

AUSTRALIA / JUDGMENT

Mehieddine v R

[2026] NSWCCA 151**COURT**

Court of Criminal Appeal

DECIDED

25 September 2026

BEFOREWard P at [1]
Hamill J at [2]
Fagan J at [3]**CASE / FILE NUMBER**

2022/319885

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**Court of Criminal Appeal
Supreme Court
New South Wales****Medium Neutral Citation:** Mehieddine v R [2026] NSWCCA 151**Hearing dates:** 2 September 2026**Date of orders:** 25 September 2026**Decision date:** 25 September 2026**Before:** Ward P at [1]
Hamill J at [2]
Fagan J at [3]**Decision:** (1) Grant leave to appeal.
(2) Dismiss the appeal.**Catchwords:** CRIME — Appeals — Appeal against sentence — Sentencing for federal offences — Denial of procedural fairness — Utilitarian value of guilty plea — 20% discount open to the sentencing judge
CRIME — Appeals — Appeal against sentence — Sentencing for federal offences — Remorse
CRIME — Appeals — Appeal against sentence — Sentencing for federal offences — Manifest excess**Legislation Cited:** Crimes Act 1914 (Cth)
Crimes (Sentencing Procedure) Act 1999 (NSW)
Criminal Code (Cth)
Mental Health (Forensic Provisions) Act 1990 (NSW)

Cases Cited:	Kaurasi v R (Cth) [2020] NSWCCA 253 R v Mehieddine [2025] NSWDC 326 Xiao v R (2018) 96 NSWLR 1; [2018] NSWCCA 4
Category:	Principal judgment
Parties:	Majd Mehieddine (Applicant) Rex (Respondent)
Representation:	
Counsel:	A Francis / I Hogan (Applicant) D New (Respondent)
Solicitors:	James & Jaramillo Lawyers (Applicant) Commonwealth Director of Public Prosecutions (Respondent)
File Number(s):	2022/319885
Publication restriction:	Nil Decision under appeal
Court or tribunal:	District Court New South Wales
Jurisdiction:	Criminal
Citation:	R v Mehieddine [2025] NSWDC 326
Date of Decision:	29 May 2025
Before:	Sutherland SC DCJ
File Number(s):	2022/319885 HEADNOTE [This headnote is not to be read as part of the judgment] Majd Mehieddine (the applicant) sought leave to appeal against his aggregate sentence for eight counts of dishonestly obtaining financial advantage by deception from a Commonwealth entity, namely, the Department of Human Services, contrary to s 134.2(1) of the Criminal Code (Cth). The applicant received a 20% discount for his pleas of guilty and was sentenced to an aggregate term of imprisonment of 7 years with a non-parole period of 4 years and 8 months. Between November 2019 and September 2022, the applicant, as a registered physiotherapist, made 40,844 claims to the Department of Human Services for Medicare rebate payments for services to patients where no service had in fact been provided, for which he received rebates totalling \$2,215,351. The applicant's appeal grounds were (1)(a) that he was denied procedural fairness with respect to the sentencing judge's decision to reduce the discount for the utilitarian value of his pleas because of a dispute as to the facts; (1)(b) that the judge erred in reducing the discount where no dispute as to the facts was litigated; (2) that the judge erred in his findings as to remorse and (3) that the aggregate sentence was manifestly excessive. The Court (Ward P, Hamill and Fagan JJ) held, granting leave to appeal and dismissing the appeal: By indicating in the course of oral submissions that he was considering a discount of 20% rather than 25% the sentencing judge sufficiently accorded procedural fairness, allowing defence counsel to make any argument he saw fit in support of the greater discount. [42] (Fagan J; Ward P at [1], Hamill J at [2] agreeing).

A judge sentencing for Commonwealth offences is not bound by s 25D of the Crimes (Sentencing Procedure) Act 1999 (NSW) to allow a 25% discount for pleas entered in the Local Court. While the applicant was entitled to re-negotiate the terms of facts that he had previously agreed when legally represented and while the result was a correction of the facts in his favour, it was open to the judge to apply a discount of 20% rather than 25% and on account of the delay and disruption caused by the applicant in that process. [38], [45]-[46] (Fagan J; Ward P at [1], Hamill J at [2] agreeing).

It was reasonably open to the sentencing judge to reject the applicant's attribution of his dishonesty to a closed period of drug misuse and to conclude that the applicant lacked insight and had not demonstrated genuine remorse. [55] (Fagan J; Ward P at [1], Hamill J at [2] agreeing).

The offending involved a sophisticated exploitation of the system of claiming Medicare. It was properly described by the sentencing judge as a "grave instance" of the type of offending. Taking account of all sentencing factors, manifest excess was not shown. [57]-[58] (Fagan J; Ward P at [1], Hamill J at [2] agreeing).

JUDGMENT

WARD P: I agree with Fagan J.

HAMILL J: I agree with Fagan J.

FAGAN J: The applicant seeks leave to appeal against an aggregate sentence imposed by Judge Sutherland SC in the District Court on 29 May 2025. The applicant pleaded guilty to eight counts of dishonestly obtaining financial advantage by deception from a Commonwealth entity, namely, the Department of Human Services. The charges were laid under s 134.2(1) of the Criminal Code (Cth), which provides for a maximum penalty of 10 years imprisonment for each count. The proposed grounds of appeal are set out at [20] below. Some preliminary reference to the facts and the charges is necessary to an understanding of the grounds.

The applicant was first registered as a physiotherapist with the Australian Health Practitioner Regulation Agency (AHPRA) on 24 December 2018 at 21 years of age. The offending conduct occurred between November 2019 and September 2022, a period 2 years and 10 months but with a gap of inactivity for about 9 months in 2021. The applicant made claims to the Department of Human Services for Medicare rebate payments in respect of a total of 40,844 claimed services to patients where no service had in fact been provided. The benefits paid out pursuant to those claims were deposited electronically to bank accounts under his control. The total he received was \$2,215,351. The applicant was suspended from practice from 4 March 2020 to 7 June 2022 and again from 11 October 2022. His offending conduct of lodging false claims continued through the first period of suspension.

The sentencing judge imposed a term of imprisonment of 7 years with a non-parole period of 4 years and 8 months. In arriving at indicative sentences for each of the nine counts, which are particularised below, his Honour allowed a discount of 20% for the applicant's pleas of guilty. The commencement of the sentence was backdated from the date on which it was passed to 29 March

2025. That allowed for 19 days of presentence custody and an additional period “in recognition of the quasi-custody and restrictions during his time in [a] rehabilitation program”, which the applicant had undertaken while awaiting sentence.

The fraudulent conduct involved in the offending can be appreciated from consideration of the means by which allied health providers, such as physiotherapists, claim and receive Medicare rebates. Health providers are issued with a Health Industry Claims and Payment Service terminal, referred to as a HICAPS terminal. Claims are transmitted to the Department of Human Services through the terminal. Each provider is given a “stem number”, which is used to identify the provider. A location number, relating to the practice address from which the service has been provided to a patient, must also be keyed in. According to the agreed statement of facts on sentence, when a claim is made through the terminal, the healthcare provider has to swipe “the client’s/patient’s bank debit card through the HICAPS terminal”. The Medicare rebate, or “scheduled fee”, is then paid by the Department of Human Services “into the bank account associated with the bank debit card which was used during the processing of the claim”.

After the applicant had worked for some months as an employed physiotherapist in practices owned by others, in November 2019 he set up his own physiotherapy practice and obtained a HICAPS terminal. In the merchant contract pursuant to which the terminal was supplied, the applicant was listed as the physiotherapist provider. The terminal was registered to Almajd Construction Pty Ltd, of which the applicant’s father was the director. The physiotherapy practice nominated by the applicant for the use of this terminal was “Diamond Standard Physio”. The address supplied for the purposes of the merchant contract in relation to the terminal was the applicant’s home address, which was also the registered address of his father’s company.

Sequence 4

Between 14 November 2019 and 31 January 2020 the applicant made claims for rebates in respect of 915 physiotherapy services that he purported to have supplied in his practice of Diamond Standard Physio. After he was suspended on 4 March 2020 and from then up to 27 November 2020, the applicant made claims for rebates for 17,876 additional services that he purported to have supplied prior to his suspension, between 6 November 2019 and 3 March 2020. Rebates were only payable where the patient had been referred by a medical practitioner. For each of the total of 18,791 purported services, the applicant nominated a referring doctor. The doctors had not referred the purported patients and none of the services had in fact been provided. The applicant had seven different bank debit cards and he used one or other of them in connection with each rebate claim. The cards were linked to three separate bank accounts under his control.

Particulars of the charge in respect of fraudulent claims made in the name of Diamond Standard Physio are as follows:

Seq 4: claims made between 14 November 2019 and 27 November 2020 (12 months) for 18,791 services purportedly provided by the applicant himself in the period 6 November 2019 to 3 March 2020, for a total of \$1,010,855 of rebates claimed and paid. Indicative sentence 5 years and 7 months imprisonment.

Sequences 5, 6, 7 and 8

The applicant had been employed in the practice of Neeta City Medical and Dental in September and December 2019. That practice provided both chiropractic and physiotherapy services. The applicant knew the identification number and practice particulars of the HICAPS terminal that was used at the Neeta City practice, either from having worked there or from eftpos purchase receipts of which he had digital photographs on his phone at the time of his arrest on 26 October 2022. The applicant obtained a “rolling password” from a person described in the agreed facts as “a contact”. Using that password, he was able to reset his own HICAPS terminal with the identification number of the terminal used by the Neeta City practice. That process is referred to in the agreed facts as “cloning” the HICAPS terminal of the other practice.

From working in the Neeta City practice the applicant also had the Medicare numbers of patients of the practice and the provider numbers of two chiropractors, Dr Jae-Man Chung and Dr Simon Yang. Medicare numbers were required for the purpose of making claims. At the time of the applicant’s arrest there were stored on his phone 134 images of Medicare cards. Many of the cards recorded the names of more than one person. The names of the patients on those cards were used in false claims that the applicant made on his HICAPS terminal, cloned as the Neeta City practice terminal, for rebates in respect of chiropractic services purportedly supplied by Drs Chung and Yang.

The number and value of the false claims made in the names of Drs Chung and Yang are as follows:

Seq 5: claims made between 30 December 2020 and 28 February 2021 in respect of 2,392 services purportedly provided by Dr Chung in the period 2 November 2019 to 28 February 2021, for a total of \$129,943.85 of rebates claimed and paid. Indicative sentence 2 years imprisonment.

Seq 6: claims made between 30 December 2020 and 28 February 2021 in respect of 12,395 services purportedly provided by Dr Chung in the period 9 November 2019 to 22 May 2022, for a total of \$667,135.05 of rebates claimed and paid. Indicative sentence 4 years imprisonment.

Seq 7: claims made between 29 January 2021 and 2 February 2021 in respect of 492 services purportedly provided by Dr Yang in the period 10 November 2019 to 2 February 2021, for a total of \$26,697.60 of rebates claimed and paid. Indicative sentence 1 year and 4 months imprisonment.

Seq 8: claims made between 14 March 2022 and 27 May 2022 in respect of 442 services purportedly provided by Dr Yang in the period 2 September 2020 to 27 May 2022, for a total of \$24,249.70 of rebates claimed and paid. Indicative sentence 1 year and 4 months imprisonment.

Sequences 5, 6 and 7 were committed over three months and seq 8 was committed over a separate, later period of nine weeks. For the claims in the name of Dr Chung the applicant used four different bank debit cards associated with eight linked bank accounts. For the claims in the name of Dr Yang he used two cards that were linked to three bank accounts. The applicant had control over all the bank accounts.

Sequence 9

It appears from the statement of facts that the applicant used data from digital photographs of eftpos purchase receipts that were in his possession at the time of arrest to obtain the identification number for the HICAPS terminal issued to Primary Physiocare Pty Ltd. He was also able to obtain a “rolling password” from his “contact”, by means of which the applicant cloned his own terminal to operate as the terminal of Primary Physiocare Pty Ltd. The applicant obtained the provider number of Mr Ali Jadid, a physiotherapist in the Primary Physiocare Pty Ltd practice, and made numerous false claims for rebates in respect of services purportedly provided by Mr Jadid.

At least some of the claims in the name of Mr Jadid were for services purportedly provided to patients whose names appeared on some of the images of Medicare cards that were stored on the applicant’s phone, as described above. Police also located on his phone a WhatsApp conversation that commenced on 21 June 2022, indicating that the applicant purchased Medicare numbers of patients from a person who was improperly supplying them. The applicant’s phone had stored on it and a list of names and Medicare numbers of numerous patients of Mr Jadid and of two more physiotherapists from another practice (referred to below in connection with seq 10 and 11).

The particulars of the charge laid in relation to the applicant’s false claims in the name of Mr Jadid are as follows:

Seq 9: claims made between 16 June 2022 and 12 July 2022 in respect of 2,017 services purportedly provided by Dr Yang in the period 2 September 2020 to 27 May 2022, for a total of \$110,482.70 of benefits claimed and paid. Indicative sentence 2 years imprisonment.

The applicant used three separate bank debit cards linked to three bank accounts, all under his control, in order to receive the rebates from these fraudulent claims.

Sequences 10 and 11

The applicant obtained the HICAPS terminal number for a physiotherapy practice carried on by Ms E Bota and Ms K M Luk under the name Bankstown Physio. The applicant was able to clone the Bankstown Physio terminal. By some means he obtained the provider numbers of the two physiotherapists. He used Medicare numbers of some of the patients whose details were either on the 134 Medicare cards of which he had images or were listed in the notes of Medicare names and numbers that he had recorded on his phone.

Particulars of the two counts in relation to false claims in the names of Ms Bota and Ms Luk are as follows:

Seq 10: claims made between 22 August 2022 and 28 August 2022 in respect of 549 services purportedly provided by Dr Yang in the period 1 October 2020 to 28 August 2022, for a total of \$30,104.40 of benefits claimed and paid. Indicative sentence 1 year and 4 months imprisonment.

Seq 11: claims made between 24 August 2022 and 9 September 2022 in respect of 3965 services purportedly provided by Dr Yang in the period 1 October 2020 to 9 September 2022, for a total of \$215,882.70 of benefits claimed and paid. Indicative sentence 3 years imprisonment.

Grounds of appeal

Leave is sought to argue the following grounds of appeal:

1 The sentencing judge:

- (a) denied the applicant procedural fairness in finding that the utility of his pleas of guilty, in respect of all offences, was to be reduced because of a dispute as to the facts, and,
- (b) fell into error by reducing the utilitarian value of each of the pleas of guilty because of a this supposed “resuscitated dispute” where there was in fact no litigated dispute, no evidence of the negotiations between the parties (including the means by which they were resolved) save as for amendments in the Agreed Facts in the applicant’s favour.

2 The sentencing Judge erred in his findings as to remorse by:

- (a) mischaracterising the applicant’s explanation for his descent into crime, and,
- (b) failing in this context to have regard to the insight the applicant had developed in respect of his character flaws including after such time as he engaged in a lengthy and voluntary curtailment of his liberty in rehabilitation to redress his criminalising tendencies.

3 The aggregate sentence is manifestly excessive.

The Court has heard full argument on all grounds. In my view leave to appeal should be granted and I will consider each ground substantively.

Procedural history

The applicant was arrested on 26 October 2022. On 24 April 2024 he pleaded guilty in the Local Court to the eight counts upon which he was ultimately sentenced. When those pleas were entered it was indicated that there was to be a dispute with respect to the facts. The appeal papers do not disclose what nature or extent of dispute was anticipated at that time. For the purposes of determining ground 1 it is only necessary to refer to procedural events after committal and up to the sentence hearing on 14 April 2025, so far as they concern finalisation of the agreed statement of facts.

The matter was first listed in the District Court on 24 May 2024 and was adjourned. The Court was informed that the reason for not immediately taking a date for sentence was that the parties were in negotiation. The next listing was on 19 July 2024. The proceedings were again adjourned for the same reason.

On the next occasion, 2 August 2024, the Court was informed that counsel who had appeared for the applicant up to that time had returned the brief. A further adjournment was allowed, to 23 August 2024, to enable fresh counsel to be engaged. On 23 August 2024 the matter came before Judge M Williams SC. Agreed facts in relation to all eight counts were tendered, signed by the applicant. Those facts were identical with the facts subsequently provided to Judge Sutherland SC on 15 April 2025, upon which his Honour passed the aggregate sentence now under consideration, except for the following:

Seq

23 August 2024

15 April 2025

Reduction

4

22,470 claims

\$1,209,004.40

18,791 claims

\$1,010,855.00

3,679 claims

\$198,149.40

6

\$679,532.15

\$667,135.05

\$12,397.10

11

\$217,310.30

\$215,882.70

\$1,427.60

Total

3,679 claims

\$211,974.10

The applicant was represented by counsel before Judge M Williams SC. The facts having been agreed, he was arraigned and pleaded guilty to the eight charges. The matter was adjourned to 4 October 2024 for sentence.

On 4 October 2024 when the proceedings came before Judge Sutherland SC, the applicant's counsel unsuccessfully sought to withdraw a psychologist's report dated 1 October 2024 that had been served on the Crown and provided to the Court. Counsel then applied for an adjournment and sought leave to withdraw "for professional reasons". The proceedings were stood over to 10 October 2024.

On 10 October 2024 the applicant had not engaged replacement counsel. At the request of the applicant's solicitor the proceedings were stood over to 9 December 2024 on the basis that counsel whom it was proposed to brief would be available that day. By late November 2024 the applicant had instructed a new solicitor. On 29 November 2024 that solicitor had the matter relisted and made an unsuccessful application to vacate the sentence hearing fixed for 9 December, on the ground that he had briefed counsel who could not appear on that date.

On 9 December 2024 senior counsel appeared for the applicant and made the following submissions to Judge Sutherland SC:

There was some dispute in relation to the quantum I am told leading up to that and the offender tells me that he was told when those agreed facts were provided to the Court by his previous solicitor all of the disputes and issues that he had in relation to the quantum had been resolved.

That solicitor, as I understand it, remained the solicitor on the record for another few weeks after that. Then his services were terminated. The offender retained his current solicitor. I was retained last week in this matter and I received the material sometime last week. I conferenced with the offender on Friday, which was the first time I was able to conference with him. He pointed out a discrepancy that he claimed existed within the financials in the agreed facts. I've tried in the meantime to go through those financials and prove him wrong, so to speak. Not being a forensic accountant I haven't been able to prove him wrong. In fact, the only conclusion that I can come to in looking at the material at the brief that's been indicated to me is that the quantum in relation to the money that's gone through the Medicare terminal that he was using should be somewhere around about \$1.825 million, not \$2.4 million.

There's also a discrepancy in what is referred to in para 78 of the agreed facts, which is the total of the money that went through his account during the offending period, being \$5 million in and \$5 million out and \$3.3 million of that coming from Medicare, although the Crown says only \$2.4 million of that was dishonestly obtained. Those overall figures are in dispute as well. Both the offender and the offender's father maintain that some of that money that's going into the income, the credit column, attributed to the offender's bank accounts is actually some of the father's money that was related to the father's business. So the bottom line is he admits the offending. He

doesn't admit that it was \$2.4 million. He says that it was probably closer to \$1.8 million.

Senior counsel submitted that although the total amount of rebates as to which the applicant was instructing him was still substantial, a possible reduction in the order of 25% relative to the amount shown on the facts that had been agreed on 23 August 2024 should be investigated.

Senior counsel said this:

We're not withdrawing the plea. We adhere to the plea but [the Crown] may now say, "We don't accept your plea unless it's based on these particular facts," which is what we say as the facts. I won't be able to give my client any further advice in relation to the financial circumstances than I've given him with my limited knowledge of accountancy. It would require, I think, a forensic accountant to look at the financials. I'm not even aware if there's anything in the Crown brief, I couldn't find anything in the Crown brief, that is a report or an analysis of the actual accounts by a forensic accountant or someone of that experience. There might be. I just haven't been able to find it but as far as negotiation is concerned I think we'd require that kind of expertise to be obtained first and then I think it can be resolved from there.

No evidence was tendered on 9 December 2024 as to how it had come about that the applicant had agreed to and signed a statement of facts that he no longer accepted in a significant respect. The following was offered by senior counsel from the bar table:

So he's never accepted, in my submission, that 2.4 million was the quantum, despite the fact that that was put forward by his previous solicitors as being agreed.

The Crown informed the Court that the prosecution brief included a forensic accountant's report substantiating the number of false claims and the quantum of rebates paid. The Crown stated that the total amount in the agreed facts of 23 August 2024 was less than the figure arrived at by the Crown's forensic accountant. The lower agreed figure had been proposed by the applicant's then solicitors. His Honour adjourned the proceedings to 13 December 2024 to enable the applicant's current solicitors to review documents upon which and the circumstances in which the facts of 23 August 2024 had been accepted.

On 13 December 2024 the applicant's then current solicitors informed his Honour that they had now obtained the brief of evidence. They considered it would be necessary to retain on behalf of the applicant a forensic accounting expert. His Honour fixed the sentence hearing for 15 and 16 April 2025.

On 15 April 2025 the sentence hearing proceeded. At the outset an amended statement of agreed facts was tendered by consent. The only changes were as set out in the table at [24] above. The number of claims made by the applicant was reduced by 3,679, as the table indicates. That meant that the total number of claims across all counts was reduced from the figure of 44,523 asserted in the 23 August 2024 facts to 40,844. (The agreed facts of 15 April 2025 show the corrected total number of claims as 40,843 but that is out by one claim – an insignificant arithmetic error). The total of the rebates fraudulently obtained by the applicant was reduced from \$2,427,325.10 (as per the 23 August 2024 facts) to \$2,215,351 (in the agreed facts of 15 April 2025). That is a reduction of

\$211,974.10, or 8.7%.

In written submissions relied upon at the sentence hearing the applicant contended that his pleas had saved the Crown the considerable expense of a potentially lengthy and complex trial and that a discount of 25% should be allowed. The Crown submitted that the discount was a matter for the Court and did not specifically argue that the extent of the discount should be reduced on account of loss of utilitarian benefit flowing from the applicant's change of position with respect to the original agreed statement of facts and associated delays in the sentencing process.

In the course of oral submissions in the sentence hearing the following exchange took place between the applicant's counsel and the sentencing judge:

COUNSEL: The matter was factually complex and this is evidenced by the fact that there's still been negotiations going on in relation to the particulars up until basically two months ago as your Honour is aware. And your Honour can see that some of those negotiations in relation to particulars have been successful because the quantum has been reduced.

In my submission he can't be punished for requiring the indictment to be fairly particularised and to fairly reflect the facts and that hasn't happened until now. And certainly wasn't happening while the matter was in the Local Court and, as I indicated, at a time when he's preoccupied because he's in rehabilitation. In any event, the Crown has conceded that there is a utilitarian benefit. The trial would have been--

HIS HONOUR: There's absolutely no question about that. Let's not mince words, I mean the real question is in the exercise of appropriate discretion, bearing in mind that I'm not bound by what the State does, the question is does he get a full 25% or does he get 20%. That seems to me to be the bottom line.

COUNSEL: I accept that, your Honour. My submission in the written submissions and the submission I make to your Honour now is that he should get the 25% discount. If this were a State matter, subject to the AGP regime, he would get the 25% and in my submission for the rationale behind that, the same rationale would apply here and he should get the 25%.

HIS HONOUR: I understand.

Discount for pleas to Commonwealth charges

By force of s 16A(2) of the Crimes Act 1914 (Cth), the sentencing judge was required to take into account the following consideration in arriving at an appropriate sentence:

- g) if the person has pleaded guilty to the charge in respect of the offence:
- (i) that fact; and
- (ii) the timing of the plea; and

(iii) the degree to which that fact and the timing of the plea resulted in any benefit to the community, or any victim of, or witness to, the offence.

The decision of this Court in *Xiao v R* (2018) 96 NSWLR 1; [2018] NSWCCA 4 has established that in sentencing for Commonwealth offences, when applying s 16A(2)(g) of the Crimes Act a sentencing judge is entitled to take into account the utilitarian value of a plea of guilty. In that case the Court said this at [280]:

Section 16A(2)(g) neither requires nor prohibits the specification of a discount. However, once it is accepted that s 16A allows a sentencing judge to give a discount to the sentence which would otherwise be imposed, it seems to us desirable that, in the interests of transparency, such discounts be specified. However, there is no obligation on the sentencing judge to do so, and a failure to do so would not of itself amount to error.

In a Commonwealth prosecution the sentencing judge is not bound by s 25D of the Crimes (Sentencing Procedure) Act 1999 (NSW), wherein particular discounts are specified for pleas of guilty entered at nominated stages of criminal proceedings. That was made clear by Fullerton J in *Kaurasi v R* (Cth) [2020] NSWCCA 253 at [3], in the following passage:

In the authorities to which I referred at some length in *Betka v R*; *Ghazaoui v R*; *Hawchar v R* [2020] NSWCCA 191, and to which Wilson J also referred in concluding that error had been made out in this case, it is accepted that the timing of a plea of guilty for both Commonwealth and State offences is largely determinative of its objective or utilitarian value. It is also accepted that it is that feature of an offender's plea of guilty which attracts an arithmetical sentencing discount. While the same authorities note that in the assessment of the utilitarian value of the plea of guilty for a Commonwealth offence under s 16A(2)(g) of the Crimes Act 1914 (Cth) there is a need to guard against the application of the fixed or normative sentencing discount that applies to State offences, it is generally accepted that an early plea of guilty for a Commonwealth offence will attract a discount of 25%.

In the same case, Wilson J cautioned (at [39]) that:

... the objective value of the utilitarian benefit of a plea of guilty can become confused with the subjective value of an offender's willingness to facilitate the course of justice, as the plea may evidence.

It was held by Wilson J (Fullerton and Ierace JJ agreeing) that the sentencing judge in that case had erred in reducing the level of discount that he would allow for the offender's plea of guilty upon the consideration that "the plea could not be accepted as indicative of remorse or a wish to facilitate the course of justice". Those considerations were subjective factors, that could not bear upon "the objective value of the plea of guilty".

Ground 1 – discount of 20% rather than 25%

The following paragraph of the learned sentencing judge's remarks gives rise to ground 1:

[30] Pleas of Guilty to the 8 sequences in respect of which he now appears for sentence were first indicated in the Local Court. However, it was indicated that there was a dispute on the facts. Subsequently Agreed Facts which were tendered by consent were sought to be withdrawn and ultimately discussions and negotiations with the Crown led to further amendments to those Agreed Facts. The original defrauded total was in excess of \$2.4 million and the reduced amount was ultimately in excess of \$2.2 million. The number of services fraudulently claimed was similarly adjusted from approximately 44,500 to approximately 40,800. Whilst recognising the pleas of Guilty as contributing to an assessment of remorse and contrition, the circumstances of a resuscitated dispute as to the Facts does operate to reduce the utilitarian value of the pleas. However, in my assessment, a discount in the order of 20% is still appropriate.

I would reject ground 1(a), which alleges denial of procedural fairness on the issue of the utilitarian value of the applicant's pleas of guilty. It was clear from the exchange quoted at [35] above that his Honour was considering allowance of a discount of 20% rather than 25% by reason of the delayed process of revising the facts upon which the applicant was to be sentenced. His Honour was not constrained against that approach by the circumstance that the Crown made no specific submission about it. The Crown expressly left the level of discount to his Honour's discretion. The applicant's counsel was on notice to make whatever submissions he wished in support of a discount at the higher level of 25%.

I would also reject ground 1(b). I do not understand his Honour's remarks to mean that the applicant was to lose part of the discount that he might otherwise have expected on the basis that he had required correction of the facts upon which he was sentenced. The applicant was entitled to take whatever steps were necessary to ensure that the facts would reflect accurately the number of his fraudulent claims in each count and the value of the rebates that he thereby obtained. His Honour did not act upon any different principle. He proceeded on the basis that the ultimately agreed figures were correct, as does this Court.

The applicant's counsel took issue with his Honour's reference to a "resuscitated dispute as to the Facts". However, that was a fair characterisation of the procedural events, bearing in mind that an undisclosed area of dispute regarding the facts was adverted to in the Local Court on 24 April 2024, then the first agreed facts document was accepted and signed in the District Court on 23 August 2024, followed by further dispute and multiple adjournments for the purposes of resolving the number of rebate applications and the quantum of payments. His Honour identified "the circumstances of [the] resuscitated dispute" as the matter that reduced the utilitarian benefit of the pleas, not the mere fact that the applicant had sought correction and had satisfied the Crown that correction was warranted. The relevant circumstances were the toing and froing and multiple adjournments, over a protracted period in which the applicant had legal representation. He changed his representation from time to time at junctures close to listings, with consequent disruption to the prosecution and the District Court.

The relevant circumstances were, first, that agreement to the first set of facts had been signified on 23 August 2024, four months after committal. During those four months the applicant was legally represented and was in possession of the prosecution brief, including a forensic accountant's report. It was not until three and a half months later, on 9 December 2024, that the applicant indicated an intention to have the particulars of his fraudulent claims re-examined by his own forensic accountant with a view to revising the facts. By that time he had changed his solicitors and counsel and two Court fixtures for the sentence hearing, on 4 October and 9 December 2024, had to be vacated to accommodate his belated consideration of the figures.

Recognising that the sentencing judge had a discretion as to the extent to which he would discount the indicative sentences for the utilitarian value of the pleas, and that he was not even obliged to specify the discount he would allow, in my view the allowance of 20% was within the reasonable range of judgment and his Honour did not act upon the basis of any irrelevant consideration.

Ground 2 – findings as to reasons for offending, insight

The passage of the remarks on sentence that is impugned in ground 2 is as follows, with particular reference to the sentence to which emphasis has been added:

[281] Subsection 16A(2)(f) requires the court to take into account the degree to which an offender has shown contrition by taking action to make reparation or in any other manner by which they have demonstrated contrition. Contrition is a term which stresses the sorrowful regret that constitutes true penitence. Penitence itself is the action of feeling or showing sorrow and regret for having done something wrong.

[282] I have no doubt that the present offender is remorseful for the position in which he has placed himself. However, he has continually sought to advance the proposition that but for his cocaine use, the offending would not have occurred. I entertain a degree of reservation about full acceptance of that proposition. His recurrent dishonesty, exhibited in his criminal acts and his dishonest interactions with the Physiotherapy Council, reveal what might colloquially be described as a dishonest “streak” which would appear to have been motivated by factors other than the use or abuse of cocaine. His involvement in gambling is manifest in the expenditure which is detailed. I also note that there have been, to this point, no repayments or reparation.

The applicant's evidence as to circumstances in which he commenced and continued to commit the offences may be summarised as follows. In his own affidavit the applicant deposed that he commenced using cocaine in 2019 after completing his university degree course. He deposed that his parents were strict with respect to his behaviour and that from the age of about 21, when he commenced working as a physiotherapist, he began to assert his independence by adopting a “partying” lifestyle. The applicant deposed that his cocaine use became addictive and he progressed to using 2 to 3 g per week. This created financial pressure to fund the addiction. At the same time the applicant was preyed upon by friends “to pay for things, such as girls and the hotel

rooms". He developed a gambling habit during 2019.

The applicant deposed that relations with his parents were strained as a result of his more independent lifestyle and irregular activities. During 2020 his relationship with an intimate partner was stressful due to her apparent insecurity about him. The relationship ended. On 2 August 2020 the applicant's employment at a physiotherapy clinic was terminated. That added to his financial pressures and led to him commencing his own practice and making false claims using the HICAPS terminal that was issued to him. The applicant deposed that his drug and gambling addictions continued in 2020. In October 2020 he was assaulted and physically threatened to extort from him money that he owed, apparently for drugs.

The applicant deposed that after his arrest in October 2022 he undertook rehabilitation during his conditional liberty on bail. The initial rehabilitation program, which he completed, lasted for one month until late December 2022. In July 2023 he commenced residential rehabilitation that continued for about one year. After approximately three months of the program he was able to leave the rehabilitation facility to attend work in his father's construction business.

The applicant tendered a report of Dr Dayalan, psychiatrist, dated 9 December 2020. That was prepared for the purpose of seeking a treatment order under s 32 of the Mental Health (Forensic Provisions) Act 1990 (NSW) in relation to earlier charges of dishonesty. The history given by the applicant to Dr Dayalan included that he had stopped using cocaine after the assault in October 2020. Dr Dayalan diagnosed a generalised anxiety disorder and said his history was also suggestive of a stimulant use disorder.

The applicant tendered report of Mr Hijazi, psychologist dated 1 October 2024. The history given to Mr Hijazi was consistent with the applicant's affidavit, summarised above. The applicant reported to Mr Hijazi that he had been admitted to hospital during 2020 for drug induced psychosis.

In a Sentence Assessment Report dated 30 September 2024, the author recorded the following from his interview with the applicant:

He attributes his offences to his drug use and stated that if he hadn't begun using drugs, he wouldn't have offended.

The applicant's criminal history, which was before the sentencing judge, showed that on 31 March 2019, at age 22, he committed an offence of obtaining financial advantage by deception. No particulars of that offence are available. It was dealt with by way of a fine. On 20 July 2019 he committed an offence of stealing from the person, taking a handbag from a lady in the Star Casino while an accomplice distracted her. That was also dealt with by way of fine. Between 1 July and 31 August 2019 he dishonestly used another person's credit card to carry out transactions to a value of \$13,750. The transactions were for the purposes of laying bets with the Ladbrokes agency. The applicant was placed under an intensive correction order of 18 months for that offence. On 15 December 2020 the applicant broke into the premises of a medical centre in Bankstown Central Shopping Complex and stole \$520 from a petty cash tin. He was sentenced to

a Community Correction Order for two years.

The sentencing judge's findings in [282] of his remarks were reasonably open to him and reveal no error. It is clear on the appeal papers that the applicant sought to attribute his descent into dishonesty to drug misuse, which led to financial pressures and compromise of judgment. The drug use commenced in a setting of early adulthood release from constraints imposed upon the applicant by conservative and controlling parents. I understand his Honour to have found in [282] that the applicant's dishonesty in the offences against the Commonwealth could not be attributed entirely to a temporary phase of drug and gambling addiction that should be regarded as definitively at an end following the applicant's successful completion of a rehabilitation program. The Judge concluded that the applicant showed an inclination towards criminal dishonesty of various kinds that appeared to be somewhat deep-seated. His Honour evidently concluded that the applicant's endeavour to ascribe his conduct solely or predominantly to a closed chapter of drug misuse was unsustainable and reflected lack of insight and remorse. Those conclusions were reasonably open. Ground 2 should be rejected.

Ground 3 – manifest excess

For the purpose of stating my conclusion on the contention that the aggregate sentence is manifestly excessive, it is sufficient to refer only briefly to some further aspects of the applicant's subjective case. As appears from [281]-[282] of the remarks, his Honour was not satisfied that the applicant was genuinely remorseful in the true sense of the term, notwithstanding the applicant's professions of remorse in his affidavit, in his letter of apology to the Court and in his oral evidence. The sentencing judge noted that nothing had been repaid as at the date of the sentence proceedings, more than two and a half years after his arrest. His Honour assessed the applicant's prospects of rehabilitation as reasonably good. Whilst recognising a "diminished likelihood of reoffending as a general proposition by so-called 'white collar criminals'", his Honour said there was "clearly a need for proper consideration of specific deterrence in the present matter".

Objectively, the offending involved a sophisticated approach to exploiting the system of claiming rebates from the Department of Human Services. Significant features of the applicant's conduct included acquiring the codes and provider identification numbers that enabled him to use his HICAPS terminal to submit claims in the names of other health providers; purchasing and otherwise wrongfully acquiring names and Medicare numbers of patients and falsely utilising the names of referring doctors. He used a code for many of the claims that falsely identified the patient as Indigenous to engage an exemption from any limit on the number of services per annum that would attract a rebate. The applicant applied himself to defrauding the Commonwealth over more than two years, with notable resourcefulness. The learned judge was right to draw the following conclusion:

There are a number of features of the repeated offending in this matter that warrant a conclusion that this particular offending is properly described as a "grave instance" of such type of offending.

The applicant has not shown that the aggregate sentence was manifestly excessive.

Orders

I propose the following orders:

Grant leave to appeal.

Dismiss the appeal.

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