IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2008-004-029179
[2012] NZHC 785

THE QUEEN

v

RODNEY MICHAEL PETRICEVIC

Hearing:	26 April 2012
Appearances:	B Dickey, W Cathcart and T Molloy for Crown C B Cato for Mr Petricevic
Charges:	Making false statements x6 Making false statement to trustee x2 Distributing offer documents containing false statements x10
Plea:	Not Guilty
Sentenced:	26 April 2012 Making false statements – 6½ years' imprisonment Making false statement to trustee – 4 years' imprisonment Distributing offer documents containing false statements – 4 ½ years' imprisonment Total: Six and a half years' imprisonment (concurrent)

SENTENCING NOTES OF VENNING J

Solicitors: Crown Solicitor, Auckland
Copy to: C Cato, Auckland

[1] Rodney Michael Petricevic you have been convicted and are for sentence on six counts under the Crimes Act of making false statements, two counts under the Companies Act of making false statements in directors' certificates to Covenant Trustee Company Limited and 10 counts under the Securities Act of distributing offer documents containing false statements.

[2] The maximum penalty for the offending under the Crimes Act is 10 years in each case, and five years for the offending under the Companies and Securities Acts.

[3] The convictions arise out of your actions as managing director of Bridgecorp Ltd and Bridgecorp Investments Ltd (BIL).

[4] Bridgecorp was incorporated on 30 April 2001. It is a wholly owned subsidiary of Bridgecorp Holdings Limited, which is in liquidation (BHL), and a company registered in Australia.

[5] BHL was a small public company in New Zealand left as a shell after the 1987 sharemarket crash. Interests associated with you bought it in about 1992. You then sold a portfolio of mortgages into it in about 1994 and interests associated with you hold about 3.8 million shares in BHL – the Crown estimate that to be approximately in excess of 60 per cent of the shares.

[6] BHL started lending money in its own right and looked to the market to raise further money. It registered its first prospectus in the late 1990's. At about that time a decision was made to migrate that company to Australia and Bridgecorp was incorporated to continue business in the New Zealand market.

[7] Bridgecorp's principal activity was the sourcing of funding and lending in relation to property financing transactions. It primarily funded that activity through investments from the public by issuing secured debentures to members of the public and through issuing redeemable preference shares to BIL.

[8] In order to raise money in that way from investors Bridgecorp had to issue prospectuses and investment statements from time to time and to register them with

the Registrar of Companies. It was also required to appoint a custodian for the debenture holders, Covenant Trustee Company Ltd (Covenant).

[9] BIL was incorporated in April 2002 as a vehicle to raise further funds for New Zealand's subsidiaries of BHL. It issued capital notes to the public and invested the proceeds from those activities into redeemable preference shares issued by Bridgecorp. BIL's performance was entirely dependent on Bridgecorp.

[10] Bridgecorp was placed into receivership on 2 July 2007. At the date of its receivership it had approximately $459 million of secured debenture stock outstanding to approximately 14,500 debenture holders or investors. It is likely that any recovery for those investors will be less than 10 cents in the dollar.

[11] BIL was placed into liquidation on 7 July 2007. As at the date of its liquidation BIL had approximately just under $29 million of capital notes outstanding to the public and $30 million redeemable preference shares outstanding in Bridgecorp. It is unlikely that the investors in the capital notes will recover anything.

[12] The relevant offer documents were issued on 21 December 2006. They were extended on 30 March 2007. In April you also provided certificates to Covenant in relation to the affairs of Bridgecorp and BIL.

[13] As from 7 February 2007 Bridgecorp and BIL missed principal and interest repayments due to investors on a number of occasions.

[14] In finding the charges under the Crimes Act proved, the Court found you knew the statement in the offer documents that Bridgecorp had never missed interest and principal repayments was false and that you intended to induce people to invest in Bridgecorp and BIL.

[15] In finding the Companies Act charges proved, the Court found that you furnished statements to the Trustee that were false in a misleading particular, namely

that they failed to disclose Bridgecorp and BIL had missed interest and principal repayments.

[16] In finding the Securities Act charges proved the Court found that the offer documents included a number of untrue statements, particularly:

- that Barcroft Holdings was not a related party;

- that no relevant adverse circumstances had arisen between 30 June 2006 (the date of the accounts attached to the prospectus) and 21 December 2006 (the date of the issue of the offer documents);

- in relation to the issue of liquidity risk; and,

- after 7 February, that Bridgecorp had never missed an interest payment, and when due, a repayment of principal.

The Court also found there were false statements made in the extension certificate made to prolong and extend the effective life of the offer documents.

[17] The Court rejected the defences raised to the Securities Act counts that the above statements were immaterial or that you had reasonable grounds to believe and did, up to the distribution of the documents, believe the statements to be true.

[18] During the period the relevant offer documents were before the public, 991 investors invested in excess of $25 million of new money and 3,461 existing investors reinvested almost $86 million with Bridgecorp. During the same period, 67 investors invested just under $2.4 million of new money and existing investors reinvested over $5.2 million with BIL. In summary, $91 million of reinvested funds and $28 million of new money was invested during the currency of your offending.

[19] I turn to your personal circumstances.

[20] You were described in the relevant offer documents as Managing Director. It is said:

> Rod has been involved in the finance industry for more than 30 years and has been a director of a number of publicly listed companies both in New Zealand and Australia. He has access to an extensive range of business contacts and potential opportunities. Rod has been a director of the Bridgecorp group of companies since 1993.

[21] The pre-sentence report itself is brief. At the age of 62 you appear for sentence for the first time on criminal charges.

[22] You were declared bankrupt in 2008 and are reliant on your family for financial support although you have recently been discharged from bankruptcy. You are banned from being a director or a promoter of a company until 29 May 2014.

[23] The probation officer notes in the report that you maintain your innocence of the charges and told the probation officer you are "truly remorseful" and you spent an "inordinate amount of time trying to fix this". Although you offered to find some way of paying any order for reparation it is now accepted that is unrealistic.

[24] Mr Petricevic as you have heard counsel's acknowledgement, reparation is just not a practical option in this case. The Court can only take an offer to make amends into account if the offer is genuine and capable of fulfilment. In your case, given your financial position, it is neither. After receiving the pre-sentence report I invited clarification as to what sum was proposed to be offered, what source the funds would come from and the ability of that source to pay. Mr Cato has confirmed that reparation is not available and is not realistic.

Submissions

[25] The Crown seeks a total starting point for all of your offending of eight years imprisonment, whether it is made up of as an accumulation of separate starting points for Crimes Act and Securities Act charges or whether the sentences imposed are concurrent. For the Crimes Act charges alone, the Crown submits that a sentence of seven years imprisonment would be appropriate. For the Securities Act charges, the Crown argues for a starting point of five years, the maximum. However, applying the principle of totality, the Crown submits a final sentence of eight years as a start point before taking account of your mitigating factors is appropriate. The

Crown concedes that a modest discount may be appropriate to reflect mitigating factors.

[26] Mr Cato submits that a global starting point of six years is appropriate and then argues for a reduction from that to take account of mitigating factors he has addressed.

[27] Mr Petricevic, in sentencing you I am required to take account of the purposes and principles of the Sentencing Act.

[28] The purposes of sentencing that are particularly relevant in this case are:

(a) to denounce your offending and deter others from committing the same and similar offences;

(b) to hold you accountable to members of the community for your actions and omissions;

(c) to provide for the interests of the victims of your offending; and

(d) to promote in you a sense of responsibility for and an acknowledgement of the harm your actions have done to the victims.

[29] In relation to that I just propose to read from two very brief extracts from a number of the summaries of the victim impact reports that the Court has received. I do not identify the victims.

[30] A retired professional man of 69 invested $150,000 with Bridgecorp in January 2007 and then after he and his wife sold their home in June 2007, they invested the net proceeds with Bridgecorp, approximately a million. They made other investments totalling approximately a further million with Bridgecorp. Those moneys have all been lost. That man has worked all his life and estimates that given his on-call work, he is averaging up to 160 hours work a week. He was looking forward to a retirement while still active. That was four years ago, but that opportunity has been lost. He is still forced to work and active retirement is now but

a dream. Loss of the funds was even harder on his wife who suffered a nervous breakdown. Despite extensive treatment she has only mildly improved and is on constant medication. On a regular basis they simply try to not think about what might have been.

[31] Another investor aged 79 and his wife worked all their lives until retirement. Before investing in Bridgecorp they had previously invested with banks. They started investing in June 2006 and after considering the prospectus issued in this case and taking advice they took what they thought was a slight risk and invested up to $250,000 in Bridgecorp. The impact of the financial loss on them has been devastating, both to the couple and their family. They are unable to help out their children as they hoped they might have been able to do. They have little savings left and minimal interest payments supporting their pension. The comfortable lifestyle they had worked all their lives for and had looked forward to has been lost. There is not a day that they have woken up and not thought about it. It is the most depressing period of their lives.

[32] That is the tangible outcome of the offending that you and the other directors in this case were involved in.

[33] I consider the following principles of sentencing assume particular importance in this case:

(a) the need for a sentence to reflect the gravity of the offending, including the degree of culpability;

(b) the requirement to take into account the seriousness of the type of offending in comparison with other offences, as indicated by the maximum penalties prescribed;

(c) the need for consistency in sentencing. Consistency in this case has two particular aspects. The first is the need for similar sentences to be imposed on people who commit like offences. The second is the need to consider the sentences imposed on co-offenders, to reflect varying

degrees of culpability. In that regard, I consider you to be in a quite different position to Mr Davidson and Mr Urwin, and, for that matter Mr Steigrad. They did not face Crimes or Companies Act charges. Mr Davidson and Mr Urwin had the advantage of pleading guilty to an agreed summary of facts which differs in respects from the findings the Court made after the full trial. The sentencing Judge accepted Mr Davidson maintained an honest, although unreasonable, belief in the truth of the statements in the offer documents, a fact the Court rejected in finding you guilty;

(d) the need to respond adequately to the effect of the offending on victims; and

(e) the need for a proportionate response, on behalf of the community.

[34] I turn to consider the appropriate starting point. I take the Crimes Act offences as the lead offences. I have considered the cases counsel have referred to but I have been most assisted by the case of *R v Farquhar*[1] and also the case of *R v Thomson*,[2] which were decided under an earlier but similar provision of the Crimes Act.

[35] Mr Farquhar was the director of Landbase, an issuer company that invested public funds in contributory mortgages. It distributed a brochure in July/August 1987 that included a statement that the company's mortgages were individually insured for their full term against any loss of principal and interest, and another statement that if any moneys were advanced by the company to its directors (or associated companies) the directors would provide full personal covenants for repayment.

[36] From August 1987 insurance premiums were not paid, in breach of the first statement, and moneys were also loaned to a company associated with the directors without a personal covenant being provided, in breach of the second statement. A

---

1 *R v Farquhar* CA 455/94, 5 October 1995.

2 *R v Thompson* HC Christchurch T113/95, 8 March 1996; *R v Thompson* CA 75/96, 14 August 1996.

total of $37 million had been invested in the company during the relevant period. The company was put into liquidation. There was a loss to investors of in excess of $14 million. Mr Farquhar was sentenced to five years' imprisonment.

[37] The Court of Appeal rejected his appeal against sentence and noted that a considerable number of investors were retired and elderly who had no prospect of recouping their losses, and that many had suffered a major reduction in their standard of living as a result of Mr Farquhar's actions. The same features apply in this case, although the sums lost in this case far exceed those lost in the Landbase case, even taking account of inflation.

[38] Mr Thompson was a managing director of Fortex Group. He was the only executive director. He was characterised by the Crown as the founder and driving force of the company, which, although it was publicly listed, was treated by him as his own.

[39] Following trial Mr Thompson was convicted on 12 counts, but acquitted on four. The lead offences for the purposes of sentencing were three counts of publishing false statements under the Crimes Act 1961.

[40] Holland J noted the victims in Mr Thompson's offending were numerous, and the sums involved were huge in that potentially $64 million was lost through the company's failure. The Judge however accepted Mr Thompson's actions had not caused all the losses but he considered the actions had contributed to them. He recognised the need for a deterrent sentence. While the Judge accepted that offending over the first two periods may have occurred because of Mr Thompson's false optimism or failure to accept reality, but nevertheless in the belief the company would come right, the Judge considered it was difficult to accept that view could have applied or have been honestly held in respect of the last period of offending. Holland J imposed an effective sentence for the totality of all the offending of six and a half years. The sentence was upheld on appeal.

[41] Mr Petricevic, I accept you did not set out to cause any of the investors harm, but you did deliberately make false statements with the intention of inducing people

to invest in Bridgecorp at a time when you knew the company was in serious financial trouble. It had even ceased new lending, which was its principal activity. The new money was effectively used to keep the company going and to meet the repayments of investors who wished to withdraw their moneys.

[42] I address Mr Cato's submissions in support of a starting point of six years (in total). The first is that the periods of default, although extensive in number, were usually of a very short duration. However they were ongoing and regular. This was not a case of a one-off aberration. You knew how bad the situation was because you put your own money in it to prop up the company from time to time. Also you agreed to steps being taken to mislead investors who enquired when their payments had been missed or delayed.

[43] Mr Cato also referred to the steps you had taken referred to in the pre-sentence report of arranging a further advance from Hanover Finance of five or six million dollars to meet the outstanding obligations that Bridgecorp was in default of, at the time of the receivership or at least immediately prior to it. However, rather than that being seen as a positive feature on your behalf frankly it seems to me to be just a further example of the steps that you were prepared to go to in order to cover up the real financial position of the company and to maintain the operations of the company, including receiving further investments and roll-overs from existing investors.

[44] Next Mr Cato submits that at all times, you took seriously the payment of obligations to investors and notes the obligations to the Australian investors were met. That may well be the case, but I have to sentence you for your actions in relation to the breach of your obligations to the investors in Bridgecorp and BIL.

[45] Then, Mr Cato submitted that there was a need to consider the context in which the offending occurred, and in particular emphasised your belief that Bridgecorp would "get through". He said although your view about the company's ability may be described as optimistic, with hindsight at least, your failure to advise of defaults or certify honestly were against a background of short term defaults, and the significant receivable expected from Momi Bay and other asset sales.

[46] While those matters may shed some light on the context in which the false statements were made, in the circumstances I do not consider your misplaced optimism is a factor that reduces your culpability in relation to the offending. For a considerable time during this period, for example, you knew that you could not rely on receiving anything from Momi Bay. The belief that Bridgecorp would survive was really your belief that you would get away with making the false statements, rather than a lack of knowledge that what you were doing was wrong.

[47] Mr Cato then submitted the Crown's suggestion the motive for your offending was to preserve your shareholding was inconsistent with its position at trial. I accept it was not a major factor at trial nor was it a factor time was spent on. The Crown submitted the object was to weather what was a liquidity crisis pending receipt of the Momi Bay funds or other asset sales. However even accepting Mr Cato's submission to that point, in respect of your culpability, I note the Court of Appeal's comment in *R v Thompson*:[3]

> Recourse to dishonesty because of inability of persons of standing to confront failure has been at the heart of much commercial fraud. We agree with the sentencing Judge that it is an arguable point whether such motivation is any less culpable than greed.

[48] Mr Cato also referred to the due diligence and other reports that were before you and the other directors and the processes Bridgecorp had in place. However, the short answer to that submission is that whatever due diligence process or reports were before you, you knew what the actual position was.

[49] I emphasise that you are not before this Court to be sentenced because the property market collapsed or because the onset of the global financial crisis affected finance companies, or even because Bridgecorp failed as a business. You are for sentence because as a director you made false statements in offer documents and other documents which misled a substantial number of people into investing or reinvesting substantial sums in Bridgecorp and BIL when, if they had been told the truth they would not have invested or, in the case of Covenant, if it had been told the truth steps would have been taken to protect the position of existing investors.

---

[3] *R v Thompson* at [17].

[50] Finally, Mr Cato sought to draw a distinction in terms of seriousness between the present offending, which he described as "fiduciary breaches of trust and deceit", and offending involving actual theft and considerable personal gain. The short answer is that s 242 of the Crimes Act creates specific criminal liability for false statements made by people in the position that you were in with the intent of inducing people to subscribe for securities. There is no requirement that there be actual theft or personal gain.

[51] In addition as I have noted, the false statements made to the Trustee under the Companies Act affected the existing investors.

[52] I accept that there are a number of aggravating factors that the Crown have identified in their submissions, in particular, if the true position had been advised, particularly from 7 February on, then neither company would have received further public investments. The losses caused are not just financial in nature. As the Court noted in the case of *R v Moses, Doolan & Young* and as I have really referred to earlier by reference to the victim impact reports:[4]

> In addition [to financial losses] there are the emotional and psychological costs caused to people who may have lost the benefit of much of their retirement savings. Common sense dictates that a number of those who have suffered loss will also have suffered from medical conditions brought on by the stress of what has happened ...

[53] The point is, that your offending has affected people not only financially but emotionally. There is also a degree of breach of trust in that the company was subject to trust deeds and reporting obligations to Covenant and you provided false information to that Trustee. There was also the breach of the trust that investors had in the company and the directors.

[54] Next, offending of this sort by directors of substantial finance companies undermines the integrity and consumer confidence in the New Zealand non-bank debt securities markets and also undermines investor confidence in general.

---

4 *R v Moses, Doolan & Young* HC Auckland CRI-2009-004-1388, 2 September 2011 at [24].

[55] The offending spans a five month period from February 2007 to June 2007. In relation to the Securities Act it extends from 21 December 2006. You were the managing director of these companies.

[56] Taking all of those matters into account, on the Crimes Act and Companies Act charges I consider a starting point of six and a half years would be appropriate. However I also have to consider the Securities Act charges. I note that in the Nathans case the Court of Appeal commented that the starting point of three years three months for grossly negligent (but honest) directors was, if anything, on the light side. The Court has found that you did not have an honest and reasonable belief in this case. Further, while there is a degree of duplication in misleading statements underlying both the Crimes Act and Securities Act charges there are a number of additional features of the Securities Act charges which are not reflected in the Crimes Act charges. I consider four and a half years would be an appropriate start point for your offending under the Securities Act. However, I have regard to the totality principle and take as a start point overall for your offending a sentence of seven and a half years.

[57] I then turn to consider your personal factors. There are no aggravating personal factors.

[58] Mr Cato argues the following factors by way of mitigation.

Previous good character

[59] A number of references have been provided which attest to your character. Mr Dickey makes the point in submission that they are references from people closely associated with you rather than truly independent references. I also note Heath J's comments in *R v Moses* that:[5]

> ... It is one thing to deny credit for past good character in a case where an offender has used a prior reputation to instil confidence in a person from whom he or she obtains money by dishonest means. In such a case the prior good character is used for a dishonest purpose. In a case such as this, there was no intention to use your good reputation to cause loss to others. It

---

5 *R v Moses* at [54].

> happened because of your failure to meet required statutory standards of competence. In those circumstances, I see no reason why some allowance should not be made for past good character.

[60] In sentencing Mr Davidson, Andrews J noted that none of the victim impact statements supported the submission Mr Davidson relied on his good character and reputation to induce investors to invest in the companies. Mr Dickey has invited me to depart from that finding in your case by reference to comments in the documents before investors. However, I do not see a reason to make such a distinction. Andrews J allowed a substantial discount for good character, remorse, offer to pay reparation, co-operation with receivers and assistance to the authorities. While a number of those considerations do not apply to you Mr Petricevic, I have considered to the extent I am able the materials provided to support you and accept, particularly, that you are entitled to credit for the fact that at the age of 62 you appear for the first time for sentence on criminal offending. I also acknowledge that imprisonment will be hard for you at this stage of your life. Taking those factors into account I consider something in the range of 10% would be appropriate.

Age

[61] Mr Cato also addressed a submission directed at your age generally. In certain cases such as *R v Mikus*[6] and *R v KJ*,[7] the Court has taken into account the age of an offender but in both those cases the offenders were in their mid seventies. At the age of only 62 years old I do not consider a discount for age itself in addition to taking account of your previous clear record and the fact that imprisonment will be difficult for you, provides any need for any further reduction.

Remorse

[62] Mr Cato submitted that you have expressed remorse for the investors' losses both in your evidence and your probation report and he says you were not able to express it earlier due to constraints imposed by your insurers, your director and legal

---

6 *R v Mikus* CA296/04, 26 October 2004.
7 *R v KJ* HC Hamilton CRI-2005-073-249, 1 December 2006.

advice. You have said on more than one occasion that you are sorry for the losses that investors have sustained.

[63] Genuine remorse may be treated as a mitigating factor. However, in *Hessell v R*[8] the Supreme Court confirmed that for remorse to be considered, it must be shown to be genuine. Mr Petricevic I have to say, as I discussed with your counsel, that I am not satisfied that you have shown your remorse is genuine. Remorse is defined as a deep regret or guilt for doing something morally wrong which in your case requires an acknowledgement and understanding that your actions were wrong in way. You have said you are remorseful but at the same time purport to maintain your innocence. You also told the probation officer that you believed the prospectus reflected the state of the economy at the time. Aspects of it may have, but not the aspects the Court found to be misleading and which you knew were misleading. You may be sorry the investors lost their money, but that is not true remorse. You do not accept responsibility for those losses. You still apparently do not consider you did anything wrong. You maintain your innocence. I do not accept that you have shown genuine remorse and I am not prepared to give any credit for remorse in those circumstances.

Delay

[64] Counsel also referred to a delay since the charges were laid. The present proceedings were prolonged because of the lengthy deposition process, issues about representation and a number of interlocutory applications involving a number of the accused including yourself. In this case there is no evidence of any egregious delay or anything else which would support a reduction for the delay in dealing with the matter.

Other

[65] There are two further and final issues that have been raised. You and your family have been subjected to intensive media scrutiny throughout this process. It is

---

8 *Hessell v R* [2011] 1 NZLR 607.

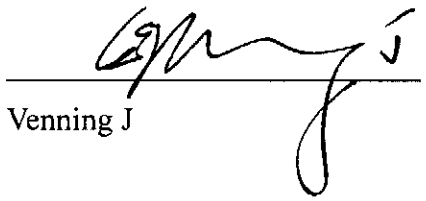
clear from the letters to the Court that this has caused you and them distress. Mr Cato submitted that while some media attention was deserved and understandable, the media attention in this case has been exceptional and punishment in itself.

[66] I have to say that intense media scrutiny is a natural consequence of your and the other directors' actions in this case. Significant harm and loss has been caused to thousands of investors. Although you and your family may perhaps have been unfairly singled out by the media I do not consider that to be a factor that the Court can properly take into account in determining the appropriate sentence for your offending. You are not alone in terms of a number of former directors of finance companies who face intense media scrutiny, public comment and debate about their actions. There are many cases in this and other areas of offending where there is a high degree of media interest and perhaps even harassment. There are civil remedies for harassment but unless the media attention escalates to the stage of contempt of Court, it must be regarded as a reflection of the extent of public reaction to the nature of the offending and I do not consider I can take it into account.

[67] However, there have also been other actions. There has been a assault on you physically. In addition offensive material has been left at your home and you and your family have been subjected to written threats. Perhaps those actions were carried out by parties who have lost money or associated with them. While I can understand the strong feelings that victims of your offending might feel, such actions cannot be condoned. I accept they will have had effect on you. They should not be ignored. In New Zealand we have the rule of law, not the rule of the mob. People charged with criminal offending, no matter what the offence or how awful the offending may be, are entitled to due process under the law. The consequences of their action, if convicted, is the sentence imposed on them by the Court on behalf of society at large. It is not for individuals to take matters into their own hands or to mete out their own idea of justice or retribution. I propose to take the actions that you and your family have been subjected to into account and make a further modest reduction for them.

[68] Mr Petricevic please stand.

[69] On the Crimes Act offences you are sentenced to imprisonment for six and a half years on each count. On the Companies Act offences, four years on each count. On the Securities Act Offences, four and a half years on each count. The sentences are concurrent. The effective sentence term is six and a half years. Stand down.



Venning J