

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

CR NO. 137/09

CROWN

v

YVONNE QUARTER

Hearing: 16 December 2011
Counsel: M Henry for the Crown
N George for the Accused
Sentence: 16 December 2011

SENTENCING NOTES OF THE HON JUSTICE GRICE

[1] Ms Quarter, you appear for sentencing on one charge of theft, as a servant involving a total of \$30,000, taken over a period of 18 months. That was the amount which you acknowledged taking from Air Rarotonga. Initially, you have been charged with theft as a servant from Air Rarotonga, for a total sum of \$77,346. However, for the purpose of sentencing, I take the plea of guilty, to the charge relating to \$30,000.

[2] The offence is related to the period 17 August 2006 to 16 February 2008. The charge holds a maximum period of imprisonment of five years under s 242 (1a) and 249 (b3) of the Crimes Act.

[3] I will first deal with the background to the charges and we have heard the summary of facts been read out to the Court by the Crown. I do not intend to read it again. I summarise that background as follows; you were employed by Air Rarotonga as a reservation consultant from May 2006 to February 2008. Your responsibilities were answering the phone, arranging customer flight bookings and also receiving daily cash payments. You were responsible for balancing your daily takings and reporting to the sales manager, Mrs Lily Henry.

[4] When arranging a customer's flight booking on a one way return fare to the outer islands, you would log into the computer system under the computer user, under your customer user ID and make a flight booking for the customer. When you received a credit card payment for the booking for a customer, you would enter into the system the amount of the expiry date of the card, and this would automatically deduct the amount of the airfare from the credit card. If the customer paid by cash or cheque, you received the cash or cheque and enter the booking into the system, and would provide a print out receipt for confirmation to the customer.

[5] After the customer left, you would return to the computer system and select a different customer's unused credit voucher for an unused travel fare, and transfer the unused travel fare to the travelling customer's flight booking to pay off the airfare. At the end of the day, you printed a copy of your daily takings and balanced that with your cash and cheques on hand. You took the cash from the till, and placed it inside your bag without anyone noticing. Your cash takings were balanced because you had already used another customer credit voucher to pay off a customer's airfare. A staff member would later double check your takings or signing the logbook and storing cash in the safe.

[6] When interviewed by the police, you were very co-operative and openly admitted to the facts as outlined. You stated you took a total of about \$50 to \$500 cash a week, on three separate days in a week. You said you used it for your own

personal use, by purchasing groceries, clothes, liquor and also for your personal airfare travels.

[7] As I have said, the maximum is five years' imprisonment and the amount has been fixed for reparation of \$30,000.

[8] At the time when you originally came before this Court, you had just given birth and I think the baby was only seven days old, that was a factor taken into account by the sentencing Judge. But subsequently, the Court of Appeal had the advantage of two other medical certificates which was supplied to them when the matter went on appeal, and that indicated that you had complications with severe bleeding at first, and you needed rest and iron supplements, and also it was desirable that the baby continued breastfeeding for six months to alleviate breast pain.

[9] The Court also noted it received fuller information than the sentencing Judge and commented on the unsatisfactory conditions of the facilities for mothers and babies in prison, and the fact there was no provision for early release or expedited pardon on that basis. The Court felt it was an exceptional case. The Court however, also indicated that, as the sentencing Judge had in the original sentence, expressed, the Court needs to ensure that any sentence maintains a deterrent effect, particularly in cases of deliberate and proven fraud.

[10] The Court commented that a fraud of this nature will almost inevitably result in a period of imprisonment; however, it weighed out against the competing issue of the humanitarian matter of accommodating the special interest of a young infant and the particular impact of imprisonment from his mother. The Court remitted the matter back for sentence, and suggested that it be deferred for four months until the baby was six months old. That was in June 2011 and it now comes back to me for sentence having been further remanded from October. The baby is now aged eight months and I have been updated on your position.

[11] The Crown in its submissions, submitted that these offences need to be taken seriously. They put before me, that \$28,000 of the \$30,000 agreed to be paid has

now been paid. It reiterated that it was a case which involved fraud and needed to be treated according to the principles of sentencing. The Crown referred me to the decision in *Nicholls v Police* (2002) CKCA 3, a Court of Appeal decision where the Court took three years' imprisonment initially, as the starting point in offences of this nature. That was the decision which the sentencing Judge particularly took account of. I do not have a updated probation report in front of me, however, I read the earlier report, Mr George for Ms Nicholls has indicated there is no need for an updated report for today's sentencing.

[12] The victim impact report, records that Air Rarotonga is disappointed and it had a great financial impact on Air Rarotonga. They accepted \$30,000 in settlement and as I said I take that as the amount.

[13] Mr George on behalf of Ms Quarter, outlined and updated the Court on events, since the original sentencing and the Court of Appeal decision. He urged me to consider a conviction and discharge. He pointed out that the Court of Appeal in suggesting that a sentence of three months might be appropriate and then prefaced that comment by "It might be thought that if by the time reparation of \$30,000 has been paid or secured in full, imprisonment for a period and the order of three months, in addition to the 20 days already served would be appropriate." He submitted and I accept that it is in the sentencing Judge's discretion today as to the sentence to be imposed.

[14] Mr George also submitted that other circumstances differ from at the time of the Court of Appeal's decision. The fact that Christmas is nearly on us, that the matter has been deferred from October, that the defendant is employed and has no previous convictions.

[15] Now Ms Quarter, I am required to take into account the principles of sentencing. The community requires that these types of offences be denounced and I am required to pass the sentence that punishes you for the offence, hold you accountable and deters others from offending. The sentence must reflect the gravity and seriousness of the offence and it must take into account the effect on the victim, Air Rarotonga, but at the same time it must take into account the mitigating factors

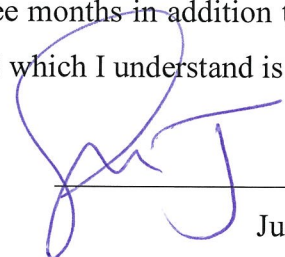
that your counsel has put in front of me, including the guilty plea, your present circumstances including the baby. I must weigh those out and impose the least restrictive sentence that is available in the circumstances. I have listened to everything that your counsel has said but despite that, it is clear that a custodial sentence must be imposed in this case.

[16] As I said earlier, the starting point in *Nicholls*, where the amount taken was \$19,200 was one to three years. The amount involved here was more, but you pleaded guilty early, you have already served 20 days' imprisonment, your family life is stable and you have small children, including the baby. Importantly, you have paid the reparation required and that is very significant.

[17] This case is indeed an extraordinary case and as the Court of Appeal says, is not to be used as a precedent in the case of mothers and babies. I have come to the view that I agree with the Court of Appeal and the period of three months, in addition to the time served, is appropriate.

[18] I have reached that decision, in looking at the totality of the offending, but if I were to approach it from the formula of taking the initial offence, discounting for the guilty plea and then discounting it further for other factors, I would have started in this case with nine months' imprisonment, discounted for the guilty plea for three months to come down to six months, and then for the various factors, that your Counsel has urged, but most particularly the baby, I have discounted it further so the outcome is the three months plus the time already served.

[19] Therefore, I sentence you to a period of three months in addition to the time served. I order reparation on the balance of \$30,000 which I understand is \$1495.58.


Justice Grice