

TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT OF QUEENSLAND

CRIMINAL JURISDICTION

JUDGE CASH QC

Indictment No 52 of 2021

THE QUEEN

v.

JEFFREY OWEN

GYMPIE

12.30 PM, FRIDAY, 25 MARCH 2022

SENTENCE

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: Mr Owen, you can remain seated. Jeffrey Owen, I must sentence you because a jury has convicted you of one offence known as industrial manslaughter, and that offence is punishable by up to 20 years imprisonment. It occurred on 3 July 2019 at your business here in Gympie. You were attempting to
5 unload a three-tonne generator from a flatbed truck, assisted by Mr Ormes, your friend of some 20 years, and the driver of the truck. The forklift that you were operating in this task was inadequate. As well, you did not have the appropriate licence to operate the forklift; you had no safety plans in place; and you did not take even the most rudimentary steps of checking the weight of the generator and the
10 capacity of the forklift. In these circumstances, it is entirely unsurprising that things went wrong.

As you took the weight of the generator on the forklift, it began to tip forward. Even then, you did not stop and set down the generator immediately. You left the forklift
15 for a time with the generator still suspended about a metre above the ground, according to Mr DeBruin, one of the witnesses, as both you and Mr Ormes moved some wood on which you were going to set down the generator. Returning to the forklift, you continued in your attempt to unload the generator. Mr Ormes put himself at risk by going around to the wrong side of the generator. As was almost
20 inevitable, the generator tipped and fell. It landed on Mr Ormes, who died from the injuries that he sustained.

You immediately tried to help him, and later that morning you cooperated with investigators who attended your business. The matter did go to trial, but that is
25 understandable when the central question was one of negligence. While there is some scope for allowance for the cooperation in the administration of justice, it cannot be as extensive as in the case of a person who pleaded guilty. In the end, the jury has found your conduct substantially contributed to Mr Ormes' death, and that it was so grossly negligent as to be deserving of punishment. That verdict is entirely
30 understandable, given the very high degree of negligence your conduct involved: there being no safety plan; the forklift that you were using being inadequate for the task; and that you continued even after the risk of the generator becoming loose and falling was patently obvious.

It is to be noted, though, that there were three of you involved in this enterprise, and none called a halt to the process, there being, I think, an element of groupthink as
35 suggested by Mr Hunter QC on behalf of the Prosecution. That is, it was not your actions alone that resulted in the death of Mr Ormes. It is also the case, as I have noted, that Mr Ormes put himself in harm's way. That, of course, did not relieve you
40 of your responsibility to create a safe work environment. You are now almost 67 years of age. You would have been 64 at the time of these events in July 2019. You have no prior convictions, nor has there been any suggestion of any prior workplace safety infringements. You are supported by your wife of 19 years, and your adult
45 son, who has his own business in Cairns.

After leaving school, you qualified as an electrical fitter, working in that capacity for some years before moving to Gympie and establishing the present business in 1985. It seems to have been a successful business, and I think it is right to infer that you are both a person of good character and also someone who has contributed to the

Gympie community. You have made some arrangements for the continuation of the business, but I accept it will be difficult in your absence. It is also to be noted that your involvement in causing the death of your friend of 20 years has weighed heavily upon you in the time since. You valued each other's friendship and you saw each other practically every day. Since Mr Ormes' death, each day that you have attended work you have been reminded of these events. I accept that you are deeply remorseful for what occurred, and for your role in it.

You have subsequently put in place all the necessary safety procedures, but it is, of course, a matter of considerable regret that this was not done before July of 2019, particularly when it may have made a difference in these events. I have been referred to a number of cases which, for understandable reasons, are of very limited assistance in deciding what an appropriate penalty to impose today would be. The starting point, of course, is the maximum imprisonment prescribed the legislation of 20 years. It is also important to bear in mind that an essential ingredient of the offence for which you are to be sentenced is that you caused the death of another person, though through negligence rather than intentionally. As this case illustrates, the results of a failure to ensure a safe workplace can be catastrophic, and for this reason the obligation to maintain safe workplaces are to be taken seriously, and breaches of them punished with appropriate severity. In doing so, it is hoped this will be a deterrence that causes others to comply with their safety obligations.

I have had regard to section 9 of the Penalties and Sentences Act. In a case such as this where harm has resulted to a person, imprisonment is not a sentence of last resort. The purpose of any sentence that might be imposed involves a combination of matters: (1) it is to punish you in a way which is just in all of the circumstances; (2) it is to deter you or others from committing offences of this kind; (3) it is to denounce your conduct, and what is meant by that is the community expects the Courts to impose sentences that indicate that criminal conduct of this kind is not to be tolerated. The fourth purpose would be to provide conditions promoting your rehabilitation. That is not a relevant factor here, as there is no suggestion of a need for ongoing supervision such as under parole or probation. The fifth matter would be to protect the community from you, and there is clearly no need to impose a sentence which would provide that kind of protection.

Mr Hunter QC, on behalf of the Prosecution, submitted the appropriate head sentence was five to six years imprisonment, acknowledging that the custodial component of that sentence might appropriately be reduced. On your behalf, Mr Feeney submitted that a sentence of three years would be appropriate, or perhaps a little more, and urged that it be suspended after you have served 12 months imprisonment. Bearing in mind the very high degree of negligence involved in your conduct, and the fact that it contributed significantly to the death of Mr Ormes, in my view a sentence of five years imprisonment is appropriate. But having regard to your personal circumstances, especially your good character and the effect that these events have already had upon you, I am satisfied that it is appropriate to suspend the sentence after you have served 18 months imprisonment. So the order I make is that you are sentenced to imprisonment for five years. That term of imprisonment will be suspended after you have served 18 months imprisonment, for an operational period of five years. Mr Hunter, anything arising?

MR HUNTER: No, your Honour.

HIS HONOUR: Mr Feeney?

5 MR FEENEY: No, thank you, your Honour.

HIS HONOUR: All right. And I thank you both for your – well, all three of you, I should say, for your assistance in the trial. We will adjourn.

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