DISTRICT COURT OF QUEENSLAND

CITATION:	*Wieland v QPS* [2020] QDC 292
PARTIES:	**WIELAND, Lucy Victoria** **v** **QUEENSLAND POLICE SERVICE**
FILE NO:	142/20
DIVISION:	Appeal
PROCEEDING:	Section 222(2)(c) of the *Justices Act 1886* (Qld)
ORIGINATING COURT:	District Court of Queensland
DELIVERED ON:	13 November 2020
DELIVERED AT:	Townsville
HEARING DATE:	29 October 2020
JUDGE:	Coker DCJ
ORDER:	**1) That the Appeal filed 25 August 2020 be dismissed.** **2) That any submissions as to costs be filed and served by the Respondent within 14 days and any submissions in response by the Appellant be filed and served within 14 days of receipt.** **3) That unless otherwise requested in writing that the determination of costs be made on the papers.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AGAINST SENTENCE – MANIFESTLY EXCESSIVE – section 222(2)(c) Justices Act 1886 – where the appellant plead guilty to four charges of fraud, one charge of forgery, one charge of uttering a forged document and one charge of possession of restricted drugs – where a head sentence of two years was imposed in relation to the fraud charges, six months each to be served concurrently was imposed for the charges of forgery and uttering a forged document and the appellant was convicted and not further punished for the charge of possession of a restricted drug – where a parole release date was set after serving six months being 4 February 2021 – where the appellant does not contest the head sentence imposed but argues the actual time to be served is manifestly excessive – whether the learned Magistrate properly considered the mitigating factors when imposing the sentence – whether the mitigating factors called for a more significant reduction in

actual time to be served in custody.

LEGISLATION: *Justices Act 1886* (Qld)

CASES: *Dinsdale v the Queen* [2000] HCA 54; [2000] 202 CLR 321
Lowe v The Queen (1984) 154 CLR 606
R v Allen (2005) QCA 73
R v Chong; Ex parte Attorney General (Qld) (2008) QCA 22
R v Ikin [2007] QCA 224
R v Lomass (1981) 5 A Crim R 230
R v Macintosh [1923] St R Qd 278
R v Morse (1979) 23 SASR 98
R v Watson [2017] QCA 82
Rongo v Commissioner of Police [2017] QDC 258
Ross v Commissioner of Police [2018] QDC 99

COUNSEL: S.Dreghorn for the Respondent
M.Hibble for the Appellant

SOLICITORS: Office of Director of Public Prosecutions for the Respondent
Resolute Legal for the Appellant

Introduction

[1] This is an appeal against sentence. The Appellant is Lucy Victoria Wieland. The Appellant plead guilty to seven charges in the Magistrates Court at Townsville on 4 August 2020. These charges included:

- Four charges of fraud relating respectively to:
  - Dishonestly obtaining a sum of money from the Baseball Association of Townsville at Townsville between the 1 September 2018 and 26 September 2018;
  - Dishonestly obtaining a sum of money from Christopher Keith Jackson at Townsville between the 1 September 2018 and 26 September 2018;
  - Dishonestly obtaining a sum of money from Bradley Congerton between 30 May 2017 and 17 October 2018;
  - Dishonestly obtaining a sum of money from unknown persons between 13 August 2018 and 17 October 2018.
- One charge of forgery relating to the forging of a doctor's letter between 2 August 2018 and 1 November 2018 with the intention to defraud.
- One charge of uttering a forged document, namely a doctor's letter between 2 August 2018 and 1 November 2018.
- One charge of possession of restricted drugs relating to the possession of methenamine on 7 October 2018, such restricted drug being unlawfully obtained.

[2] The maximum penalty in relation to the offending is related to the charges of fraud and is five years imprisonment.

[3] The Appellant was ultimately sentenced to two years imprisonment with a parole release date after six months, though the most significant penalty related to the four charges of fraud. Each of those resulted in the sentence of two years imprisonment with a parole release date after six months, being 4 February 2021. The forgery and uttering a forged document each resulted in a sentence of six months imprisonment with a parole release date of 4 February 2021. In respect of the charge of unlawful

possession of a restricted drug, the Appellant was convicted but not further punished.

[4] Restitution was also ordered to be paid to various complainants in the sum of $29,692.67.

[5] The appeal was filed in this Court on 25 August 2020. The grounds of the appeal were short and to the point, namely "the sentence is manifestly excessive".

[6] However, in the Appellant's outline the grounds of appeal were elaborated upon, noting that there is no argument as to the head sentence being manifestly excessive, but rather that when consideration is given to the combination of mitigating factors, a more reduced time in actual custody was appropriate.

[7] Those mitigating factors were noted to include: the age of the Appellant; lack of criminal history; plea of guilty; motivation for offending; payment of full restitution; and her pregnancy. It was also acknowledged that, 'in the ordinary course of events', consideration of the Appellant's age, plea of guilty and lack of criminal history would have attracted a sentence in the range of that which was imposed, but that the additional mitigating factors, including the Appellant's motivation to offend, payment of full restitution and her pregnancy called for more significant reduction in actual imprisonment.

[8] At the time of sentencing a considerable number of documents were tendered including, on the part of the Prosecution, copies of the Australian Red Cross donor forms, photographs of the Appellant, including photos of what appear to show the Appellant receiving treatment, as well as a victim impact statement from Bradley Congerton. On behalf of the Appellant a psychological evaluation prepared by a forensic psychologist, Mr Robert Walkley, dated 1 August 2020 was tendered.

[9] Thereafter, the Prosecutor made lengthy submissions to the learned Magistrate, Magistrate Keegan, as to the nature of the police investigation including the initial Crime Stopper reports provided by members of the public, as well as detailing the outcome of their enquiries, especially relating to the quantum of the fraud.

[10] The Respondent to this appeal has provided an overview of the facts in their outline and that overview has not been criticized or contested by the Appellant. For

convenience, and to provide some context in respect of the arguments put, I include that overview from paragraphs four through twenty-one of the Respondent's outline.

Overview of the Facts

In August 2018 Police received a number of reports via Crime Stoppers that the Applicant was claiming to have stage five ovarian cancer and was undergoing chemotherapy at the Townsville Hospital. The informants advised Police that they believed this to be untrue. They further reported that a 'Go Fund Me' page had been created to raise funds for the Applicant's medical expenses.

Police confirmed that the Applicant has never suffered from ovarian cancer, received chemotherapy or been an oncology patient at the Townsville Hospital.

Investigations revealed a sophisticated and researched fraud against countless complainants spanning a period of five months with a total quantum of $72,823.

Bradley Congerton – Fraud between 30 May 2018 and 17 October 2018

Mr Congerton was in a relationship with the Applicant at the time of the frauds. She convinced him that she was terminally ill. He took out two loans to fund what he understood to be life-saving and necessary medical treatment.

The first was a loan for $12,000 from Defence Bank. Mr Congerton transferred this money to the Applicant for the purpose of paying for life-saving chemotherapy.

The second loan was for $5,000 from the Army Release Trust Fund. This money was also used by the Applicant. Mr Congerton believed it was used to pay for the harvesting of the Applicant's eggs, lest she should be left infertile through chemotherapy. The Applicant told Mr Congerton that this treatment failed and resulted in emergency surgery at the Townsville Hospital.

The $12,000 loan was paid out in full through money obtained from the 'Go Fund Me' page (detailed below). At the time of the sentence Mr Congerton was still paying off the $5,000 loan with no assistance from the Applicant. Police confirmed that the Applicant had never had her eggs harvested or received emergency surgery at the Townsville Hospital. The quantum of the fraud involving Mr Congerton was $17,000. Restitution of $5,000 was sought on his behalf (***Charge 3***).

Mr Congerton provided the Court with a detailed victim impact statement detailing the damage wreaked upon his life, professionally and personally, as a result of the Applicant's conduct.

'Go Fund Me' page – Fraud between 13 August 2018 and 17 October 2018

On 25 August 2018 the Applicant appeared in an article in the Townsville Bulletin entitled "*Townsville community donations fund medical bills for woman fighting for life*". In the article the Applicant stated that she had been diagnosed with ovarian cancer in March 2018 and that it was putting a huge strain on her and Mr Congerton's finances. She claimed they had been reduced to one income and were having to make decisions about which medications they could afford. She stated that the 'Go Fund Me' page was set up by Mr Congerton on 14 August 2018 to assist in paying for medical treatments.

The 'Go Fund Me' page notes that the Applicant wanted to travel to Germany for expensive alternative treatment. Enquiries confirmed that the same treatment was available from the Townsville Hospital free of charge.

A link on the 'Go Fund Me' page directed to a number of blogs by the Applicant as well as photographs of her. The photographs depicted the Applicant wearing various dressings and bearing a 'PIC' line in her chest (apparently for the administration of chemotherapy). The photographs further depicted two scars which the Applicant stated were the result of emergency surgery. Throughout the blogs the Applicant discussed the various medical symptoms she was experiencing as a result of having ovarian cancer as well as the emergency operations she had received, scans, blood tests, the loss of hair and specialist appointments.

At the time of being charged the 'Go Fund Me' page had accumulated $54,975 in donations which was the quantum of the fraud. Some of the money was able to be returned, the detriment to the contributors at the time of sentence being $23,844.17, that amount was sought in restitution (***Charge 7***).

Baseball Association of Townsville – Fraud between 1 September 2018 and 26 September 2018

Every mother's day the Baseball Association of Townsville fundraises for ovarian cancer as a result of one of their members having died from ovarian cancer in the past. In 2018 the proceeds of that fundraising were donated to the Applicant as a result of public posts she had made. The quantum of that fraud being $348.50 (***Charge 1***).

Keith Jackson – Fraud between 1 September 2018 and 26 September 2018

Mr Jackson hosted a fundraising event at the 'Old Mates Barber Shop' for the Applicant on 1 September 2018. From 6am to 6pm on that day he performed $20 haircuts with all proceeds being donated to the Applicant. Mr Jackson became aware of the Applicant's 'condition' through a Facebook post by Mr Congerton, but it was the Applicant who contacted Mr Jackson in the lead up to the fundraising event and offered her assistance. Mr Jackson provided the Applicant with fliers and she also attended on the day.

During interactions with Mr Jackson the Applicant kept up the pretence that she was suffering from ovarian cancer. The Applicant accepted the fundraising proceeds of $500, the quantum of that fraud (***Charge 2***).

Search warrant 17 October 2018

Police located an unsigned letter from Dr Suresh Varma dated 2 August 2018 stating that the Applicant had ovarian cancer and recommending that the Applicant recommence chemotherapy at the Townsville Hospital. It was accompanied by information about stage four ovarian cancer and its survival rates. Enquiries confirmed that the Applicant had not been a patient of Dr Varma and it was the Crown case that the Applicant forged this letter (***Charge 4***).

The Applicant provided the forged letter from Dr Varma to Mr Congerton sometime in August, from which the uttering charge arises (***Charge 5***). Mr Congerton submitted this document to his superiors at the Australian Army for the purpose of securing carers leave. Mr Congerton subsequently accessed two weeks of carers leave at that time.

Police also located a bottle marked "letrozole" which purported to be prescribed by a Dr Ron Chang of the Queensland Fertility Group. Letrozole is a drug sometimes prescribed to cancer patients. Enquiries confirmed that the Applicant had never been a patient of Dr Chang. Analysis revealed the bottle in fact contained traces of Methenamine which is restricted drug and had no benefits treating ovarian cancer (***Charge 6***).

The Law

[11] In relation to an application such as this, it is necessary to consider the basis on which an appeal is made. This appeal is an appeal against sentence. The right to appeal is a creature of statute, with the nature of the appeal right dependent on the construction of the statute concerned. It should particularly be noted that, as is the case here, where a person pleads guilty or admits the truth of a complaint, a person may only appeal under section 222(2)(c) of the *Justices Act 1886* (Qld) on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate. The appeal is then dealt with by way of rehearing on the original evidence given in proceedings before the Magistrate, and in the circumstances, the court has the power to confirm, set aside or vary the order of the Magistrate.

[12] It is the sole ground of appeal relied upon here, and it is suggested by the Appellant, that the sentence was manifestly excessive. In order for a sentence to be "excessive" it must be "beyond the acceptable". It must be, as has often been said, "beyond the acceptable scope of judicial discretion" or "so outside the appropriate range as to demonstrate inconsistency and unfairness". In that regard, I am mindful of the decisions in *R v Morse* (1979) 23 SASR 98, *R v Lomass* (1981) 5 A Crim R 230, *R v Macintosh* [1923] St R Qd 278, and *Lowe v The Queen* (1984) 154 CLR 606.

[13] In commenting upon appeals relating to sentences, whether they be manifestly excessive or inadequate, I have considered the recent decision of her Honour Judge Muir in *Ross v Commissioner of Police* [2018] QDC 99. There, Her Honour, when commenting upon the exercise of an appellant Judge, noted at paragraph 8:

> *"... it is not a sufficient basis for this court to intervene, that this court considers it might have taken a different course between the competing considerations which have to be weighed in the exercise of the discretion. It must appear that some error has been made in exercising the discretion of the kind identified in House v The King (1936) 55 CLR 499. If the Magistrate acted upon a wrong principle, if he allowed extraneous or irrelevant matters to guide or affect him, if he made a mistake about the facts, if he did not take into account some material consideration, then the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so."*

[14] There, Her Honour has eloquently expressed the very real need for there to be, not a simple substitution of one view for another, but a proper exercise of the appeal power and a recognition that a difference of opinion or view is not, of itself, simply a basis upon which an appeal should be upheld.

[15] Her Honour made particular reference in her reasons to the decision of Keane JA (as he then was) in *R v Ikin* [2007] QCA 224, where his Honour noted as follows:

> *"The judgment appealed from is a discretionary one. An appeal can succeed only if an error of the kind described in House v The King (1936) 55 CLR 499 at 504 - 505 has occurred."*

[16] In this regard, there may be cases where the sentence is so "unreasonable or plainly unjust" in the circumstances as to give rise to an inference that the discretion has miscarried. It is this idea which informs the familiar ground of appeal that a sentence is manifestly excessive. But that having been said, as was emphasised by Kirby J in *Dinsdale v the Queen* [2000] HCA 54; [2000] 202 CLR 321 at 341, this court should allow an appeal against sentence only where the error is clearly apparent.

[17] Perhaps most succinct of all, His Honour Judge Devereaux SC of this Court, noted in *Rongo v Commissioner of Police* [2017] QDC 258 the following:

> *"It seems to me, then, that the focus in this and many appeals brought to this court on attempting to demonstrate an error in the exercise of the sentencing discretion is not misguided but slightly misplaced. The real question is whether the sentence was excessive, so that, although the appellant may argue that the Magistrate made a certain error, the success of the appeal does not depend on persuading the appeal court on that point."*

[18] His Honour then goes on to note that:

> *"Identifying a particular error might assist because it might explain why the sentence was excessive."*

[19] In *R v Watson* [2017] QCA 82 the long-held test with respect to appeals against the sentencing discretion at first instance was reiterated by the Court when it noted:

> *"In order to obtain a grant of leave to appeal the Applicant needs to demonstrate an arguable error in the exercise of discretion. It is the existence of error that grounds this Court's jurisdiction to interfere with the exercise of discretion of a sentencing judge. An appellate court that disturbs a discretionary order is obliged to identify the error that constitutes the legal justification for its intervention and must disclose its reasoning for its conclusion that there has been an error. The error may be one of law or it may be one of fact. It may involve a failure to take into account a relevant consideration or it may involve the taking into account of an irrelevant consideration.*
>
> *It may be that it does not appear how the judge making the order reached a result, but if upon the facts the order is unreasonable or plainly unjust, an appellate court might infer that there has been a failure to exercise the discretion properly."*

[20] As Keane JA said in *R v Ikin* (supra):

"In this regard, there may be cases where the sentence is so "unreasonable or plainly unjust" in the circumstances as to give rise to an inference that the discretion has miscarried. It is this idea which informs the familiar ground of appeal that a sentence is manifestly excessive. But that having been said, as was emphasised by Kirby J in Dinsdale v The Queen, this Court should allow an appeal against sentence only where the error is clearly apparent.

Consequently, an applicant for leave to appeal must articulate with clarity and particularity the error in the exercise of discretion that is said to exist. The rubric that a sentenced is "manifestly excessive" is a mere statement of a conclusion. There remains the requirement to state the reasons for that conclusion. As Kirby J pointed out in Dinsdale, an omission to identify the relevant error and also to explain the reasons for the conclusion that there is an error make it "all too easy for the mind to slip into impermissible reasoning.

A failure by an applicant to do anything except to assert that the sentence was too severe and to cite some previous sentences for the same or similar offences means that the Court has little upon which to base its consideration of the application."

[21] Accordingly, there is the need to consider whether the sentence imposed, a head sentence of two years with the requirement that six months be actually served, is manifestly excessive. As I have noted, the Appellant does not argue that the head sentence was excessive and Counsel for the Appellant was at pains to also emphasise that the Appellant did not argue that no time should be served but rather, that the requirement to serve six months or 25% of the head sentence was excessive, if proper weight was given to those additional matters of mitigation. These include, payment of full restitution, the motivation for offending or, as it was put in the Appellant's outline, mental health issues and her pregnancy.

[22] The first of those issues, the payment of restitution was argued for the Appellant to be a significant consideration. In the outline the Appellant noted the observation of the Full Court in *R v Allen* (2005) QCA 73 where the following was said:

"Restitution in full is a means of demonstrating that crime need not pay, and sometimes does not pay, and restitution can also be evidence of remorse quite independently from the benefit that it gives to the victim. That benefit is appropriately extended to the person being sentenced usually by significant reduction in any actual term of imprisonment imposed."

[23] Certainly, there is a need for some proper benefit to be extended as a result of restitution being paid but there is also a very real need to accept that offenders should never be able to buy their way out of a sentence which properly reflects the degree of criminality in any offending.

[24] As was noted by the President of the Court of Appeal in *R v Allen* (supra), the Applicant in that case:

> *"Paid full restitution by selling the family home. Whilst Courts would never allow wealthy offenders with the capacity to pay compensation to buy their way out of an appropriate custodial sentence, restitution is, as the Respondent concedes, a relevant mitigating factor in that it compensates the victim and benefits society and is often, as here, a tangible demonstration of genuine remorse."*

[25] The payment of restitution is, therefore, a consideration but there is also the real need to balance that payment with a clear assessment of the degree of remorse shown in the manner in which the restitution has been paid. A gift made to an offender by some other individual involves no hardships being experienced by the offender. In *R v Allen* (supra) the Applicant had sold his family home to effect the payment, reflecting a real detriment to him and a clear demonstration of the lengths that he was prepared to go to in evidencing his remorse.

[26] There is no mention in the material presented at the sentence or at the appeal as to the source of the funds made available for restitution and nothing indicates that the Appellant has been able to acquire the monies through her own endeavours, noting, as the Respondent does, that the Appellant's employment prior to sentencing was as, 'a barmaid in Agnes Waters'.

[27] With there being no evidence as to the source of the funds used to effect restitution, it is impossible to make any real assessment as to the degree or level of the remorse

shown by the Appellant and whilst the payment of restitution is a proper matter to consider by way of mitigation, the weight is lessened.

[28] However, it should also be noted that the learned Magistrate did recognise the payment of restitution as a mitigating factor, noting as she did in her sentencing remarks, on page three:

> *"That I would rely on the fact that you've pleaded guilty, that there will be, retrospective of the outcome of today, full compensation made, that you are heavily pregnant and the circumstances of the fraud being because of the disorder."*

[29] Additionally, the learned Magistrate, at the conclusion of her sentencing remarks, made specific reference to the factors she had considered in mitigation and how she had used that to reduce the sentence imposed and the time to be served. She said:

> *BENCH: "The issue then is, is it the most exceptional case? I haven't mentioned earlier that, with the frauds – you didn't desist on your own. The offending was cut short because you were caught. It's hard to step away from the seriousness of the offence. I've taken into account all the actors in mitigation, the plea of guilty, the full compensation that will be paid, the fact that you are due to give birth at the end of October, and that there is some impairment of judgment based on the report of the psychologist. In imposing the sentence I am recognising your impaired functioning in two ways. From reducing the head sentence and then also reducing the bottom – I've just lost the compensation amount.*
>
> *MR HIBBLE: $29,727.17.*
>
> *BENCH: $29,692? No.*
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> *MR HIBBLE: $29,727.*
>
> *BENCH: 20?*
>
> *MR HIBBLE: Oh sorry, $29,692.17. Yes.*

BENCH: Without those factors I would've thought that a two and a half year head sentence was the appropriate sentence to impose. Because of the factors in mitigation I've reduced that to two years. I'm referring to the three or the four frauds here, sorry. Normally a person has to serve a third of that sentence. Taking into account the principles as stated in Rosa the principles from impaired functioning and the mitigating features present to you in particular I have reduced that head sentence. It should be a sentence of eight months but I'm setting your parole release date at the six month mark, which will be the 4th of February 2021. So to be clear, I didn't consider that, in combination all of the factors pushed you into the most exceptional category where a non-custodial sentence was to be imposed."

[30] Ultimately, I am not at all satisfied that the argument put with respect to the weight to be given to the payment of restitution is made out. The learned Magistrate has considered it and had included it in her assessment of what constitutes an appropriate head sentence, as well as to how it might be used in assessing any time to be served.

[31] I am also not at all influenced by other reductions in time to be served as a result of restitution paid in other cases. The Appellant referred to the percentage of time to be served in *R v Allen* (supra) as 19% of the head sentence and also made mention of an unreported sentence of Judge Lynham of this Court in *R v Christine Margaret O'Shea* on 26 October 2018, where the time to be served was four months out of thirty months or 13.33%.

[32] Such mathematical calculations carry little, if any, weight as the specific facts in each case is more important than any percentage discount. The learned Magistrate has considered the matter and applied, in her assessment, an appropriate reduction. No error can be identified.

[33] The second matter said to give rise to further mitigation of sentence relates to the Appellant's mental health. The Appellant's outline details succinctly the argument as follows:

"The offending was very unusual, in the sense the proceeds of the frauds were effectively reinvested in continuing the lie [cancer]. Without the psychological

report, it would be difficult to understand a possible motivation for the fraud [given the money was being re-invested]. Whilst the mental health status of the Appellant was not definitive, it was consistent with the offending conduct. Without the report, the motivation for the fraud, seems senseless [why obtain money and then just spend it on furthering the deception – what was the ultimate point of the fraud]. In the context of this particular case, the report assisted in understanding the offending. The report also explained the motivation being one that was not typical of fraud related offending.

The moral culpability was decreased, due to the underlining mental health."

[34] The position of the Respondent, in respect of the Appellant's mental health was summarised in the outline at paragraphs 36 to 38 where the following is said:

"It is submitted that the possible mental health concerns described by Mr Walkley are not of such a nature that, even if they were properly established, would be of such a nature that any time required to be served would be said to be excessive.

The impacts of a mental health diagnosis on sentencing is well established and the Respondent accepts a formal diagnosis can have a mitigating effect on the sentencing discretion. In this matter though the Magistrate at first instance and this Court are entitled to put very little weight on such a cautious diagnosis.

The Magistrate however, did place some weight on the mental health concerns raised as is clear in her remarks an reduced the time required for the Applicant to spend in actual custody as well as the head sentence."

[35] However, to more fully appreciate the thrust of the argument put by the Appellant there needs to be a more detailed consideration of the report and the learned Magistrates' use of that report. Mr Walkley's report, dated 1 August 2020, commences with detailed background information relating to the Appellant's childhood, and on to education, employment, tobacco, alcohol and other drug use, criminal history and psychiatric history.

[36] The Appellant identified some issues with alcohol use and also some indications as to concerns with her mental health as a teenager but there is no corroborative documentation.

[37] Mr Walkley also details the offences with which the Appellant is charged and information from the Police brief regarding the history of the offending and what had been found in their investigations. Balanced against that is what the Appellant told Mr Walkley under the heading, *'Ms Wieland's version of events and attitude towards her offending'*. This section generally involved the Appellant's own recollections which would seem to generally reflect a disconnect between what seems to have occurred and the Appellant's own appreciation or even recall of what occurred and when. This section of the report concluded with the following:

> *"In terms of how she feels about her future Ms Wieland said, "I really feel like I am a crazy person" and, "I'd love to get some answers why I did this". When asked whether-or-not she had sought out treatment Ms Wieland said it has been her intention to do so but, "I never thought this would take two years to get here" and, "life just seemed to get away from me". She recognised, "I need to know how and why I did this" and has definite intentions to explore this."*

[38] The clinical observations were generally unremarkable, though when the Personality Assessment Inventory (PAI) was administered, a number of diagnostic possibilities were suggested. Those included, alcohol dependence in recession, and evidence of heightened anxiety. Mr Walkley opined:

> "*From a clinical perspective, there are a number of possibilities that range from engaging in malingering or fraudulent behaviour through to suffering from a psychiatric condition which precipitate those types of behaviours."*

[39] Quite properly, Mr Walkley noted:

> *"Attempting to determine this in a retrospective matter is innately difficult given the contemporaneous clinical impressions and the examination of the indicia of her mental state presentation cannot be undertaken. Instead there is a dependence upon Ms Wieland's self-report. Within a context in which there*

are criminal charges, the possibility of untruthfulness and self-serving statements are quite possible confounding variables."

[40] Finally, Mr Walkley also noted the possible clinical diagnosis of, Factitious Disorder. He then outlined his observations and concerns and noted particularly the need for further investigation to:

"differentiate what Ms Wieland did from the actions of a malingerer or fraudster."

[41] Mr Walkley, quite properly, did not attempt a diagnosis and noted that while the validity scales indicated that she was being open and honest and was not attempting to sway the picture provided one way or the other, where criminal charges are afoot:

"Dishonest and self-serving statements are possible."

[42] The learned Magistrate was very much aware of these possibilities, but also attuned to the fact that there was no clear diagnosis. She commented upon the report at length from the last paragraph on page four of the sentencing remarks, through to the end of the sentencing remarks at the end of page six and then specifically spoke of the factors that the Court looks at in considering impaired mental functioning and how that might have a bearing on sentence.

[43] I am satisfied that the learned Magistrate has been very aware of considerations relating to the Appellant's mental health, as well as being aware of the fact that the report, informative as it is, is not a diagnosis of the Appellant's mental health. Its use and application is therefore limited. However, any suggestion that the learned Magistrate did not adequately address the issue of the Appellant's mental health is not sustainable when the sentencing remarks in their entirety are considered.

[44] Finally, the Appellant argues that her pregnancy was not adequately or properly taken into consideration in determining the sentence. The Appellant refers particularly to the comments of the Court of Appeal in *R v Chong; Ex parte Attorney General* (Qld) (2008) QCA 22, though applies the comments more to the effects upon the father and his opportunities to see the child, when with the mother in custody.

[45] Unfortunately, there is no evidence whatsoever regarding the difficulties that might face the father other than the general statement as to the father living in central Queensland. How that might hinder the regularity of visits or what the requirements or expectations of the corrective services facility might be are not explained. In any event, this was not argued at all before the learned Magistrate, though perhaps understandable when the child had not been born.

[46] Insofar as any argument relating to the Appellant and the child is concerned no issue seems to have been raised, which is understandable in the context of there being more than adequate facilities available in the Townsville Correctional Centre to allow the Appellant and her newborn to remain together.

[47] The learned Magistrate did not fail to consider these maters when considering her sentence. In the final paragraph on page three of the sentencing remarks, the learned Magistrate spoke specifically of the need to consider the nature of the offence and how serious the offence or offending was. She then went on to say:

> *"I don't think anyone here can take away from the fact that this was very serious offending. The damage that you caused was more that monetary damage. There's clearly emotional damage that was caused as a result as well. I do need to balance up the aggravating and the mitigating factors here. I also include in those facts the fact that you are pregnant, but you of course got pregnant after you'd been charged and placed on bail, and that factor cannot overwhelm the entire sentencing process."*

[48] And further at page seven, the learned Magistrate said:

> *"I've taken into account all the factors in mitigation…the fact that you are due to give birth at the end of October."*

[49] Her Honour considered this situation, along with all of the other matters that properly required consideration, in determining an appropriate penalty and reduced what she considered to be the normal sentence of two and a half years to two years and further reduced the period to be served from eight months to six months. She set a parole release date at 4 February 2021 and noted:

> *"So to be clear, I didn't consider that in combination all of the factors pushed you into the most exceptional category where a non-custodial sentence was to be imposed."*

[50] Accordingly, having considered all of the matters emphasised by the Appellant I am satisfied that there is no basis upon which it could be considered that the sentence imposed was so 'unreasonable or plainly unjust' as to give rise to an inference that the discretion exercised by the learned Magistrate has miscarried.

[51] I would dismiss the Appeal. The orders of the Court are as detailed at the commencement of these reasons.