



AUSTRALIAN ADVOCACY INSTITUTE

DPP v URI ZUKOV

PLEA IN MITIGATION

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Revised by Prof. the Hon George Hampel AM QC

[04-2016]

INSTRUCTIONS FROM URI ZUKOV

Uri Zukov is 50 years of age. He was born in The Ukraine and educated to tertiary level. He then completed an accounting and bookkeeping course. He was employed by the government but was dismissed because he tried to implement western style transparent accounting procedures.

He migrated to Australia as a single man fifteen years ago. He attended English classes and became an Australian citizen. He worked hard in two jobs for five years and saved up for a deposit on a house. The house is mortgaged but he is still paying it off. Ten years ago he married his Australian wife, Maria. They have two children, aged 6 and 8.

Until about two years ago Uri worked at the ANZ bank as an assistant accountant, while Maria had a part time job in a local supermarket.

Two years ago Uri and Maria borrowed more money on an overdraft of \$120,000, secured by their house, and started their own business. They rented premises near their house and started a newsagency and milk bar business. They also had a sub post office license, which provided an additional income of \$500 per week.

After about six months they found that the business was not sufficiently profitable and they started amassing debts. At about the same time the older child, Natasha, developed multiple sclerosis and needed considerable medical attention. Although they were able to reduce their overdraft, there was still about \$100,000 owing and the interest rates had gone up. Their only car needed repairs, which exceeded \$5000 and there were pressings medical bills and debts for rates and telephone. They were behind in their interest repayments.

The Zukovs decided to sell their business and an agent found them a buyer who paid a deposit of \$10,000. Settlement was to take place three months later. There was little goodwill but the agreement for the business including stock and fittings was for \$105,000. This represented their capital in the business. Believing that they were assured of the sale, Uri started using money deposited at their post office business for payments of superannuation, to pay their bills. It was his intention to repay that money once the balance of the purchase price was paid.

During those three months Mr Zukov made false entries in the books and used a total of \$110,000. This was taken out in four amounts. These were \$30,000 twice, \$40,000 and finally \$10,000. This enabled him to pay for the car repairs, a special bed and wheelchair for his daughter, some back interest on the overdraft, medical and hospital bills, rates and other expenses. He also paid \$30,000 off his overdraft.

Uri intended to repay the money to the post office when the sale was completed. Unfortunately the prospective purchaser died and the sale fell through just after the last withdrawal. The falsifications were discovered by a Commonwealth Post Office auditor and Uri was charged with four counts of theft and six of false accounting. He intends to plead guilty.

He has no previous convictions and intends to start paying the money back as soon as he can. They lost the post office business but continue to run the newsagency and milk bar business where he and his wife now work long hours.

The bank has been very supportive and has come to an arrangement which will keep the business going if there is no downturn. In the evenings Uri drove taxis and was able to save \$100 a week to pay back his debt to the post office. He has now saved \$600 which is in a special account for that purpose.

With all this on his mind he felt depressed and started drinking. Unfortunately last month he was convicted of driving over .05, on a reading of .08, and careless driving. He lost his license for six months and has had to stop driving the taxi. All this happened after a fund raising social which he hosted. This was for the Multiple Sclerosis Society. He had to toast a number of donors and did not realise how three small glasses of vodka would affect him. He is not a regular drinker. Uri hopes to drive again when he gets his license back. In the meantime his wife has to do all the driving for the business and with the children. Despite his long hours at the shop Uri manages to coach a local school soccer team in which his son plays.

Fortunately they received good news that Natasha's condition has significantly improved and she will be able to resume her normal schooling and hopefully lead a normal life.

The shop is doing well since the development of a new housing estate nearby. They hope to be able to repay the money taken from the post office. Their life ambition is to educate their two children in private schools.

The Zukov's are very embarrassed about what Uri did and have not told anyone about the charges. No character witnesses are therefore available. He is confident that he will not offend again and has been terrified about going to gaol.

Consider –

- ***What is the theme or case theory of this plea?***
- ***What are the aggravating factors?***
- ***What are the mitigating factors?***
- ***How should the plea be structured?***

On that basis, prepare to present or oppose the plea, depending on your allocated task.