

**IN THE DISTRICT COURT
AT NELSON**

**I TE KŌTI-Ā-ROHE
KI WHAKATŪ**

**CRI-2022-042-001142
[2023] NZDC 15041**

THE KING

v

WILLIAM MASFIELD TREVOR SULLIVAN

Hearing: 21 July 2023
Appearances: J M Webber for the Crown
M Zintl for the Defendant
Judgment: 21 July 2023

NOTES OF JUDGE D C RUTH ON SENTENCING

[1] William Sullivan, you are before the Court today for sentence having pleaded guilty to a charge of making false statement. The summary of facts, in relation to you, I think needs to be read into the record so that there is transparency as to how the Court is dealing with you and on what factual basis.

[2] Aimex Limited is a marine industrial engineering company based in Vickerman Street here in Port Nelson. They have a website which records that the facilities are based at Port Nelson, that they have a wide range of machinery, 1,300 square metres of workshop space and that they employ over 100 staff and additional contractors. You were, at the relevant time, the Health and Safety Officer at that company in 2019. You reported to a General Manager at the time of this incident who, in turn, reported to the Managing Director who was your brother and

one of three directors in the company, but he I think was regarded as the overall managing director in terms of directorship.

[3] In 2019, the company was subject to a WorkSafe investigation relating to the Health and Safety at Work Act 2015 after an employee of Aimex, Mr Palmer, became overcome by toxic fumes in the hull of a boat while he was cleaning the engine with brake cleaner on 29 July that year. As a result of that incident, he suffered a long-term brain injury.

[4] During the investigation by WorkSafe, their investigators became aware of a previous similar incident that had occurred with another employee (who has been called Employee X) on 24 July the week prior using the same brake cleaner and on the same vessel.

[5] Employee X, also an employee of Aimex, informed WorkSafe of this previous incident during an interview with the investigators on 10 October 2019, during the investigation into the incident relating to Mr Palmer. He told investigators that he had been cleaning the engine room of the same vessel with brake cleaner when he became overcome with fumes. He recognised the symptoms and self-evacuated from the situation immediately.

[6] Employee X said he had recorded the incident on his timesheet for that day, 24 July, stating that he had felt lightheaded. He had also discussed the incident with you, in your capacity as the Health and Safety Officer, a short time after that incident. You completed an incident report recording the details of what had occurred. You wrote on the incident report that your assessment was a lack of ventilation and incorrect product for task. You then ticked the probable consequence box as “significant”, and recorded prevention opportunities as “training for all and toolbox discussion”. You later discussed this report with the General Manager, who I think at that stage was a Mr Lavery, although it was never raised in the daily staff toolbox health and safety meetings.

[7] The following Monday, 29 July, Mr Palmer had his incident using the same brake cleaner and you assisted, in fact, with the extraction of Mr Palmer from the hull

of the vessel as a result of him being found unresponsive in that area and so you were fully aware not only of the situation for Employee X but also for Mr Palmer.

[8] On 21 February 2020, during the subsequent investigation into the incident involving Mr Palmer, you were interviewed by WorkSafe. That interview was recorded electronically.

[9] Towards the end of that interview, you were asked by WorkSafe investigators if there had been any previous similar incidents. You responded: “Not that I know of, no.” The WorkSafe investigator asked: “So nothing with a similar hazardous substance?” You responded: “Not in my time here.”

[10] You were asked about the “lightheaded” comment made on the Employee X timesheet and asked whether that seemed familiar to you. You claimed it did not, saying that you did not see the timesheets and asked: “Why would a tradesman be cleaning an engine room?”

[11] You then followed up by saying:

I am shocked that Employee X would have been in that engine room. I am just looking at this, he was told to leave the boat and that has just rung a bell with me. I think this may relate to an incident with the Employee X and one of the senior managers where the Senior Manager got nailed. I’d have to check my diary.

[12] You were then asked: “Would there be any paperwork if there was a near-miss or an incident reported?” Your reply was:

I’d have to look, I’d have to have a look at that but I would be very – it would have stuck in my mind ‘what the hell is he doing in cleaning an engine room’ but I think my diary will answer this question, but there is no way he was getting paid to clean.

[13] You then told the investigators you would look into it, get a copy of your diary, but you never did. As a result of a lack of corroboration about that incident, WorkSafe were unable to rely on the disclosure of the previous incident in making their charging decisions or in their sentencing submissions to the Nelson Court in July 2021 after the company had pleaded guilty to charges under the Health and Safety at Work Act.

[14] At the sentencing of the company, counsel acting on behalf of the company sought certain discounts which were, in fact, accorded and mainly on the basis that there was no evidence at that point about what had happened to Employee X. The sentencing Judge was really forced to treat the company as a first offender with a clean prior record.

[15] After that sentencing in the court on 9 July, the Chief Operating Officer became aware of a number of concerning circumstances around the Employee X incident report and actions that were taken by some Aimex employees intending to cover up that incident during the WorkSafe investigation.

[16] On 12 July 2021, the Chief Operating Officer spoke to you. You were visibly very upset. You confirmed that Employee X had reported this incident to you and that you had filled out an incident report but you claimed you had given it to the General Manager. You admitted to the Chief Operating Officer that you had not told WorkSafe about the matter when you were interviewed, even though you had knowledge of it.

[17] WorkSafe New Zealand were advised about the situation by the Chief Operating Officer and in August 2021 Nelson police also commenced an investigation into the allegations of misleading and of withholding information from WorkSafe .

[18] On 6 December 2021, police executed a search warrant at the home address of the ex-General Manager where they located a copy of the Employee X incident report that he had saved.

[19] On 10 December 2021, you were interviewed by police. You admitted to having had knowledge of Employee X's incident report at the time of the WorkSafe interview and to having completed sections of it yourself but, in your view, you said the blame for it not being disclosed to WorkSafe lay with the ex-Manager rather than you. You admitted that you had not told WorkSafe about the incident report during your interview and when asked you claimed you believed it was not your job to disclose it to WorkSafe as you were just an employee and that you no longer had the

incident report. You said you did not believe you had any supporting evidence to show them.

[20] You have previously appeared before the courts but I agree with Mr Webber they are not of any particular moment for present purposes.

[21] Mr Zintl, on your behalf, urges me not to bring to bear the actions of the company onto your culpability and I agree entirely that they are separate issues. The basic fact, however, that is inescapable is that it was your knowledge, that you denied the existence of, that was ground zero in terms of the perversion of the course of justice that followed. That is a matter that you do not face, your brother does, but it was your inactivity, your absolute dereliction of your duty as a health and safety officer which has led to an entirely preventable incident. Mr Palmer has been damaged for the rest of his life because you took the view that you would not abide by your obligations as a health and safety officer, for what reasons I do not know.

[22] The reality is that your obligations once Employee X had been extracted from that workplace were to immediately close that area down and have it not usable for any employee until specific health checks had been made and safety had been ensured, so that someone like Mr Palmer did not subsequently go down and suffer the life-changing injuries that he has suffered.

[23] If anyone in this company has any direct responsibility for Mr Palmer's plight it is you, it is on your shoulders. Your dereliction of duty is outrageous. Why you then continued with the lie I cannot know, but you have to be held to account and so do those who undertake work of a health and safety nature. It is absolutely imperative that health and safety regulations be strictly abided by and that people do not put their own interests before the health and safety of those who they are tasked with caring for. They must ensure that employees do work in a safe environment, so that they do go home at the end of the day not in an ambulance but under their own steam.

[24] I have a pre-sentence report that tells me that you left your employment after the company went to court and Mr Zintl confirms that you are no longer working. He has told me about a difficulty that you have which is something that hopefully can be

worked on in the due course of time. The difficulty that the recommendation from the Probation Service has for this Court is that it is not put in a position where electronic monitoring or that type of sentence can be considered, because there is no home available for such a sentence.

[25] The real issue here is whether and to what extent I take the view that the sentence that I impose will satisfy the needs, the aims, the purposes and principles of sentencing which are set out in the Sentencing Act 2002 that binds what I do. The situation, it seems to me, is a starting point of 12 months for imprisonment purposes must be about right. I think both the Crown and your counsel agree that that is so. There are scant higher court authorities to guide this Court in terms of just what the correct sentence might be and in my view, in any event, these cases are very fact specific.

[26] I regard your dereliction of duty here as being serious. I regard the outcome of your failures to be serious. I take the view that on perhaps a favourable footing for you, that from that 12 months I would grant a term of three months which is 25 per cent by way of a discount. That, I know, is not supported by the Crown but is a discount I am prepared to allow.

[27] The real question is, how do I impose a sentence that is consistent with the purposes and principles of the Sentencing Act in relation to the remaining nine month residual sentence? My view is that in a case such as this that deterrence, both general and specific, must be the overriding and overwhelmingly important factors of this sentencing. Those who are tasked with and who have obligations under health, work and safety legislation must get the message that this is serious and a failure to carry out obligations in the way you failed to has to have consequences that everyone can understand.

[28] I take the view after having very carefully thought about all of the sentencing options in the Sentencing Act, having regard to all of the submissions and having regard to such case law as there is, that there is no other sentence that can meet the Sentencing Act requirements but a term of imprisonment.

[29] You will therefore be imprisoned for nine months. You will have standard release conditions that will go on for six months beyond your sentence expiry date and I give you leave under s 80I of the Sentencing Act to apply to have your sentence commuted to home detention should a suitable property be found.

Judge DC Ruth

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 24/07/2023