which he would carry out to educate councillors about the dangers of corruption.
- [76] The character references came from a combination of people who had previously worked with or for Wulff, his family and friends. The quality of some of the references was lessened by the fact that the particular author did not know the details of the charges being faced by Wulff, or had derived their knowledge from media reports. Nonetheless the character references spoke of Wulff in a praiseworthy way, referring to his strong leadership, diligence, sound knowledge of commercial realities, business acumen, leadership qualities, integrity and honesty, and loyalty to his family and friends. The many statements about how Wulff exhibited honesty and integrity through those dealings had to be tempered by the fact that Wulff's admitted offences were entirely to the contrary, and his admitted offence of attempting to pervert the course of justice was completely at odds with such an assessment.
- [77] The material contained a report from Dr Hatzipetrou,¹⁰ a psychologist. That report detailed Mr Wulff's history and upbringing, all of which were largely unremarkable. He had completed schooling and then completed a Bachelor of Civil Engineering degree as well as a Masters of Business Administration. He had always been in employment of one sort or another, eventually in positions of high trust with local councils. His relationship with his family was good, and insofar as personal relationships had not succeeded, there were prosaic reasons for that.
- [78] Dr Hatzipetrou found no personal history of physical or mental deficiencies, nor any drug or alcohol history relevant to what occurred. Based upon what Wulff told him he identified that the offending was because Wulff's judgment and decision making had been affected by a number of particular factors, giving him a "misaligned moral compass".¹¹ Those factors included:
- (a) confrontation with multiple financial pressures stemming from his investments;
 - (b) a state of desperation and panic as his financial plans unravelled;
 - (c) coincidentally, the deteriorating health of his father, who had dementia and multiple health complaints;
 - (d) the reinforcement of the offending behaviour by receiving the financial payments which addressed his own personal financial problems; and
 - (e) together with the increased financial strain, increasing episodes of anxiety, stress and irritability.¹²

⁹ Exhibit 4, AB 116-166.

¹⁰ AB 146.

¹¹ AB 159.

¹² AB 158-159.

- [79] The risk of re-offending was found to be low based on the findings in the report, Wulff's age, lack of criminal history and his current relationship with Oxenbridge. There was no evidence of previous criminality or anti-sociality and there were "a raft of protective factors that mitigate the risk of re-offending".¹³
- [80] The material indicated that Wulff had obtained employment as a traffic controller¹⁴ and his offer of assistance to the CCC was to engage with local councils to give them an insight into the consequences of corruption. Whatever benefit flowed from that offer had to be tempered by the fact that some of Wulff's recitation of how the offending occurred minimised Oxenbridge's involvement, contrary to the agreed facts.¹⁵
- [81] In the course of submissions at the sentencing hearing, that material was covered by Wulff's Counsel. It was said that it demonstrated that his offending was aberrant in terms of his general character and in the manner in which he had conducted himself in his life up to that time.¹⁶ The learned sentencing judge observed that the character references were not consistent with the offending, a point accepted by his then Counsel. No further relevant facts were advanced beyond the scope of the character references and the psychologist report.

Submissions

- [82] Counsel for Wulff contended that there were a number of mitigating factors which were not given adequate weight by the learned sentencing judge. It was said that had appropriate weight been given to those factors then the point at which Wulff's release was fixed would have been less than the 20 months imposed. Those factors included:
- (a) Wulff's extensive co-operation;
 - (b) his age, lack of criminal history, his career in local government, and the "otherwise impeccable antecedents and good character";
 - (c) his remorse;
 - (d) his obtaining and maintaining employment in the years since the offences were committed;
 - (e) the fact that his motivation was a desire to avoid his financial detriment, rather than greed;
 - (f) the cognitive distortions which affected his thinking; and
 - (g) the negligible risk of reoffending.
- [83] Whilst acknowledging that there was no fixed rule to set release at one-third of the sentence where a plea of guilty was entered, it was submitted nonetheless that it was a common or normal practice.¹⁷ Relying on *R v Hoad*¹⁸ it was submitted that the

¹³ AB 159.

¹⁴ A stop/go man.

¹⁵ For example, the fourth paragraph at AB 178.

¹⁶ AB 56.

¹⁷ Relying on *R v Ungvari* [2010] QCA 134 at [30]; *R v Blanch* [2008] QCA 253 at [24]; *R v Crouch*; *R v Carlyle* [2016] QCA 81 at [29]; *R v Jamieson* [2016] QCA 11 at [48]; and *R v Kendrick* [2015] QCA 27 at [43].

¹⁸ [2005] QCA 92.

various factors warranted a reduction of the time to be served before release, to below 20 months, formulated as being “a substantial reduction”.

[84] In oral address before this Court four factors were relied upon to demonstrate that the sentence was “unreasonable or plainly unjust” within the meaning of *House v The King*¹⁹ and *R v Pham*.²⁰ It was submitted that but for those four factors the sentence otherwise imposed adequately reflected the competing or contradictory factors of the seriousness of the offending and matters personal to Wulff. The four factors were:

- (a) [Redacted];
- (b) Wulff’s migration status; whilst acknowledging that Wulff would face hardship if deported, the learned sentencing judge imposed a sentence where there was an incongruity between the structure of the sentence and the manner in which the migration status was taken into account;
- (c) Wulff’s co-operation in relation to the confiscation proceedings required that credit be given for it;²¹ and
- (d) Wulff’s co-operation with the CCC was unusual and had a potentially enduring significance.

[85] For the respondent, it was submitted that a contention that a sentencing judge has placed “insufficient weight” on matters was not an allegation that the sentencing judge acted on a wrong principle, took into account extraneous or irrelevant matters, mistook the facts, or failed to take into account a material consideration in terms of the principles in *House v The King*.²² In this regard reliance was placed upon *R v Coutts*²³ where that principle was noted.

[86] Further, the circumstances of the offending, to which regard had to be paid under s 9(2)(c) of the *Penalties and Sentences Act 1992* (Qld), meant the sentence imposed was not manifestly excessive. The offender was the Chief Executive Officer of a city council, there was an egregious breach of trust, and the offence was one of official corruption which struck at the heart of society and called for strong deterrence.²⁴

[87] [Redacted].

[88] By reference to various comparable authorities²⁵ the sentence imposed also could not be said to be manifestly excessive. The sentencing judge took the co-operation into account and there was no reason to consider that Wulff was likely to be a severe risk of retaliation whilst in custody. That co-operation came after the provision of statements by Innes, Myers and Oxenbridge, albeit that Wulff did not know about their co-operation at the time. Whilst the plea of guilty was early, it was submitted that the Crown case was very strong, and no true remorse had been

¹⁹ (1936) 55 CLR 499 at 505.

²⁰ (2015) 256 CLR 550 at 559.

²¹ Relying on *R v Ly*; *R v Kyprianou* [2008] QCA 149 at [42].

²² (1936) 55 CLR 499 at 505.

²³ [2016] QCA 206 at [4].

²⁴ Referring to *R v Gmeinder* [2001] QCA 354 at [4].

²⁵ *R v McNamara and Gray*, unreported, Court of Criminal Appeal, Qld, CA No 342 of 1990; CA No 343 of 1990, 26 March 1991; *R v Swift* [1999] QCA 94; *R v Gmeinder* [2001] QCA 354; *R v Nuttal* [2011] 1 Qd R 270; *R v Nuttall*; *Ex parte Attorney-General* [2011] 1 Qd R 270; *R v Harndon* [2003] QCA 340; *R v Maxwell* [2018] QCA 17; and *R v Mackay* [2019] QCA 97.

demonstrated, particularly when one had regard to the offence of attempting to pervert the course of justice. Further, the offer to co-operate with the CCC was made late in December 2018 at a time when the sentencing hearing had already been set down.

- [89] It was submitted that all mitigating factors were taken into account by the learned sentence judge, including the risk of deportation.

Discussion

- [90] For a number of reasons I am unable to conclude that the sentence imposed on Wulff was manifestly excessive.

- [91] First, all of the considerations raised before this Court by Counsel on behalf of Wulff have to be seen in the overall context of the seriousness of the offending. This was not a low-level employee engaging in minor forms of official corruption. Wulff was the Chief Executive Officer of the Ipswich Council, and therefore at the pinnacle of the non-councillor officers employed by the Council. He was responsible for all others below him, and the honest and efficient management of the Council's affairs. He was centrally involved in the instigation of two corrupt schemes by reason of which he directly received more than \$130,000 from the Myers scheme, and more than \$100,000 in respect of the Walker scheme. Wulff was centrally engaged in the planning of relatively sophisticated steps to camouflage the truth of the arrangements and the fact of the payments. In all of those matters Wulff was, as the learned sentencing judge found, a willing and enthusiastic participant.

- [92] When the whole thing began to unravel because of the CCC's investigation, Wulff took steps to persuade others to join him in lying to the CCC about the arrangements and thereby thwart the investigation. He thus exhibited a propensity not only to lie himself, but to encourage others to lie on his behalf. His attempt to pervert the course of justice takes his offending beyond mere official corruption, and into a more serious category of offending. The corrupt arrangements were an egregious breach of trust insofar as the Council and its officers are concerned, but the attempt to pervert the course of justice strikes well beyond the Council, and at the heart of the legal system in place for the benefit of all members of the community.

- [93] Secondly, [Redacted].

- [94] [Redacted].

- [95] [Redacted].

- [96] [Redacted].

- [97] Thirdly, the deportation issue was taken into account by the learned sentencing judge. His Honour said:²⁶

“You are not an Australian citizen and, consistent with the authorities to which I have referred, I have regard to the likely hardship, identified by the psychologist in exhibit 15 that would

²⁶ AB 99 lines 8-12.

follow from the prospects of deportation. Were it not for that, then I would have imposed a sentence that could not have attracted a suspension.”

[98] His Honour was plainly indicating that he had taken into account the risks attached to deportation and by that method brought the head sentence in at five years rather than something higher. A sentence of five years permitted his Honour to suspend it, whereas something higher would not. In that respect there was plainly a discount given to acknowledge the risk of deportation.

[99] [Redacted].

[100] The final two aspects of the cooperation relied upon can be dealt with together. They are Wolff’s cooperation in relation to the confiscation proceedings and his offer to assist the CCC in the future. In each case it was acknowledged that his Honour had adverted to those factors, and that is so. As to the assistance in the confiscation proceedings the learned sentencing judge referred to *R v Ly*,²⁷ indicating that he would approach the matter as thereby mandated, namely recognising that it can be factor to be taken into account in a general way when considering remorse, rehabilitation and cooperation.²⁸ Similarly, the learned sentencing judge adverted directly to the offer to the CCC, and the response.²⁹

[101] It is true to say, as Counsel for Wulff submitted, that such cooperation is beyond the ordinary level. However, inevitably such mitigating features are balanced against the objective seriousness of the offending, and the need for condign punishment. Here the offending was of such an egregious character that it called for the imposition of a substantial period of actual imprisonment: see paragraph [91] above. Given that Wulff was centrally involved in each of the corrupt arrangements designed to benefit himself, and solely the instigator of the attempt to pervert the course of justice, the task of demonstrating that 20 months’ actual custody is manifestly excessive cannot, in my view, be achieved.

[102] Further, when one compares the degree of objective criminality of the other offenders, and the sentences imposed upon them, it becomes even more difficult to demonstrate manifest excess in Wulff’s case. Oxenbridge, who was involved in the two corrupt schemes but not the aggravating offence of attempting to pervert the course of justice, received a sentence requiring her to serve nine months. A similar sentence was imposed upon Walker who was involved only in one count of official corruption but who participated centrally in setting up the false arrangements designed to camouflage the events. A lesser sentence was imposed on Myers, whose offending consisted only of one count of official corruption, but who had the powerful mitigating factor of bringing to light Wulff’s attempt to pervert the course of justice. Set against them is the level of offending by Wulff, reflected in paragraph [91] above. His involvement at the heart of all offending, particularly given his position in relation to the Council, was of such a nature that it cannot be said to be beyond the scope of appropriate sentencing discretion to impose a period of actual custody amounting to 20 months.

[103] Finally, even acknowledging that Wulff had undone the monetary aspect of offending, through the compensation proceedings, and had taken unusual steps in terms of his

²⁷ [2008] QCA 149.

²⁸ AB 95 lines 38 – 43.

²⁹ Exhibit 14.

offer with the CCC, I am unable to accept the submission advanced on his behalf that he thereby “effectively undid the damage or potential damage done”.³⁰ Official corruption of this kind damages the fabric of society in ways which are not directly salved by the repayment of the money and public expressions of regret. As was said in *R v Gmeinder*:³¹

“Official corruption strikes at the health of society and unless strongly deterred has a ready capacity to spread. The honest administration of our system of government is a very important and fundamental matter that needs support from the Courts.”

- [104] That passage was adopted recently by this Court in *R v Mackay*³² and remains as sound today as it was when stated by Thomas JA.
- [105] When one adds into the offending conduct the fact that Wulff attempted to pervert the course of justice by persuading others to join him in lying to the CCC, and thus hiding his admittedly corrupt behaviour, the seriousness becomes such that it would be an affront to the community had the period required to be served in actual custody been significantly lower than that imposed.
- [106] For these reasons Wulff’s application for leave to appeal against sentence should be refused.

Application for leave to appeal by Oxenbridge

Additional matters added without objection

- [107] On behalf of Oxenbridge it was submitted at the sentencing hearing that the large volume of references tendered, both as to character and her professional life,³³ should lead to the conclusion that her offending was an aberration and there was no risk of committing further offending.
- [108] Some of her background was referred to. She had an unexceptional upbringing, completing schooling and then pursuing university studies, where she eventually obtained a Master of Science. She then worked with various city councils, obtaining an MBA as a post-graduate degree. Eventually she was employed by CASA in a senior position. She left that role when it became public that the unit at Hamilton was rented to Walker. However, she subsequently worked at a high level with Occupational Therapy Australia.
- [109] Dealing with the first corrupt arrangement, that with Walker, it was said that none of the emails or invoices which were designed to show a legitimate consulting arrangement were authored or sent by her. However, she knew about them, and allowed her husband to use her personal information and email account, and was therefore criminally responsible as a party to those actions.
- [110] The references in Exhibit 13 included character references from her family and many from people with whom she had worked in one job or another. All of them praised her for her honesty and integrity, her professional approach to work, and her pursuit of an excellent career path. One of the references from a co-worker at CASA made particular mention of her professionalism and strength of character,

³⁰ As was put by his Counsel, appeal transcript T1 – 31 lines 5 – 10.

³¹ [2001] QCA 354 p 4.

³² [2019] QCA 97 at [23].

³³ Exhibit 13, AB 267-299.

and that she was one of the very few females who held a management position at CASA. Other references referred to her voluntary work with Rotary, a golf club and in fundraising activities for charity days.

Approach of the sentencing judge

- [111] The learned sentencing judge commenced by noting the pleas of guilty on behalf of all of those who were charged, noting that no matter who initiated the agreement between Myers and Wulff, “all involved were willing participants”. His Honour then summarised the offending conduct, largely from the agreed schedule of facts. His Honour noted that Oxenbridge signed the contract which nominated her as consultant, fully aware that she would not be providing any consultancy work. The same was the case in respect of the corrupt arrangement with Walker, where his Honour noted that Oxenbridge was to be engaged as a “consultant”, with monthly invoices sent from her email address, with her knowledge, invoicing the payments. Oxenbridge knew that no consultancy services were ever intended. His Honour found that Oxenbridge “knowingly aided and encouraged that corrupt agreement by allowing Wulff to use your email address and to utilise the company structure of Bojangles for falsely invoicing the corrupt payments as being work that you had actually performed”.³⁴
- [112] The learned sentencing judge then referred to the personal antecedents of Oxenbridge, noting that she had no prior convictions and had entered a plea of guilty at an early stage. In addition, she had co-operated with investigators by providing a statement, but that followed the ones already provided by Innes and Myers, and therefore a strong case already existed against her. Nonetheless her co-operation was taken into account, particularly the fact that she was the first to produce a detailed statement outlining her involvement in the offence involving Walker, and she refused to co-operate with Wulff in his attempt to mislead the investigation.
- [113] His Honour referred to Oxenbridge’s good employment record and number of favourable references. His Honour accepted that Oxenbridge was not involved in the instigation of the offending, or even in actually issuing any of the bogus invoices, but she did sign the contract which nominated her as consultant, aware at the time that she would not be performing that work. Further, she knowingly allowed her email account to be used to facilitate the arrangement, and to use the company structure of Bojangles to falsely invoice corrupt payments as being work she had performed. His Honour went on:³⁵

“I accept, however, as the learned Crown Prosecutor put it, that you were at: “arm’s length” in terms of aiding and encouraging the offending. From your side of the corruption, I accept that your husband was the principle [sic] driver. You told the authorities that you acted under: “*a level of coercion*” by Wulff, relating to your financial problems. I accept that to be so but nevertheless, you benefited financially from this offending and your involvement was an essential part of the scheme.”

- [114] When the sentence was imposed the learned sentencing judge also said:³⁶

³⁴ AB 94 lines 40-43.

³⁵ AB 97 lines 14-25.

³⁶ AB 99 lines 25-31.

“I am conscious of the authorities which deal with parity in the sentencing of co-offenders. Though you are charged with two offences, Oxenbridge, I accept the Crown’s submission that your involvement was at arm’s length and that you acted under what has been described as a level of coercion by Wulff in relation to your joint financial positions. In the end, I have concluded that your overall criminality is comparable to that of Walker.”

Submissions

- [115] For Oxenbridge it was submitted that her circumstances differed from the other co-offenders, in that she did not instigate or organise the arrangements, and her involvement “was because she was married to the offender Wulff”.³⁷ It was contended that the sentence did not sufficiently reflect the different nature of her culpability and that a period of actual custody to be served made the sentences imposed manifestly excessive.
- [116] Further, it was submitted that the proper application of the parity principle called for Oxenbridge’s sentence to be reduced relative to the sentence imposed on the offender, Walker.³⁸ The fact that Oxenbridge was married to the principal offender, participated at “arm’s length”, and aided her husband after she had been subject to “a level of coercion by Wulff in relation to your joint financial positions”, meant that a period of nine months’ actual imprisonment was manifestly excessive. The element of marital coercion was absent in Walker’s offending, and he was a person directly involved in the instigation of the corrupt arrangement. On that basis, it was said, Oxenbridge had a legitimate sense of grievance in receiving the same sentence as Walker
- [117] For the respondent it was submitted that true considerations of parity for Oxenbridge lay in considering the sentences imposed on Wulff, rather than Walker. Oxenbridge had the same two official corruption offences as did Wulff, although Wulff had the additional offence of attempting to pervert the course of justice. Walker on the other hand was sentenced only in respect of one of the two offences committed by Oxenbridge.
- [118] Further, it was submitted that the contention that Oxenbridge was sentenced on the basis that she had not encouraged Wulff was incorrect. The learned sentencing judge expressly found that she was a party in terms of “aiding and encouraging”, albeit at “arm’s length”. Her participation in signing the consultancy contract knowing it was false, and permitting the fraudulent invoices to be sent and payments made justified the conclusion that she was a willing participant who knowingly aided and encouraged the corrupt arrangement. In addition, she benefitted financially from the payments that were put through Bojangles. Therefore the sentence was not manifestly excessive, nor contrary to the parity principles.

Discussion

- [119] The parity principle which is at the heart of this contention was summarised in *R v Illin*:³⁹

³⁷ Applicant’s outline, para 1.1.

³⁸ Each of Oxenbridge and Walker were sentenced to three years’ imprisonment, suspended after serving nine months.

³⁹ (2014) 246 A Crim R 176 at [24].

“... The “parity principle” is designed to ensure equality before the law and takes into account that equal justice according to law generally requires that “like cases be treated alike” and that there be “differential treatment of persons according to differences between them relevant to the scope, purpose and subject matter of the law”: *Green v The Queen* (2011) 244 CLR 462 at 472 – 473 [28] (French CJ, Crennan and Kiefel JJ). In order to achieve those objectives, an appellate court may interfere with a sentence which is not manifestly excessive if, upon an objective analysis, a disparity between that sentence and the sentence of a co-offender may give rise to a legitimate sense of grievance or create the appearance that justice has not been done; conversely, the parity principle does not justify interference in a sentence where its disparity with the sentence of a co-offender is explicable by differences in the circumstances of the offences or the offenders’ personal circumstances: see *Lowe v The Queen* (1984) 154 CLR 606, *Postiglione v The Queen* (1997) 189 CLR 295, and *Green v The Queen*.”

- [120] I am unable to conclude that the sentence is either manifestly excessive, or offends the parity principles. There are a number of reasons for that conclusion.
- [121] First, Oxenbridge was charged with official corruption in relation to two arrangements, one with Walker and one with Myers. In each case she was a willing participant who knowingly aided and abetted those corrupt arrangements by signing false documents, permitting false invoices to be issued, and permitting her company, Bojangles, to be used to funnel money to Wulff and herself. As the learned sentencing judge found, Oxenbridge’s involvement “was an essential part of the scheme”. The learned sentencing judge’s reference to her being at “arm’s length” was simply a reflection of the fact that she did not make the arrangements, but merely aided and encouraged them.
- [122] That participation has to be seen in context. The accepted facts concerning Oxenbridge, and the references which testify to her past qualifications and experience, reveal her to be a highly intelligent, skilled and experienced businesswoman, quite capable of operating at high management levels and dealing with difficult problems. Oxenbridge is not a person who could claim to have not known the significance of what was being done, or the illegality and immorality of it.
- [123] Secondly, it is true that the learned sentencing judge accepted that Wulff was the principal instigator of the two corrupt arrangements. It is also true that his Honour accepted that Oxenbridge acted under what was described as a level of coercion by Wulff in relation to their financial problems. However, those financial problems were not just affecting Wulff, but also Oxenbridge. It is, in my respectful view, no excuse to say that her participation in corrupt arrangements that directly benefited her in a financial way, being \$104,000 from the Walker arrangements and close to \$140,000 from the Myers arrangements, should be watered down because of financial pressure felt by Wulff and herself. Corruption striking at the heart of government, even on a local level, can hardly be washed away by the offender saying they needed the money.
- [124] Thirdly, in terms of parity considerations, Walker was only charged with one offence relating to his own corrupt arrangement. Oxenbridge was charged with two offences, one relating to the Walker arrangement and the other relating to the Myers arrangement. On any view, even allowing for the fact that Walker was one of those

who instigated the arrangement, Oxenbridge's involvement was at a greater level in terms of the financial benefit derived from both corrupt schemes. The fact that Oxenbridge received the same sentence as Walker is a reflection of what his Honour said when passing sentence upon her. It was that her involvement was at arm's length,⁴⁰ and that she acted under the coercion from joint financial positions. That is a factor absent in Walker's own offending. Therefore there can be no justifiable sense of grievance on the part of Oxenbridge at the fact that her sentence was the same as Walker. But for those considerations she might have received a higher sentence.

[125] Fourthly, as was said in *R v Gmeinder*⁴¹ official corruption strikes at the heart of society and unless strongly deterred, has a ready capacity to spread. The honest administration of the system of government is important and a fundamental matter that needs support from the courts. As the learned sentencing judge said, this corruption went to the heart of local government, calling for general deterrence and public denunciation. In my respectful view, a sentence for Oxenbridge that had no element of actual custody would be an affront and unjust. This was a case of the wife of the CEO of the Council actively participating in corrupt arrangements in respect of which close to \$240,000 was paid, and sophisticated efforts taken to hide that from public view. Whilst it is to Oxenbridge's credit that she co-operated as closely as she did with authorities, that does not call for a wholly suspended sentence, much less create a set of circumstances in which it was not open to the learned sentencing judge to do otherwise but impose a wholly suspended sentence.

[126] [Redacted].

[127] [Redacted].

[128] For the reasons stated above Oxenbridge's application for leave to appeal against sentence should be refused.

Application for leave to appeal by Myers

Additional matters added without objection

[129] In the course of submissions for Myers at the sentencing hearing a number of additional facts were advanced, without objection from the prosecutor.

[130] Ten character references were supplied as part of the material on behalf of Myers. There is no need to rehearse them all as they uniformly attested to Myers' good character, honesty and valuable work in various positions including on the boards of public bodies.⁴² Those character references also urged that Myers' involvement in the official corruption was an abhorrent act, completely uncharacteristic of his nature.

[131] In addition, a report from a psychologist was tendered. The report noted a largely unexceptional childhood, even acknowledging that he was bullied by his older brother, and at school, and his mother suffered mental health problems described as "nervous breakdowns".⁴³ Myers had reported difficulties consistent with a significant depressive experience, and some suicidal ideation, though it was noted

⁴⁰ This is to be understood as meaning not an instigator of either arrangement.

⁴¹ [2001] QCA 354.

⁴² AB 237-246.

⁴³ AB 222-223.

only a small percentage of individuals who entertained such thoughts actually acted upon them. The conclusion was that he suffered from a depressive experience, characterised as severe anxiety and depression. There was no evidence to suggest that he was suffering from a diagnosable mental health condition during the period of offending. The report noted a significant change in his life since discovery of the official corruption and the loss of respect in the corporate world had caused him great loss to his self-worth. In addition to those mental health issues, he had developed chronic pain in his lower back as a result of degeneration in his spine.

- [132] The psychologist’s report said that Myers had developed excellent insight into the reasons behind his offending, ascribing his involvement to his trusting nature, lack of assertiveness and his desire to please others to gain their approval. It was said he had demonstrated extreme remorse for his offending.
- [133] The psychologist concluded that the offending was out of character and driven by the desire to please others in order to keep his self-esteem intact. His various health conditions were noted, including his likely difficulty in navigating a prison environment, however these were expressly disavowed during the course of submissions as meaning that a term of imprisonment would be unduly harsh upon him.⁴⁴ The report concluded that ongoing counselling was warranted, noting that he had engaged with the psychologist for about 12 months at the time of sentencing.
- [134] Myers’ CV was also tendered,⁴⁵ and revealed an extensive career including positions of trust on the boards of public companies and government bodies.

Approach of the sentencing judge

- [135] In the course of referring to the arrangement involving Myers, and the payments under the “guise of a bogus consulting agreement”, his Honour noted that there was a conflict about who actually initiated the corrupt arrangement, and, whilst it was not possible for his Honour to resolve that question, his Honour found that “all involved were willing participants”.⁴⁶
- [136] When referring to Wulff’s involvement in the corrupt arrangement of which Myers was part, his Honour referred to the offending as “sophisticated” involving the use of the company structure of Bojangles and bogus invoices to camouflage the payments. His Honour also noted the corruption extended over a lengthy period of time, and the amount of money was considerable.
- [137] Turning to Myers’ particular situation, the learned sentencing judge noted various factors about his personal circumstances including:
- (a) his age and lack of any criminal history;
 - (b) a plea of guilty; and
 - (c) his co-operation which involved providing a lengthy statement as well as becoming involved in covert recordings of conversations with Wulff on two occasions.
- [138] His Honour described Myers’ involvement as being “in a significant way in the formation of the corrupt agreement with Wulff”, and that arrangement having a

⁴⁴ AB 79 line 46 to AB 80 line 10.

⁴⁵ AB 250.

⁴⁶ AB 93 line 45.

level of “sophistication about the payments, which were disguised on the pretence of Oxenbridge performing the consultancy work”. His Honour then noted that notwithstanding the conflicting versions as to how the scheme was initiated, “there is no doubt you were an enthusiastic participant”.⁴⁷

- [139] The learned sentencing judge took into account the co-operation given by Myers, noting that “full notice of the corrupt payments made to Wulff and Oxenbridge’s company only became clear to the police because of your cooperation”.⁴⁸ His Honour found that there was no identifiable risk of personal harm arising from that co-operation, “although the potential for such harm within the prison environment cannot be entirely discounted”.⁴⁹
- [140] His Honour then referred to the mitigating features including the loss of reputation in the business world, the report from the psychologist and Myers’ health issues.
- [141] The learned sentencing judge referred to the decision in *R v Gmeinder*⁵⁰ and a passage where official corruption was said to strike at the heart of society. His Honour observed that the conduct in which Myers had engaged⁵¹ was “conduct which can only serve to undermine public confidence in local government”. His Honour continued:⁵²

“I have considered carefully the many character references that have been tendered on your behalf. In my view, their worth falls to be assessed in the context of the nature of your offending and the period of time over which that offending occurred. I have regard to those matters that have been urged in your favour, but you must be punished for what you did. This was corruption going to the heart of government at local level. General deterrence and the need for public denunciation of such conduct are, in my assessment, important considerations in this case.”

- [142] In closed Court the learned sentencing judge noted that the sentences imposed had been reduced under s 13A of the *Penalties and Sentences Act* 1992 (Qld). His Honour set out the principles that were applicable, referring to cases including *R v de Figueiredo*,⁵³ *R v FAF*,⁵⁴ *R v KAK*,⁵⁵ *R v Gladkowski*,⁵⁶ and *R v Sittzenko; Ex parte Director of Public Prosecutions (Cth)*.⁵⁷ His Honour then noted that the authorities established that although there was an important emphasis to be placed on the subjective nature of the cooperation, regard must be had to the value of the cooperation and to the risk it posed on the personal safety on the individual accused, “ensuring always that any reduction does not result in a sentence which affronts community standards”.

⁴⁷ AB 97 lines 30-39.

⁴⁸ AB 97 line 46 to AB 98 line 2.

⁴⁹ AB 98 lines 2-4.

⁵⁰ [2001] QCA 354.

⁵¹ As well as the others.

⁵² AB 98 lines 35-41.

⁵³ [2013] QCA 303 at [41].

⁵⁴ [2014] QCA 360.

⁵⁵ [2013] QCA 310 at [44].

⁵⁶ [2000] QCA 352 at [7].

⁵⁷ [2005] QCA 461 at [18].

[143] Having noted the essential features of the cooperation of all four participants, his Honour said:⁵⁸

“I have accepted the submissions made that there should be a substantial discounting of the sentences imposed on each of you, but in my assessment, the cooperation here is not of that high order which might attract the substantial discount recognised as being appropriate in some cases. Moreover, in the circumstances of this case, I see no reason to consider that any of you are likely to be at severe risk of retaliation from other criminals.”

[144] His Honour then identified that he would have imposed a sentence of three and a-half years imprisonment, suspended after nine months. His Honour said that the period of nine months had been “reduced from a period of 12 months, because of the cooperation referred to elsewhere”.

Submissions

[145] On the ground of manifest excess, it was contended that the requirement to serve six months in custody was excessive when one had regard to the level of past cooperation. It was contended that Myers was the first of the applicants to cooperate and at that time he was unaware that Innes had provided information. Therefore Myers’ cooperation manifested remorse. Secondly, Myers participated by wearing a listening device and handing over notes given to him by Wulff. That provided the evidence which formed the basis for count 2, the attempt to pervert the course of justice. Thirdly, the learned sentencing judge found that the full extent of the corrupt payments only became clear because of Myers’ cooperation.

[146] It was said that the reduction from 12 months to nine months for all cooperation except future cooperation under s 13A of the *Penalties and Sentences Act* was insufficient. It was contended that, leaving aside s 13A cooperation, the appropriate sentence would have been three and a-half years’ imprisonment, suspended after six months. That would then have been further reduced to recognise the s 13A cooperation. As at the date of the appeal, Myers had served three months and 21 days, and should be immediately released.

[147] As for ground 2, it was contended that the circumstances under which Myers could expect to serve any custodial component of his sentence had been overlooked. Whilst the learned sentencing judge had regard to the risk which cooperation posed on a prisoner, and made an assessment of that, his Honour made no reference to the consideration that the applicant was to go into protective custody, and therefore into medium to high security. Referring to *York v The Queen*,⁵⁹ it was contended that it was necessary to take into account the conditions under which a prisoner, who had assisted authorities, would have to serve his sentence.

[148] For the respondent, it was contended that one could readily infer that the learned sentencing judge had taken into account the more onerous circumstances that Myers might face in custody, given that his Honour was well aware of the fact that Myers had given cooperation to the authorities, and the nature of that cooperation. The circumstances of Myers’ placement in protective custody was inextricably linked to any risk posed and that risk was referred to. His Honour’s finding that there was no

⁵⁸ T 1-4 lines 1-4.

⁵⁹ (2005) 225 CLR 466 at [3] and [38].

identifiable risk of personal harm arising from the cooperation, even though that risk could not be entirely discounted, indicated that his Honour had taken into account all relevant factors. Further, the cooperation extended in respect of the four participants in official cooperation, and no further. There was therefore no risk posed by other defendants or their associates.

- [149] As to the question of manifest excess, it was submitted that Myers' substantial involvement in the corrupt arrangement and his payment of over \$115,000 together with the finding that he was "an enthusiastic participant", made this a serious example of the offence. That warranted the sentence imposed, which was in accordance with submissions made on behalf of Myers at the sentencing hearing.

Discussion

- [150] The contention that the learned sentencing judge overlooked a material consideration, namely the circumstances under which Myers could be expected to serve any custodial component, must be rejected. There are a number of reasons for that conclusion.
- [151] First, the sentencing of all four participants in the counts of official corruption, and Wulff on the count of attempting to pervert the course of justice, was one which inevitably attracted a deal of publicity. The fact that all of them had, at one stage or the other, co-operated with the Crime and Misconduct Commission, given statements that implicated the others, and in Myers' case, participated in covertly recording conversations with Wulff which brought about the charge of attempting to pervert the course of justice, was publicly stated and in submissions in open court by both the prosecutor and defence counsel.⁶⁰ Indeed, Counsel for Myers made the point in open court that some of the submissions he would make would normally be in closed court but "because ... Mr Wulff is being sentenced for the offence of attempting to pervert the course of justice, it's appropriate that I speak about it in open court".
- [152] Secondly, the difficulties that Myers might confront in serving a period of custody were addressed by his Counsel at the sentencing hearing.⁶¹ That was in the context of his physical and mental condition, but the question of risk to him was addressed in the closed court session.
- [153] In the course of submissions Myers' Counsel urged the assessment of risk on the basis that "given the way these proceedings have played out, it will no doubt be widely publicised, if not today then certainly by tomorrow, that my client co-operated to the extent of obtaining evidence against Wulff. So there is absolutely no way it won't be known that he is an informer, if I can use a neutral term."⁶² It was in that context that a submission was made that Myers would have to go into protective custody, and the Wolston Correctional Centre was a medium and high security facility, where the opportunities to progress to low or open facilities were extremely limited.⁶³
- [154] Thirdly, in the sentencing remarks specific mention was made of the fact that by the time Wulff made his own statement, both Myers and Oxenbridge had already

⁶⁰ For example, AB 42 and AB 77-78.

⁶¹ AB 79 line 46 to AB 80 line 10.

⁶² T 1-14 lines 44-47.

⁶³ T 1-15 lines 1-9.

provided statements.⁶⁴ Specifically, express mention was made of Myers' co-operation in providing a lengthy statement, then "additional cooperation and cooperation which involved you covertly recording conversations with Wulff on two occasions and presenting to the authorities a document handed to you by Wulff, which forms the basis of the charge of attempting to pervert the course of justice".⁶⁵

[155] Fourthly, the learned sentencing judge made a finding that there was no identifiable risk of personal harm arising from Myers' co-operation, "although the potential for such harm within the prison environment cannot be entirely discounted".⁶⁶ It cannot have escaped the learned sentencing judge's attention that to speak of a risk of personal harm arising from the co-operation where that involves providing evidence against another offender is to raise the very question which might prompt protective custody.

[156] Fifthly, when dealing with the mitigating features advanced on behalf of Myers, the learned sentencing judge said:

"I have regard to those other matters that have been urged in your favour, but you must be punished for what you did."⁶⁷

[157] The reference to "other matters that have been urged in your favour", is, in my view, a reference to those matters which were urged as to the likelihood of Myers being detained in protective custody. In that respect I note that the sentencing took place on 15 February 2019, just over two months after the submissions were made. That meant that the learned sentencing judge had ample opportunity to study not only the written submissions, but the transcript of the closed court session.

[158] Finally, as was accepted during the sentencing hearing, there was no specific evidence about any particular threat arising from the level or type of co-operation by each of the offenders, but in particular Myers. It was in the course of discussing his sentence that the learned sentencing judge found there was no identifiable risk of personal harm, but acknowledged that its potential could not be entirely discounted. That, and his Honour's references to the authorities referred to in paragraph [142] above make it plain, in my view, that there was no overlooking of the impact in custody of Myers' co-operation.

Manifest excess

[159] The essential argument on behalf of Myers is that an insufficient discount was given in respect of his co-operation, both past and future. In what follows reference will be made to the nominal sentence stated in closed court under s 13A(7)(b) of the *Penalties and Sentences Act*. That is because Senior Counsel for Myers was content to make submissions concerning that aspect of the case in open court. Consequently the need to redact any passages is reduced.

[160] The sentence ultimately imposed on Myers was imprisonment for two and a-half years, suspended after having served a period of six months. No issue is taken before this Court as to the head sentence, nor the nominal head sentence announced in closed court. It had been contended at the sentencing hearing that the sentence

⁶⁴ AB 95 line 29.

⁶⁵ AB 97 lines 41-46.

⁶⁶ AB 98 lines 2-4.

⁶⁷ AB 98 lines 37-39.

should be wholly suspended. Before this Court that was not maintained, but rather it was said that the three months and 21 days already served reflected the more appropriate discount that should have been given for Myers' co-operation.

- [161] In closed court the nominal sentence was three and a-half years, suspended after a period of nine months. That sentence necessarily took into account all mitigating features with the exception of future co-operation under s 13A of the *Penalties and Sentences Act*. His Honour indicated that the period of nine months had already been reduced from a period of 12 months "because of the co-operation referred to elsewhere".
- [162] The "co-operation referred to elsewhere" is a reference to what had been said shortly beforehand as to a summary of Myers' co-operation. That comprised the provision of his statement before that given by Innes, but after those given by Wulff and Oxenbridge. That statement enabled the court to assess his criminality, "but also provides evidence against your co-offenders". His Honour then noted that Myers would not be required to honour his undertaking, given the pleas of guilty.
- [163] Had the nominal sentence reflected only a plea of guilty one might have expected a period of 14 months to be served. However, that was evidently reduced to 12 months for other mitigating factors. That seems plainly to reflect the material filed on Myers' behalf, as to his good character, blameless record, remorse and the unlikelihood of reoffending. Then the reduction made for past co-operation was to reduce the 12 month period to nine months. In my respectful view, that was a substantial discount given that his Honour had cited the authorities referred to in paragraph [142] above as to the comparative levels of appropriate discount balanced against the need to ensure that any reduction did not result in a sentence which affronted community standards. Further, his Honour had recognised that whilst there should be a substantial discounting "the co-operation here is not of that high order which might attract the substantial discount recognised as being appropriate in some cases".
- [164] In the result, therefore, the discount applied for future co-operation took the period to be served from nine months down to six months. Once again, in my respectful view, that is a significant discount given what his Honour had found about the seriousness of the offending, the fact that Myers' undertaking in respect of future co-operation would not be called upon, and the need to ensure that any sentence did not constitute an affront to community standards.
- [165] Ultimately, the sentence imposed, at least in terms of the period of custody to be served, reflected a discount from 14 months down to six months. On any view, that was a substantial discount. The difference between that and the nearly four months which is at the heart of the submission on Myers' behalf before this court, is not such as to lead to the conclusion that the six months is manifestly excessive. It is not surprising that Senior Counsel was unable to refer to any comparable authority which might suggest so.
- [166] In my respectful view, it cannot be demonstrated that the sentence imposed was manifestly excessive.
- [167] For the reasons given above Myers' application for leave to appeal against sentence should be refused.

Application for leave to appeal by Walker

Additional matters added without objection

- [168] During the sentencing hearing a number of additional matters were advanced, without objection by the prosecutor, principally in written submissions.⁶⁸ There is presently no need to descend into great detail; it suffices to summarise them:
- (a) Walker was between 55 and 56 at the time of offending, and 61 at the date of sentencing; he had a very dated criminal history though it did include offences of dishonesty and, in 1994, a suspended sentence of one month imprisonment;
 - (b) he was born in South Africa, of mixed race, and migrated to Australia in 1973; he was married with four children and five grandchildren;
 - (c) he had recently been diagnosed with atrial fibrillation and impaired heart function;
 - (d) he had completed schooling and then part of a mechanical engineering degree, but deferred those studies and began working as a trainee computer operator;
 - (e) various references established that he had an impressive work history, and colleagues and contemporaries spoke highly of his business acumen, honesty and bona fides in dealings;
 - (f) he held senior positions in telecommunications and software companies, and commenced his own company, PCG, in 2009/2010; and
 - (g) he retained two consultancy contracts as at the date of the sentencing, and continued to be involved with a global finance broker, and was the chair of a foundation to assist people suffering from endometriosis.⁶⁹
- [169] Part of the material tendered on Walker's behalf was a psychologist's report.⁷⁰ Apart from matters of personal history and his self-reported response to the offences, the report offered the opinion that at the time of the offending he was not suffering from any diagnosable mental health condition. However, he was now reporting symptoms of a reactive agitated depressive disorder, his condition being reactive to his legal situation, and the possibility that he would be incarcerated. The symptoms of that disorder would steadily resolve once he was dealt with by the court. Those symptoms would be exacerbated if he was imprisoned because of his genuine feelings of embarrassment, stupidity and remorse. He ascribed his offending as being caused by displaying a misguided sense of confidence in, and loyalty to, Wulff. The opinion was advanced that his risk of reoffending was minimal.
- [170] Other material on behalf of Walker included his CV, listing his various achievements over 30 years, and character references from his wife and other family members, and others with whom he had worked.

Approach of the sentencing judge

⁶⁸ AB 179.

⁶⁹ AB 182-184.

⁷⁰ AB 195.

- [171] The learned sentencing judge began by noting the pleas of guilty to the charges, and then summarised the offending conduct. His Honour noted that he did not have to resolve the dispute about who formulated the idea for the corrupt scheme in which Walker participated, but his Honour found that he and Wulff “were both willing and enthusiastic participants in the agreement”.⁷¹
- [172] When his Honour referred to Walker specifically, it was first to summarise his personal antecedents, noting that the criminal history included offences for dishonesty but which were “dated”, and were accompanied by penalties which suggested that offending “was not of the more serious type”.⁷²
- [173] The learned sentencing judge noted the timely plea of guilty, but found that Walker had involved himself “in a significant way, in the offence of official corruption”. He was directly involved in the formation of the agreement, as a consequence of which he paid more than \$100,000 to Wulff over a lengthy period of time. His Honour referred to the fact that there was an “element of sophistication”, using the company structure of Bojangles to camouflage the payments.
- [174] The learned sentencing judge referred to the plea of guilty and Walker’s co-operation, his long history of working with local governments, and the testimonials to his past good character. Further, that he had not reoffended during the five years since the corrupt arrangement, but his Honour noted that the charge had not hung over his head for that length of time.
- [175] The learned sentencing judge noted the fact that the conviction would impact upon his reputation and business dealings. His Honour referred also to the psychologist’s report and a medical report as to the heart issues. As to the latter, his Honour found that they “do not appear to be such as could not be adequately dealt with within a custodial environment”.⁷³
- [176] His Honour referred to the co-operation by Walker, which came after Oxenbridge and Wulff had provided statements, and therefore the case against Walker was already strong. However, his Honour accepted that Walker had indicated his intention to co-operate at an earlier time, and took that co-operation into account.
- [177] The learned sentencing judge considered that the level of criminality of Walker and Myers was comparable, but that Myers had an additional level of co-operation absent from that of Walker. His Honour also noted that the arrangement constituted conduct “which can only serve to undermine public confidence in local government”, referring to *R v Gmeinder*.⁷⁴

Submissions

- [178] Senior Counsel for Walker contended that the sentence was manifestly excessive to the extent that it required him to serve a period of actual imprisonment. It was said that such a sentence was inconsistent with s 9(2)(a) of the *Penalties and Sentences Act* 1992 (Qld). The submission was that a sentence that kept Walker in the community was to be preferred, and once s 13A considerations were added in, the sentence was “obviously excessive”.

⁷¹ AB 94 line 35.

⁷² AB 96 lines 1-2.

⁷³ AB 96 line 30.

⁷⁴ [2001] QCA 354.

- [179] As to the co-operation, it was submitted that Walker made a full statement to authorities as to his offending and that of Oxenbridge and Wulff, and even though it was finished after the other two, it signified “profound remorse”, which was supported by the references tendered on his behalf. The submission accepted that Walker’s undertaking to give evidence was not called on.
- [180] The challenge on the ground that the sentence was manifestly excessive did not attack the head sentence. Rather, it was contended that a wholly suspended sentence was warranted because the applicant was not the principal, there was no financial benefit and the other mitigation factors pointed away from a custodial sentence. In that respect the five year period since the offending, during which Walker had continued to be engaged in business and did not reoffend, signified that there should have been a non-custodial sentence.
- [181] It was also contended that by comparing the criminality of Walker with Oxenbridge and Myers, and even Wulff, the sentencing judge fell into error. The submission was that those people were not co-offenders and the comparison ran the risk of infringing the parity principle. The criminality of a person who is not a co-offender cannot even be said to be a “yardstick”, let alone a factor influential in the sentence.
- [182] Finally, it was submitted that the learned sentencing judge erred in the comparison he made. The nexus between Walker, Oxenbridge and Myers was Wulff. The error in assessing the degree of similarity between Walker, Oxenbridge and Myers was that the “benefit” received by all three was very different. Oxenbridge and Myers benefited financially whereas Walker did not.
- [183] The ultimate submission was that a wholly suspended sentence was the only one appropriate, or alternatively one that set the custodial element at time already served.
- [184] For the respondent it was submitted that the learned sentencing judge was entitled to have regard to the criminality of other defendants being sentenced at the same time, when regard is had to both the parity principle and general principles in relation to consistency in sentencing. Those issues were not conflated.
- [185] Walker was a co-offender with Wulff and Oxenbridge, but not a co-offender with Myers. The prosecutor, when dealing with the essential criminality of each offender’s conduct, started with Walker, then moved to considerations of parity with Oxenbridge and Wulff. Thus, the prosecutor did not lead the learned sentencing judge into error. When his Honour referred to the conduct of all four defendants that was not demonstrative of a failure to recognise those offenders to whom parity applied. Further, the sentencing judge was obliged to have regard to the sentences being imposed on others at the same time, to ensure consistency in sentencing.
- [186] It was submitted that where a comparison could be made, it was, and there was no real reason, by virtue of benefit obtained, to distinguish between Myers and Walker. The benefit to Oxenbridge was different in that it was an indirect benefit as a consequence of her being married to Wulff.
- [187] It was submitted that given there was no complaint about the indicative sentence, or the actual head sentence, what was really being contended was whether the reduction in relation to s 13A co-operation was sufficient in the circumstances. It

was submitted that the reduction could not be said to be unreasonable or plainly unjust.

Discussion

[188] In my view, the contention that the sentence is manifestly excessive should be rejected for a number of reasons.

[189] First, s 9(2)(a) of the *Penalties and Sentences Act* provides that "... a court must have regard to ... principles that ... a sentence that allows the offender to stay in the community is preferable". It does not mandate that such an order is appropriate in a particular case. All it does is direct the court to have regard to that principle. As to that this Court recently said, in *R v Oliver*:⁷⁵

"... The prescription that a sentence of imprisonment should only be imposed as a last resort and that a sentence that allows the offender to stay in the community is preferable is a reflection of community standards. In most cases it will be immediately clear whether or not a sentence of imprisonment is called for."

[190] What was said in *Oliver* cannot be seen as anything more than a general statement in relation to the principle in s 9(2)(a) of the *Penalties and Sentence Act*. It does not mandate the result in any particular case.

[191] Secondly, the offending here by Walker was rightly described as a serious case of corruption in which all were willing participants. Walker was involved in devising the plan under which \$104,000 was paid by him to Wulff, disguised by a fraudulent consultancy agreement, fraudulent invoices and payments intended to deliver a very significant financial benefit to Wulff and (indirectly) Oxenbridge. The learned sentencing judge was right to describe the offending as "sophisticated", and extending over a lengthy period of time, in Walker's case two years. The amount of money was considerable.

[192] As was said in *R v Gmeinder*⁷⁶ official corruption strikes at the heart of society and unless strongly deterred has a ready capacity to spread. The learned sentencing judge was correct to characterise the conduct as being such that it could only serve to undermine the public confidence in local government. It was corruption going to the heart of government at a local level, and the need for general deterrence and public denunciation was great.

[193] Thirdly, it is not to the point that there was no direct financial benefit to Walker. Plainly he was not paying the money for nothing. The learned sentencing judge identified the benefit as being that companies with which Walker was involved would receive continued work from the Ipswich Council on favourable conditions.⁷⁷ Walker's eagerness to pay Wulff cash funds, at a rate of \$5,000 (excluding GST) per month, eloquently identifies the level of benefit, albeit not directly financial, that Walker perceived that he would derive.

[194] Fourthly, it is, in my respectful view, incorrect to suggest that Walker was not a principal. Certainly he was not the person holding official office, but the agreed facts and the findings of the learned sentencing judge were that Walker involved

⁷⁵ [2018] QCA 348 at [22].

⁷⁶ [2001] QCA 354.

⁷⁷ AB 96 line 13.

himself in a significant way in the offence, was an enthusiastic participant in the agreement, and was a willing participant in the corruption.

[195] To suggest in those circumstances that it was effectively not open to the learned sentencing judge to impose a period of actual custody, cannot be maintained.

[196] [Redacted].

[197] [Redacted].

[198] [Redacted].

[199] [Redacted].

[200] This proposed ground of appeal lacks merit.

Error by comparing criminality with non-co-offenders

[201] The contention which is at the heart of this ground is that the learned sentencing judge sentenced Walker by a process of general comparison between him and Oxenbridge, Wulff and Myers. This was said to be induced by a submission by the prosecutor where the difference in criminality was referred to by reference to the number of charges and by reference to the nature of the conduct.⁷⁸

[202] Further, it is said that the learned sentencing judge accepted the invitation to treat the offenders as a package when his Honour said:⁷⁹

“The conduct in which the *four of you have engaged is conduct* which can only serve to undermine public confidence in local government. It is not much to the point, in my view, to say this work was done in a satisfactory manner. *The reality is that the corruption secured favourable treatment, treatment not available to those who were prepared to operate legitimately and transparently.*”

[203] I pause to note that the comments in the passage above were made in the course of sentencing remarks concerning Myers. The second sentence in that passage is a reference to the work done on the deck provided to Wulff, and the consultancy work by Walker. That becomes clear when one considers a passage in the sentencing remarks immediately preceding the one quoted above. It is a passage upon which this contention focuses, it being said that the learned sentencing judge’s error became manifest in “specific and problematic findings”. His Honour said:⁸⁰

“In general terms, Myers, I would assess your level of criminality as equating to that of Walker, though I accept your additional level of cooperation to which I have referred entitles you to a further discounting of your sentence, not available to Walker.”

[204] A second passage is relied upon for the same purpose, made in the course of the comments with respect to Oxenbridge:⁸¹

“I am conscious of the authorities which deal with parity in the sentencing of co-offenders. Though you are charged with two offences,

⁷⁸ Applicant’s outline, para 32.

⁷⁹ AB 98 lines 29-33; emphasis added.

⁸⁰ AB 98 lines 16-19.

⁸¹ AB 99 lines 25-31.

Oxenbridge, I accept the Crown's submission that your involvement was at arm's length and that you acted under what has been described as a level of coercion by Wulff in relation to your joint financial positions. In the end I have concluded that your overall criminality is comparable to that of Walker."

- [205] I am unable to conclude that what his Honour was doing, in the passages referred to above, was to sentence Walker by a comparison based on parity principles. In my respectful view, all his Honour was doing was having regard to the differing levels of criminality in the conduct under question. There is no suggestion whatsoever in the sentencing remarks that his Honour considered Walker a co-offender of Myers.
- [206] In my view, the respondent is right to characterise his Honour's sentencing remarks as reflecting a desire to achieve consistency in sentencing, rather than to adjust sentences by reference to parity principles. Reasonable consistency in sentencing is a requirement of justice, within the tolerances required for individual discretion.⁸² That is distinct from questions arising from the parity principle. That principle requires, as a matter of equal justice, that like be treated alike, but that due allowance for differences be made. That was not what his Honour was doing in the remarks to which reference is made.
- [207] To say that the learned sentencing judge assessed Myers' level of criminality as equating to that of Walker is not to equate them as co-offenders such as to bring the parity principle⁸³ into play. It is a simple comparison of the seriousness of conduct, or the level of criminality as it was put. In any event, in respect of the passage referred to in paragraph [203] above the reference made was in respect of Myers, not Walker. It was made in the course of the sentencing remarks concerning the Myers sentence, not the sentence for Walker.
- [208] It is notable that in the sentencing remarks that concern Walker, no reference is made to co-offenders or the parity principle. That arose only in the second passage relied upon, that in paragraph [204] above. The remarks concern a differentiation between Oxenbridge and Wulff as co-offenders, as they were. The last sentence, once again, is simply a comparison of overall criminality, or as might be put another way, a comparison of the seriousness of one person's conduct with that of another. To do so is not to sentence by a process of general comparison at all, but rather to achieve some sort of consistency when sentencing multiple offenders.
- [209] In any event, the comparison of criminality as between Myers and Walker was, in my view, accurate. The learned sentencing judge said that in general terms he would assess Myers' level of criminality "as equating to that of Walker", though there were additional levels of co-operation which would affect the sentence of Myers, but not Walker. An examination of the essential factual background demonstrates the accuracy of his Honour's view:
- (a) Myers was a successful businessman who instigated the corrupt agreement with Wulff; by that method he paid Wulff \$115,500 and participated in the provision of a deck;⁸⁴ Oxenbridge facilitated the corrupt arrangement; the payments were disguised under a false agreement with false invoices, levied by Bojangles and the money paid to Bojangles;

⁸² *Wong v The Queen* (2001) 207 CLR 584; [2001] HCA 64 at [6] and [7].

⁸³ See *Lowe v The Queen* (1984) 154 CLR 606; *Postiglione v The Queen* (1997) 189 CLR 295; *Green v The Queen* (2011) 244 CLR 462 at 472 – 473 [28].

⁸⁴ Innes paid an additional \$15,000 directly to Wulff.

(b) Walker was a successful businessman who instigated the corrupt agreement with Wulff; under that agreement Wulff received \$104,000; Oxenbridge facilitated the corrupt arrangement; the payments were disguised under a false agreement and false invoices, levied by Bojangles and the money was paid to Bojangles.

[210] The comparison as to overall criminality made as between Oxenbridge and Walker was not one which was by way of characterisation of Walker's criminality. Rather, the views were expressed by the learned sentencing judge in respect of Oxenbridge's overall criminality. Conscious of the authorities dealing with parity for co-offenders, the learned sentencing judge concluded that Oxenbridge's overall criminality was comparable to that of Walker, after balancing some of the different aspects of her participation. For example, his Honour accepted the Crown submission that Oxenbridge's involvement was "at arm's length" and that she "acted under what has been described as a level of coercion by Wulff in relation to your joint financial positions". Properly understood his Honour was simply saying that even though Wulff, Oxenbridge and Walker were co-offenders in the corrupt arrangement instigated by Walker, the fact that Oxenbridge was an aider and abetter, acting under a degree of financial coercion by her husband, meant that her overall criminality was less than that of Wulff, and more like that of Walker. Thus understood, the comparison is unobjectionable.

[211] I am not persuaded that ground 2 has merit.

Ground 3 – comparison of criminality – error in comparative conclusions

[212] The contention here is that the learned sentencing judge was wrong in his assessment of the "degree of similarity" between the conduct of Walker, Oxenbridge and Myers. It is said at the heart of that error was a failure to appreciate that the benefit received by each of them was very different. Here one could point to financial benefits for Oxenbridge and Myers, but not for Walker.

[213] For reasons which I have set out above, the fact that Oxenbridge and Wulff received a financial benefit, whereas Walker did not, makes little difference to the proper characterisation of the conduct. Walker was centrally involved in a corrupt arrangement with Wulff, under which he paid \$104,000 for the benefit of Wulff and Oxenbridge. He was a willing participant and an enthusiastic participant in that corrupt conduct. He plainly saw a benefit to himself, even if it could not be quantified.

[214] As to the other remarks, made where his Honour assessed the level of criminality for Myers, and that for Oxenbridge, as comparable to that of Walker, the criticism does not lead to the conclusion that the sentence for Walker miscarried. The conduct of Myers and Oxenbridge was being compared to that of Walker, not the reverse. There is nothing in the sentencing remarks for Walker which indicates some perversion of the sentencing process because of that comparison.

[215] I do not consider there is merit in ground 3.

[216] For the reasons stated above Walker's application for leave to appeal against sentence should be refused.

Conclusion.

[217] All applications for leave to appeal are based on grounds that lack merit. I propose the following orders:

1. In CA No. 51 of 2019, application for leave to appeal refused.
2. In CA No. 47 of 2019, application for leave to appeal refused.
3. In CA No. 33 of 2019, application for leave to appeal refused.
4. In CA No. 61 of 2019, application for leave to appeal refused.

[218] **LYONS SJA:** I agree with the reasons of Morrison JA.

[219] **BODDICE J:** I agree with Morrison JA.