

Westpoint property promoter avoids jail

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A backlog in the judicial system means a convicted investment adviser given too lenient a sentence still won't serve time in jail, the NSW Court of Criminal Appeal has ruled.

Neil Austin Burnard, 47, from Mosman in Sydney's north, was found guilty in May last year of nine charges resulting from an Australian Securities and Investments Commission (ASIC) probe into the collapse of the Westpoint Group.

Receivers were appointed to the Western Australia-based property group in February 2006, with it owing creditors more than \$300 million.

During the court case, it emerged Burnard told self-funded retirees he was a director of the non-existent "Kebbel Investment Bank".

The charges related to six investors who handed over a total of almost \$1.2 million, much of which was lost in the property group's collapse.

In August last year, Burnard was given a 12-month good behaviour bond and fined \$50,000 in the Downing Centre District Court.

He appealed the conviction, while ASIC called on the Commonwealth Director of Public Prosecutions to appeal against the leniency of the sentence.

Justices Bruce James, Murray Tobias and Derek Price handed down their written judgment on Tuesday, dismissing both appeals.

Justice James said the sentence handed down in the criminal court should have been more severe.

"I have held that error did occur in the sentencing of the respondent and that the sentences imposed on the respondent were manifestly inadequate," Justice James wrote.

"I am, nevertheless, of the opinion that this court should, in exercise of its discretion, refuse to intervene."

Burnard was convicted in May last year, sentenced in August, the crown appealed in September and because of the "court's congested lists of appeal" it was not heard until December and the judgment not handed down until Tuesday.

During that time, ASIC in October permanently banned Burnard from providing financial services.

He has since retrained in the environmental consulting industry.

The appellate court judges determined sending Burnard to jail nine months after the original sentence would not be appropriate since he had used the time to establish a new career.

"In my opinion, the appeal against conviction should be dismissed and the court should, in the exercise of its discretion, dismiss the crown appeal against sentence," Justice James wrote.

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