

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

CR NO. 137/2009

POLICE

v

YVONNE QUARTER

Date: 8 April 2011

Counsel: Ms C Evans for the Crown  
Mr N George for Defendant

Sentence: 8 April 2011

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SENTENCING NOTES OF HUGH WILLIAMS J

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Solicitors:

C Evans, Crown Law Office, Avarua, Rarotonga ( [Catherine@crownlaw.gov.ck](mailto:Catherine@crownlaw.gov.ck) )

N George, Norman George & Associates, Avarua, Rarotonga ( [lawman@oyster.net.ck](mailto:lawman@oyster.net.ck) )

[1] Mrs Quarter, on 3 February 2009 you were charged with theft as a servant from Air Rarotonga by whom you were then employed of a total sum of \$77,346.00. The fact that it is necessary to mention that figure in sentencing remarks means that necessarily the Crown's appeal against the order suppressing that sum from publication must also be allowed.

[2] On 24 February 2011, that is to say nearly three years later, you pleaded guilty to the one charge of theft as a servant but only of the sum of \$30,000.00, that being the amount which you are prepared to acknowledge taking from Air Rarotonga.

[3] Because Ms Evans has read the summary of facts to the Court, as have I, I do not intend to read it again but will take into the sentencing remarks the passages from the summary of facts that Ms Evans has read.

[4] 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.

[5] When arranging a customer's flight booking on a one way return airfare to the outer Islands, you would log into the computer system under your computer user I.D. and make a flight booking for the customer. When you received a credit card payment for a 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 entered the booking into the system and would provide a printout receipt for confirmation to the customer. After the customer has 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 out a copy of your daily takings and balanced that with your cash and cheques on hand.

[6] You also took cash from your cash till and placed it inside your bag without anyone noticing. Your cash takings would balance because you had already used other customer credit vouchers to pay off a customer's airfare. A staff member would later double check your takings before signing the log book and storing the cash in the safe.

[7] When interviewed by the Police you were very cooperative and openly admitted to the facts as outlined above. You stated you took a total of \$50 to \$500 dollars cash on three separate days within a week. You stated you used the cash for your own personal use by purchasing groceries, clothes, liquor, and also for your personal air fare travels.

[8] The maximum sentence that you can face is one of five years' imprisonment, but it needs to be said that Air Rarotonga is prepared to accept the sum of \$30,000.00 from you in reparation notwithstanding that you may have stolen more than that sum.

[9] A sympathetic probation report acknowledges that you have already paid a significant sum towards reparation, something of the order of \$10,000 to \$12,000 and in the orders that I will make later I will deal with that issue.

[10] At the time of preparation of the pre-sentence report you were pregnant. You have now had your third child about a week or so ago, so although that is a factor to be taken into account in the sentencing it remains a fact also that you must have conceived that child well after you were charged with these offences. You have been in a defacto relationship for about seven years and wish to marry your partner. You have a very supportive family, a number of whom are present in Court today. As a result of this you lost your job at Air Rarotonga but are now at the Edgewater, although Mr George says you are not handling money.

[11] The Probation Service acknowledges that this was a systematic *modus operandi* over time when you were in a position of trust but suggests that the appropriate sentence would be one of two years' probation with community work.

[12] Helpfully the Probation Service have provided a schedule of charges and sentences on theft as a servant over the period of about the last three or four years. Many of those do involve community service or probation or the like, but they are for much smaller sums than the sum you acknowledge stealing. The only one which is comparable is *R v Paniani* in July 2010, where the thefts total between \$25,000 and \$30,000 and there was an order to come up for sentence. Given the amount stolen one has to say that that sentencing decision looks lenient and somewhat out of line with the other decisions.

[13] Ms Evans for the Crown draws my attention to the Judgment of the Court of Appeal in the Cook Islands in *Nicholls v Police*,<sup>1</sup> where the amount stolen was \$19,200.00 over some six charges. The way in which the theft was undertaken was somewhat similar to the system that you operated. Again, Ms Nicholls was a person with some four children and accordingly the decision has some comparability with this. In *Nicholls* from paragraphs [4] onwards, the Judges in the Court of Appeal reviewed a number of Cook Islands decisions concerning theft as a servant and came to the view that the appropriate starting point, in that appeal at least, was one of three years' imprisonment.

[14] Now, in your case the sentence to be imposed must try and hold you accountable for your offending, provide some reparation for Air Rarotonga, denounce both your conduct and the conduct of anyone else who might be similarly minded to steal from their employer.

[15] The relevant factors are that this was your first offence, which is true, and there was only one of them. That is correct, but given that the offending was over some 18 months and took place on a number of occasions it is clear you could have

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<sup>1</sup> *Nicholls v Police* [2002] CKCA 1, CA 5.2002 11 December 2002.

been charged with many more charges than the one compendious charge covering all your offending.

[16] You are entitled to a reduction in the sentence for the fact that you pleaded guilty, but it was a plea in February this year to a charge laid in February 2009.

[17] You are entitled to some leniency because you were pregnant at the time the pre-sentence report was prepared and now have a very young baby.

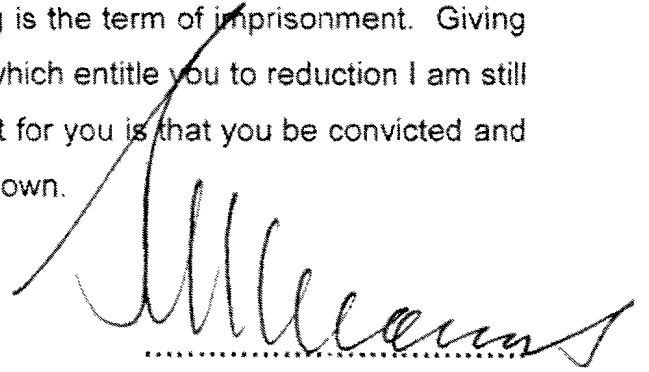
[18] This, however, was prolonged offending over some 18 months, which took place on a number of occasions and a significant sum of money was taken. Whether one limits one's consideration to \$30,000 or to something greater than that, you are only to be sentenced on the \$30,000.00.

[19] It is also an aggravating feature that you were in a position of trust and that the means by which you stole the money from your employer was reasonably deceitful and quite complicated and you were successful in avoiding detection for a long period. In those circumstances, harsh though you and your family may regard it, it is my view that a sentence of imprisonment is inevitable.

[20] Having regard to the comments in *Nicholls* I take the view that a starting point for the appropriate length of imprisonment in your case is two years' imprisonment. *Nicholls* and the other Cook Islands cases reviewed say that. You are certainly entitled to a reduction for your plea of guilty – late though it was in the process. You are entitled to a reduction for the fact that you are prepared to pay reparation. You are also entitled to some leniency from the fact that orders for suppression of your name and the amount you stole have now been revoked. YThis will no doubt be reported and within the close knit Cook Islands community you will now be known as a thief.

[21] The orders, therefore, are that you pay reparation to Air Rarotonga of \$30,000.00, less whatever sum that firm accepts has already been paid by you.

[22] However, the major issue for sentencing is the term of imprisonment. Giving you the maximum I can for the various factors which entitle you to reduction I am still left with the view that the only appropriate result for you is that you be convicted and sentenced to one year's imprisonment. Stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams J', written in a cursive style. The signature is positioned above a dotted line.

**Hugh Williams J**