

FOLEY'S | LIST

Case Note – GENERAL DETERRENCE IN 'WHITE COLLAR' CRIME OFFENDING POST BOULTON

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Case Note – General Deterrence in ‘white collar’ offending post Boulton

1. In *Dyason v The Queen*¹, the Court of Appeal was recently asked to consider whether the sentencing judge had erred by failing to impose a Community Corrections Order (a CCO) for serious ‘white collar’ offending. The Court concluded that *Boulton’s* case does not affect the continuing relevance of general deterrence in sentencing serious white collar offenders.
2. Ms Dyason had systematically diverted funds from St John’s Village where she worked as a finance officer. She diverted approximately \$1.4 million in total to her own benefit.
3. Ms Dyason pleaded guilty to seven charges and was sentenced to an aggregate term of five years’ imprisonment with a non-parole period of three years. The sentence was imposed prior to the Court of Appeal handing down its guideline judgment in *Boulton v The Queen*².
4. Ms Dyason sought leave to appeal the sentence imposed on a number of grounds, including that:

*In all the circumstances of the offending and of the offender, the sentence imposed was manifestly excessive because the purposes for which the sentence was imposed would have been achieved by imposing a Community Correction Order in combination with a much shorter term of imprisonment.*³

5. In the course of oral submissions the focus was on the extent to which the reasoning concerning the sentencing of so-called ‘white collar’ offenders in *DPP v Bulfin*⁴ remained operative in light of the judgment in *Boulton*.
6. In *Bulfin*, the Court considered an appeal against sentence by an offender who pleaded guilty to a variety of dishonesty offences concerning many millions of dollars. A submission was made on behalf of the offender that in ‘white collar’ cases there should be a ‘wider than normal gap’ between the head sentence and the non-parole period.
7. Charles JA, with whom Winneke P and Callaway JA agreed, rejected that submission. Charles JA then said:

For persons first contemplating corporate criminality, a sentence which requires an offender to spend a substantial term in actual custody by virtue of the non-parole period fixed, is, in my view, much more likely to focus their attention and have real deterrent impact

¹ [2015] VSCA 120, Whelan, Santamaria and Beach JJA

² [2014] VSCA 342

³ [2015] VSCA 120 at [7].

⁴ [1998] 4 VR 114; (1998) 101 A Crim R 40.

*than a longer head sentence, much of which is likely to be served on parole after the offender's release from custody. If this view be correct, to fix an unduly short non-parole period, would, in cases such as the present, be quite subversive of the whole concept of general deterrence, notwithstanding that a significantly longer head sentence was imposed. The sentencing practice discussed in Corbett must be understood with those considerations firmly in mind.*⁵

8. Dyason's counsel had argued that *Boulton* in effect over turned *Bulfin*. In rejecting that submission, the court in *Dyason* said:

We reject the submission that a short period of imprisonment combined with a CCO is relevantly to be distinguished from the position addressed in Bulfin, a period of imprisonment with a wide gap between the head sentence and the non-parole period, on the basis that the former is sufficiently punitive whilst the later is not.

9. At [38], the Court concluded that the decision in *Boulton's* case does not affect the continuing relevance of Charles JA's analysis in *Bulfin*.⁶

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⁵ [1998] 4 VR 114, 131-2

⁶ See *Robert Gianello v The Queen* [2015] VSCA[28]