

**IN THE DISTRICT COURT
AT NORTH SHORE**

**CRI-2017-044-003491
[2018] NZDC 1975**

ACCIDENT COMPENSATION CORPORATION
Prosecutor

v

DEAN JULIAN KENNY
Defendant

Hearing: 2 February 2018

Appearances: C McDiarmid for the Prosecutor
P Wicks QC for the Defendant

Judgment: 2 February 2018

NOTES OF JUDGE P A CUNNINGHAM ON SENTENCING

[1] Dean Kenny, you appear today for sentence in relation to one charge of dishonest use of a document and the charge period is from 5 March 2016 until 13 July 2017 and it is a representative charge.

[2] The document refers to ACC forms. There are tax invoices for services listed at the back of the charging document. There were 28 people who you treated either for conditions that did not entitle them to ACC cover and in some cases you have claimed for work that is chiropractic services that you did not carry out. A lot of this happened in the context of your going with a [school name deleted] rowing team to a regatta in April 2016. Something that you did on a voluntary basis but, of course, you were entitled to make claims for any chiropractic work that you did that was genuinely covered by ACC. I am not told, but there may well have been genuine claims over that period of time, but you falsified claims in the ways that I have already referred to.

[3] The total amount in the summary of facts was the \$2282.72 by way of overpayments to you. That figure seems to have been revised to \$1893.62, of which you have paid \$600. The reparation amount sought now is \$1282.72 and there is no resistance to you making that reparation in full. You have been paying it at the rate of \$50 a week and in your circumstances, which are that your income is now something like one sixth of what it used to be, that is not easy for you to do, and it will be an ongoing financial hardship to you and your family to pay the rest off.

[4] I said that your income was now a sixth of what it used to be, and the reasons for that are that you had to surrender your certificate to work as a chiropractor. There may be professional rules why you have felt the need to do that, but certainly trust by any state organisation such as ACC will be at an end now, because you have a series of convictions back in 2010 for similar offending between the years of April 2007 and October 2009. Because of those convictions, which run to three pages, all dealt with on 15 October 2010, you were lucky that ACC trusted you again. They must have been satisfied that you had learnt the lesson, but unfortunately you have breached that trust.

[5] The Crown contend for a starting point of six months' prison. Mr Wicks, your lawyer, has contended for a starting point of five months' prison. The amount is not high, just under \$2000, however there were 28 patients for whom you made often multiple false claims and it must carry with it an aspect of planning and premeditation. It was a short period of time and that is because there was a complaint to ACC and it was investigated and brought to an end quite quickly. To your credit, as I have already said, you have started to repay the amount.

[6] Taking into account the aggravating features, which I have identified, I adopt a starting point of five months' prison but, unlike Mr Wicks, I would give an uplift of two months for the prior offending because of the extent of it, and I mean the period of years and the number of charges. That leads to an end sentence of seven months for which you are entitled to a discount for your guilty plea, which I calculate as 1.75 months; leads to an end sentence of 5.25 months.

[7] The Crown submit that I should sentence you to imprisonment. In oral submissions Mr McDiarmid has emphasised the need for general deterrence and denunciation. He submitted that anything less than that would be insufficient deterrence. I do not agree with that. In my view a community-based sentence is available to you given the end point of 5.25 months' prison.

[8] When considering prison for dishonesty offending, deterrence both personal and general deterrence is an important factor. In my view deterrence in this case is really to other medical professionals who might defraud ACC or any other Government scheme where the cost of medical services are either paid for or subsidised by the state. I imagine that most chiropractors in New Zealand are going to learn that you are no longer practising and why. I view that as deterrence to other chiropractors and it may well extend to other medical professionals.

[9] The effects of this offending, your convictions and your loss of your practising certificate will have impacted hugely on you and your family. I have been handed a number of references from former patients and people who know you and it is apparent from what I have read that in addition to your skills as a chiropractor, which are lauded by your former patients, that you are one of those people who goes an extra mile to make sure that people are restored to the very best of health that they can be. You are a person who is willing to get involved in the community. The very fact that you put yourself forward to go to this rowing camp is one example of that. Despite what you have done, people who have been your former patients and people who have known you as a friend and professionally continue to be willing to call you their friend or acquaintance.

[10] You were earning a six figure income when you were a chiropractor. Your wife works as a shop assistant and the fortunes of your family are now completely changed because of the loss of income. I imagine that things are pretty difficult at home, or have been, not just because of the financial effect on your family, but also because you are dealing with another difficult situation at home, which I do not need to go into. I imagine that everybody in your family (including you) is very disappointed in what you have done. I consider that it would be even harder on your family if you were sent to prison and I also consider that it would be hard on your family if you were

sentenced to home detention, because you may lose the small income that you have been able to achieve outside your chosen profession.

[11] There are reasons why you are needed at home. So I agree with the sentence of community detention that has been suggested by your counsel, Mr Wicks. It has to be something more than community work that you received last time, for obvious reasons.

[12] So you will be sentenced to four months' community detention at your home address, which is [address deleted], between the hours of 7 o'clock at night and 7.00 am in the morning. And you will be required to make reparation. It will be paid into Court from today onwards in the sum of \$1282.72 at the rate of \$50 a week. We will make that commencing next Friday, which will be 9 February.

P A Cunningham
District Court Judge