

# **Perjury**

s 124 *Criminal Code*

**From 1 January 2014**

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
agg	aggravated
burg	burglary
att	attempted
EFP	eligible for parole
indec	indecent
TES	total effective sentence
ISO	intensive supervision order
SIO	suspended imprisonment order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>Atherley v The State of Western Australia</i></p> <p>[2017] WASCA 53</p> <p>Delivered 23/03/2017</p>	<p>53-61 yrs at time offending. 66 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p>	<p>Cts 1 &amp; 2: Stealing. Ct 3: Perjury.</p> <p>Atherley was the victim's accountant and had enduring power of attorney. He was later appointed her legal guardian and executor of her will due to her declining mental faculties. He was the only person with authority to make transfers from her bank accounts.</p> <p>Atherley stole \$1,309,070.50 over 165 fraudulent transactions before the victim's death (ct 1). He retrospectively created false entries in his accounting system about work purportedly done. He told police that the transactions were for fees incurred and work completed.</p> <p>After the victim's death, Atherley stole \$312,925 and generated a number of false invoices for the transactions (ct 2).</p> <p>Atherley gave false affidavit evidence and oral testimony in probate proceedings to the effect that he performed accounting and financial planning work that he did not in fact perform (ct 3). He annexed false invoices and a spreadsheet of false work entries to his affidavits.</p>	<p>Ct 1: 4 yrs imp. Ct 2: 2 yrs 6 mths imp (cum). Ct 3: 12 mths imp (cum).</p> <p>TES 7 yrs 6 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found that there was a high level of criminality involved and the appellant engaged in prolonged and significant dishonesty; abusing a position of trust, compounded by an unsuccessful attempt to cover his tracks by false documents and perjury.</p> <p>Co-operative with authorities.</p> <p>Absence of remorse.</p>	<p>Dismissed.</p> <p>Appeal concerned totality.</p> <p>At [56] ... ct 1 occurred over the course of four yrs and involved 168 separate dishonest transactions while Mr Atherley was ... subject to a fiduciary, professional and moral obligation to protect the interests of his client, who he knew to be incapable of protecting her own interest. ... Mr Atherley's offending was not an isolated lapse of judgment or impulsive but was deliberate, methodical, planned, systematic and prolonged. ... the stealing increased exponentially in the latter part of [the victim's] lifetime as her mental state declined and her vulnerability to ... Mr Atherley's abuse of trust increased.</p> <p>At [57] ... Mr Atherley's offending appears to have been motivated entirely by greed, that the money was used for his own personal</p>

					<p>benefit, and that the money has not been repaid to any extent.</p> <p>At [59] ... Mr Atherley's conviction ct 3 is also properly regarded as manifesting a high level of criminality. ... The unsuccessful attempt to deceive the court was... protracted ...the perjury ...was central to the issue to which the proceedings were directed...</p> <p>At [61] The weight to be given to the fact that Mr Atherley had not previously been convicted of any offence is significantly undermined by the fact that he engaged in persistent and serious criminal conduct between 2002 and 2010, which he successfully concealed until the latter part of that period. Further and in any case, when a professional person uses their reputation and apparent integrity to obtain a position of trust which is then abused, it is difficult to give any significant weight</p>
--	--	--	--	--	---

Office of the Director of Public Prosecutions

					to the previous good behaviour that gave rise to the reputation which became the springboard for the offending conduct.
--	--	--	--	--	---

Office of the Director of Public Prosecutions