

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA

WOOD v IVANYI

[2016] SAERDC 3

Reasons for Sentence of His Honour Judge Costello

10 February 2016

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING AND DEVELOPMENT PROSECUTIONS - SENTENCING

Defendant pleaded guilty to 11 counts of illegal disposal of waste and one count of failing to comply with an Environment Protection Order - unlawful dumping took place over a period of nearly six months and continued after a warning from the police - offences comprised serious breaches of the Environment Protection Act.

HELD: Defendant convicted on all counts and sentenced to one penalty in relation to all counts being imprisonment for four months and two weeks - sentence suspended upon defendant entering into bond in sum of \$100 to be of good behaviour for two years - defendant to pay compensation to landowners for clean-up of their land in the sum of \$44,000 and a Victim's of Crime Levy of \$160.

Environment Protection Act 1993 ss 34(i), 133(1)(d)(ii); Environment Protection (Waste to Resources) Policy 2010 cl 10(1); Criminal Law (Sentencing) Act 1988 ss 10, 18A, referred to.

Complainant: ANDREW WOOD (A PUBLIC OFFICER) Counsel: MS M CATTONAR - Solicitor: CROWN SOLICITOR'S OFFICE

Defendant: GABRIEL PAUL IVANYI Counsel: MR G AITKEN - Solicitor: YAN ROBSON BARRISTER & SOLICITOR

Hearing Date/s: 05/02/2016

File No/s: ERD-14-293

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Introduction

1 Gabriel Paul Ivanyi ('the defendant') pleaded guilty to 11 counts of
intentionally or recklessly contravening a mandatory provision of the
Environment Protection (Waste to Resources) Policy 2010 contrary to s 34(i) of
the *Environment Protection Act 1993* ('the Act').

2 The relevant provision of the Policy that was contravened is cl 10(1) which
the defendant breached by disposing of more than 20 kgs of waste on someone
else's property without consent.

3 Ten of the 11 counts concern the illegal disposal of waste on land, at
Pedder Crescent, Regency Park owned by SA Water Corporation, Australian Rail
Track Corporation and the Minister for Transport and Infrastructure.

4 The other count concerns the illegal disposal of waste at Eastern Parade,
Gillman on land owned by the SA Railways Commissioner.

5 The defendant also pleaded guilty to one count of failing to comply with an
Environment Protection Order ('EPO') requiring him to remove the waste which
had been illegally deposited.

Background Facts

6 The charges laid are against a background of offending on the part of the
accused. The defendant disposed of waste at Regency Park in December 2012,
January, March, April 2013 and at Gillman in May 2013, on a total of some
26 occasions.

7 The defendant is the sole director and secretary of the company
Adelaide Earth Removal Pty Ltd. The company advertised its services as offering
site clean-up, site preparation, bobcat hire, rubbish removal, demolition and
concrete removal. At the relevant time a white international tipper truck
registration VVN-176 was owned by the defendant and registered to the
company. The listed place of business for the company was the defendant's home
address.

Count 1

8 The defendant's truck with registration VVN-176 was seen by EPA
investigator Anthony Williams at his residence on 6 December 2012 full of
assorted rubbish including timber panels, green laminate, cardboard, plastic and
green waste. Photographs were taken of the truck and its contents.

9 On the following day Investigator Williams returned to the address and saw
the tipper truck parked in front of the premises, but with a bob cat loader in the

tipper tray. No rubbish was in the truck. Investigator Williams then commenced driving through the surrounding streets looking for signs of illegal dumping. He eventually discovered piles of demolition waste on vacant land at Pedder Crescent. Upon closer inspection he saw that one of the piles, contained a quantity of green laminate. He recognised the laminate as that which he had seen on the truck on 6 December 2012. He took a series of photographs of this rubbish.

10 EPA officers returned to the site at Pedder Crescent later in the day and searched the pile of rubbish to try to identify any evidence that would indicate from where the waste originated. Located in the rubbish was a piece of wood with a person's name written on it.

11 Following investigations EPA officers contacted this person who it subsequently transpired was a licensed builder. He indicated that he was approached by a person who introduced himself as Gabriel from a company, Adelaide Earth Removal. Gabriel provided him with one of his business cards and told him that if he needed any assistance in clearing rubble he could do the work.

12 After this meeting the defendant called him constantly in the following week. He eventually contacted the defendant in relation to a site at Welland in December of 2012. He explained to the defendant that he needed the site cleaned and told him that the footings of the house had been poured and that he needed excess soil from the site and concrete waste and spoil from the footings removed and disposed of. He helped the defendant to put the rubbish onto the back of his truck. The defendant told him that he had a mate off Port Wakefield Road who was doing landfill and who was allowed to take rubbish. The defendant was paid for this work on 12 December 2012 in the amount of \$400.00.

13 Investigator Lewis showed the witness a series of photographs taken by Investigator Williams. The witness recognised that parts of the rubbish in the photo were from sites in Welland.

Count 2

14 The Terminal Operations Manager of Pacific National based at Pedder Crescent became aware that the EPA were investigating the unlawful disposal of waste onto the vacant land at Pedder Crescent, adjacent to the Australian Track Rail Corp Line. Pacific National have a security camera which captures train movements along this line.

15 Footage from the camera revealed that on 9 December 2012 a truck entered the vacant land and was then seen to deposit its load and depart.

16 On 14 December 2012 EPA investigator Veers returned to Pedder Crescent and observed new piles of waste in addition to those he observed on 7 December. He took a series of photographs of the waste. The new pile of construction and

demolition waste contained timber, concrete slabs, some weeds and green shade cloth.

17 The licensed builder who contracted with the defendant in relation to count 1 was shown the series of photographs taken by Investigator Veers. He stated that he recognised the brown and white painted timber beams, green shade cloth, concrete footings and weeds that came from a property where he had undertaken demolition work. He stated that he had engaged the defendant to remove waste from this property and he had done so over a two day period. The defendant was paid \$500.00 for this work.

Count 3

18 EPA Investigators Williams and Humphries attended the Pedder Crescent site on 16 January 2013. Photographs were taken of a pile of construction and demolition waste comprising of pink terrazzo flooring, a pink hand basin stand and concrete. Two envelopes with an address indicating the possible source of the waste were located.

19 The occupant from that address provided a statement to officers stating that he had employed the defendant to remove demolition waste from his bathroom renovation on 13 January 2013. He was able to identify that the terrazzo flooring and pink hand basin came from his property

Count 4

20 On 28 February 2013 EPA investigators installed motion cameras in the south-east corner of a business which adjoins the site at Pedder Crescent.

21 Surveillance cameras showed the defendant's truck reversing onto the site at Pedder Crescent with a full load of waste on board on 7 March 2013. The vehicle was observed leaving the land empty. The face of the driver was observed and identified as the defendant. The waste disposed of was soil.

Count 6

22 On 8 March 2013 employees of the adjoining business, referred to in count 4, saw the defendant in his truck disposing of waste at Pedder Crescent. This was also captured on surveillance video. The driver's description matched the defendant.

Count 8

23 Surveillance video showed the defendant's truck disposing of waste at around 6:20 p.m. on 11 March 2013. After the truck had driven off a new pile of soil was observed in front of the concrete and construction and demolition waste.

Count 9

24 Investigations revealed that the defendant's truck was involved in a collision on 12 March 2013. The defendant then hired a truck from Big Chief Hire Trucks on 2 April 2013. Surveillance photos taken on 3 April 2013 showed this truck reversing onto the Pedder Street site carrying concrete waste. EPA investigators saw this truck parked at the defendant's house on 3 April 2014.

Count 10

25 Surveillance photos taken on 6 April 2013 showed the same truck hired from Big Chief Hire Trucks enter the land on Pedder Street loaded with waste. Police attended the site on this day and observed the same truck with the tipper tray up and a combination of concrete, soil and green waste on the ground below the tailgate.

26 The male driver identified himself to police as the defendant and stated that he had filled his truck with waste from a building site he was clearing at Seaton. He said that he had spent the last hour trying to empty his truck. He said that he did not know it was illegal to dump waste at the Pedder Crescent site. He was told by police not to dispose of any further waste at the site otherwise he might be arrested.

Count 11

27 Surveillance video shows the defendant's truck (hired from Big Chief Hire Trucks) attending the site at Pedder Crescent on 7 April 2013, the day after being spoken to by Police, loaded with construction and demolition waste and then leave empty a few minutes later.

Count 12

28 The Account Manager at Big Chief Hire Trucks stated that on 8 April 2013 the defendant returned one truck and hired another. On 11 April 2013 surveillance photos showed this truck depositing waste on the site at Pedder Crescent. EPA Investigator Lewis attended the Pedder Crescent site on 12 April 2013 and observed a new pile of waste at the site containing soil vegetation, plastic conduit, timber ladders, timber pieces and round Permapine posts.

Count 13

29 This charge concerns the illegal disposal of waste at Gillman. At about 2:30 p.m. on 8 May 2013 residents in the area viewed a tipper truck with Martelco written on the door and drive onto vacant land at the site at Gillman.

30 One resident subsequently attended the site with another officer from the Department and viewed fresh heavy vehicle tracks and two piles of waste that appeared to have been recently disposed of at the site.

31 A statement was obtained to show that the defendant hired the truck from Martelco at the time of the offending. Two piles of waste which consisted of concrete, brick, soil, timber, rock and vegetation were subsequently photographed.

Count 14

32 On 10 May 2013 EPA Investigators attended at Pedder Crescent and served the defendant with an EPO requiring the removal of the waste from Pedder Crescent. The waste has not been removed and remains at the site up to this time.

Defendant's Personal Circumstances

33 The defendant is 40 years of age and was born in the Northern Territory. His father migrated to Australia in 1955 from the then Czechoslovakia. His father died about 10 years ago. His mother died in 1986 when the defendant was about 11 years old. She was murdered by the defendant's stepfather. The defendant was a witness to her murder and the traumatic effects of it continue, understandably, to blight him to this day.

34 He grew up in Adelaide and Coober Pedy. He attended Temple Christian College and Croydon High School to year 10. After leaving school he worked in a variety of positions including roof tiling and fruit and vegetable retailing. He also worked for the Shahin group of companies for some seven years.

35 He has experienced difficulties over the years with both alcohol and drugs but latterly drugs.

36 About three years ago he started the business of Adelaide Earth Removal. He bought two trucks, an excavator and a bobcat with money from his father's estate. The business generally involved work in general demolition and site clean-up.

37 It was his practice to take waste from the clean-up sites to ResourceCo at Wingfield. At the time of this offending (late 2012 to May 2013) the defendant had fallen into financial difficulties. He was struggling to pay for things like the registration, running costs and repairs on his trucks.

38 As a result, he chose to dump the materials unlawfully thus avoiding the need to pay for any dumping fees. Despite doing so, I am told and accept, that he made relatively little money in doing these jobs, perhaps as little as \$2,000.00.

39 The defendant has attempted to rehabilitate his life including undergoing a 'detox program' at the Glenside Hospital. He also maintains a preparedness to pay for the costs of the clean-up, to the extent of some \$5,000.00. The total cost for the site clean-up is approximately \$40,000.00.

40 I also accept that although the clean-up has not taken place, the defendant has previously made approaches (which were subsequently unfruitful) to EPA officers in effort to arrange for the clean-up.

Sentence

41 The maximum penalty for both the illegal disposal of waste and the failure to comply with the Environment Protection Order is \$120,000, two years imprisonment or both.

42 The defendant has a significant past history comprising offences involving drugs, driving and violence.

43 Of particular relevance is an offence of depositing rubbish on land without consent for which he was convicted in late May 2012 or a little over five months before this series of offences commenced.

44 I accept that these offences did not involve hazardous waste and that the offending occurred against a background of financial stress. I do not accept that the offending was to use the description of counsel for the defendant, Mr Aitken, 'unsophisticated'. It was planned or premeditated in the sense that it occurred over an extended period of time, during which there were opportunities for reflection. It also continued despite a direction from police.

45 I regard these as serious breaches of the Act. The offences involved the dumping of a significant amount of waste, which was deposited over nearly six months and on about 25 occasions. It was deposited in circumstances which demonstrated little or no regard for the landowners or indeed the surrounding environment. Unsurprisingly, the offences have caused considerable community concern and resulted in numerous complaints about the unsightliness of the land.

46 Disposal of waste in this way undermines the legitimate market that exists for licensed waste depots. It precludes waste from being appropriately recycled and permits the offender to avoid paying the appropriate waste levies. Nor should it be overlooked that these are regulatory offences which are often difficult to detect and police.

47 In offences of this kind general as well as personal deterrence are important factors.

48 I was invited to place the defendant on a bond to appear before the Court at a later date for sentence if he breached the bond. In my view, these offences are far too serious to consider such a course of action. In my view, the seriousness of this offending is such that a sentence of imprisonment is warranted.

49 I regard all these offences as arising out of an ongoing single course of conduct. I therefore propose to impose one penalty for all the offences pursuant to s 18A of the *Sentencing Act*.

50 Having regard to the considerations set out in s 10 of the *Sentencing Act* I impose a sentence of imprisonment of five months which will be reduced to four months and two weeks to take into account the discount, available under s 10B of the *Sentencing Act*, for the defendant's plea of guilty.

51 In my view, given the apparent efforts that the defendant has been making to rehabilitate his life, there are good grounds to suspend his sentence. The sentence will therefore be suspended upon him entering into a bond in the sum of \$100.00 to be of good behaviour for a period of two years.

52 I also make an order pursuant to s 133(1)(d)(ii) of the Act that the defendant pay to:

- Australian Rail Track Corporation \$5,076.93;
- SA Water Corporation \$18,615.38; and
- Minister for Transport and Infrastructure \$20,307.69

by way of compensation for the costs of cleaning up their land.

Formal Orders

- 1 The defendant is convicted on counts 1-4, 6 and 8-14.
- 2 The defendant is sentenced to imprisonment for four months and two weeks, which sentence is suspended upon him entering into a bond in the sum of \$100.00 to be of good behaviour for two years.
- 3 Pursuant to s 133(1)(d)(ii) of the *Environment Protection Act* the defendant is to pay compensation to the Australian Rail Track Corporation fixed in the sum of \$5,076.93, SA Water Corporation fixed in the sum of \$18,615.38 and the Minister for Transport and Infrastructure fixed in the sum of \$20,307.69.
- 4 The defendant is to pay a single Victim's of Crime Levy of \$160.

