

EXAMPLE TWO

Police-v-Mr. X

Newcastle Local Court – 5 May 2020

Outline of submissions for Mr. X

Ultimate submission

1. The Court could discharge Mr. X under a conditional release order without proceeding to conviction [ss 9(1)(b) and 10(1)(b), *Crimes (Sentencing Procedure) Act 1999* (the CSPA)]:
 - i. For 2 years.
 - ii. Imposing an additional condition that he attend upon his treating psychiatrist and receive treatment for as long as deemed necessary: s 99(2)(a), CSPA.

Objective Seriousness

2. Towards the lower end of the spectrum for offences of this type: [list the reasons in support e.g.]
 - i. Impulsive and spontaneous – not part of a planned or organised criminal activity: s 21A(3)(b), CSPA.
 - ii. Fleeting – of very short duration.

Aggravating Factors (common law or statute) – there are no aggravating factors.

Mitigating Factors – Common Law

Delay

3. Significant delay [summarise the delay in bullet-point]:
4. Principles in *R v Todd* [1982] 2 NSWLR 517 at 519 per Street CJ apply – that is, delay may require the court to give greater weight:
 - i. to demonstrated progress towards rehabilitation.
 - a. No offending since the date of the offence.
 - b. Evidence of employment.
 - c. Family and community support.
 - d. Participation in ongoing psychological counselling.
 - ii. the circumstance that the offender has been left in a state of uncertain suspense.

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EXAMPLE TWO

- a. Letter of Mr. X at pp1-2.
- b. Psychological distress worsened by the delays in prosecution: Dr. A at [1] and [10].
- iii. *“to the fact that sentencing for a stale crime, long after the commission of the offences, calls for a considerable measure of understanding and flexibility of approach...”*.

Extra-Curial Punishment

5. The court can take into account that Mr. X has already suffered some serious loss or detriment as a result of having committed the offence: *R v Daetz; R v Wilson* (2003) 139 A Crim R 398 at 411. Specifically:
 - i. Suspension from employment: [cite the evidence e.g. letter of employer].
 - ii. Possible loss of employment: [cite the evidence e.g. letter of employer].
 - iii. Deterioration in his mental health: [cite the evidence e.g. px, Dr. A].

Mental Health

6. Diagnosed with personality disorder: Dr. A at [10].
7. [list in bullet point the symptoms of the mental health condition/illness/developmental disability]: e.g.
 - i. Delusional fantasies.
 - ii. Disordered thinking.
8. Effect on the sentencing exercise [e.g. in this case, only some of the *De La Rosa* factors apply]:
 - i. Moral culpability is reduced to a substantial degree because his mental health significantly contributed to the commission of the offence. Therefore, the need for denunciation and punishment is moderated: *DPP (Cth) v De La Rosa* [2010] NSWCCA 194 at [177].
 - ii. Not an appropriate vehicle for general deterrence: *DPP (Cth) v De La Rosa*.
 - iii. Importance of rehabilitation and treatment: *R v Engert* (1995) 84 A Crim R 67; *Benitez v R* [2006] NSWCCA 21 at [37].

Statutory Mitigating Factors under the CSPA

9. ***Not part of an organised or planned criminal activity – s 21A(3)(b)***: see above at [3].

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10. ***Plea of Guilty – s 21A(3)(k) & s 22:*** entered at an early opportunity – 25% discount.
11. ***Remorse – s 21A(3)(i):*** e.g.
 - i. Admissions at the time of arrest
 - ii. Plea of guilty sparing the complainant the trauma of giving evidence.
 - iii. Expressions of remorse: letter of Mr. X.
12. ***No previous criminal convictions – s 21A(3)(e)***
13. ***Good character – s 21A(3)(f)*** [list features that establish good character e.g.]
 - i. No criminal record.
 - ii. History of employment and volunteer work.
 - iii. Letter of Mr. K at p1.
14. ***Unlikely to re-offend and Good Prospects of Rehabilitation – ss 21A(3)(g) and s 21A(3)(h)*** [list features that establish this e.g.]
 - i. He demonstrated insight into his offending and accepted responsibility: at [7].
 - ii. Assessed as low risk of re-offending: Dr. A at [5].
 - iii. No criminogenic factors: Dr. A at [9].
 - iv. Engaging in ongoing psychological counselling: Dr. A at [3].
 - v. Strong family and community support.

Conclusion

15. [A sentence that wraps up the case] e.g. The subjective and objective features of the case warrant a sentence of leniency and compassion; this is an appropriate case for a non-conviction.

Your name

Solicitor and your organisation

Date

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