

**MAGISTRATES COURT OF SOUTH AUSTRALIA**  
(Criminal)

**PELTON V KIRK**

**Remarks on Penalty of Magistrate White**

**3 July 2017**

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Complainant: GRANT PELTON (A PUBLIC OFFICER)  
Prosecution: MS L WILLOWS  
Defendant: JASON SCOTT KIRK  
Counsel: NO APPEARANCE BY OR FOR DEFENDANT

Hearing Date/s: 3/7/2017

File No/s: AMC-17-5195

## PELTON V KIRK

### Magistrate White Criminal

1 Jason Scott Kirk has been charged with 13 offences under the *Natural Resources Management Act 2004*. He was subject to a complaint and summons which was served on him and on 4 May this year he acknowledged his guilt in writing by returning that to the Court having it witnessed by a Justice of the Peace.

2 In his written guilty plea he says:

I stand by my statements but just want to put all the time behind and continue with my life as it is now not full of bullying, stress, pressure that it was and I have always helped during the process and will never have anything to do with water well work again and hope for the quick finish to put it all behind me.

He has dated that 7 May 2017 and it is witnessed by a Justice of the Peace as I said.

3 As at today I am told and he is not here to dispute, that he is currently working as a Drilling Assistant for a company receiving \$429 per day with an expected 224 shifts per year. That current employment seems to be directly contradicting his statement he made on 7 May 2017 in that he said:

I will never have anything to do with water well work again.

4 Insofar as he is not alleged to have been involved in water well drilling, that statement is correct.

5 I repeat, he has been notified of the hearing today, not only by the Court but by a letter from the Attorney-General's Department to him dated 17 May 2017 outlining the seriousness of the offending as alleged by the Complainant in Court today. That letter was also subject to confirmation by email. The Court has not heard by way of message or letter from him today and as we are allowed, we proceed to deal with this matter in his absence.

6 I agree with the careful outline of submissions filed by the Complainant on 28 June of the potential disaster his unauthorised work could have resulted in. It seems that this offending was calculated to meet whatever work requirements he found himself involved in. As put by the Crown, it was only because of the diligent auditing procedures conducted by Mr Statton that these offences were detected. Indeed I have had the fake licences tendered to me and they are carefully constructed and it is no wonder the deception worked.

7 I agree with the submission that these matters are very serious and that personal and general deterrence needs to be emphasised. I am also told that this charged period is preceded by uncharged acts. I will not sentence him for the uncharged acts but use it as a background for this offending so not as to say it is an isolated but lengthy period of offending. It is offending proved in a background of a long course of conduct.

8 The licensing system for the precious resource of groundwater is extremely well regulated both nationally and at the State level. I am sure the public would expect nothing less and that any crimes committed against this system must be generally deterred and in this case I agree with the submission personal deterrence must be an important factor in sentence.

9 I note the maximum penalties for each offence; \$25,000 for Counts 1 to 11 and \$10,000 for Counts 12 and 13.

10 I will convict him on all Counts. I take into account that he is entitled to a 40% discount by law and he will be given that.

11 I impose one global penalty to reflect the seriousness of the offending conduct. I note that no actual damage was caused but it is the potentiality that is so serious and the breaches were calculated and deliberate.

12 I have regard to the maximum for each offence and I also have regard to the very little I know about him other than what is said to be his current employment and his current advertising on LinkedIn concerning the certificates he says he has obtained when in fact he has not. That shows a disregard for what he has done and, as I said, causes to emphasise personal as well as general deterrence.

13 I do not punish him for not attending today but he has forfeited any opportunity to explain his conduct or ask the Court to take matters into account in his favour.

14 In light of all the offending I set the notional penalty at \$100,000. I reduce that by 40% to \$60,000. I consider the principle of totality with that final figure and given the length of the offending and the number of offences I decline to reduce it further for totality.

15 I impose the usual Court costs and levies.

16 I direct that the Prosecution fee in the amount of \$800 be made payable to the Department of Environment, Water and Natural Resources.

