

POLICE

v

MATTJERI KAMOE

Date: 02 December 2015

Counsel: Ms A Mills for the Police
Mr W Rasmussen for Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[1] Ms Kamoe, you appear for sentence on one charge of theft as a servant. This is an offence under the Crimes Act and carries with it a maximum period of imprisonment of 5 years.

[2] You were employed by Westpac as a bank teller. You stole a total of \$15,000 between January 2013 and November 2013. Your employment was terminated shortly after an internal investigation conducted by Westpac. You have breached the trust that the bank put in you. You used your position to benefit yourself. Your offending not only affected Westpac but the other staff who worked with you and the culture of the bank and the staff.

[3] The bank also incurred additional costs to investigate the matter. You stole the money at about \$100 or more a week. You said you were struggling financially to support your parents who were not working as well as taking care of your own family. You did not consider the consequences. Once confronted, I am told by your Counsel Mr Rasmussen, you realised how wrong it had been.

[4] As both counsel have indicated I am obliged to follow certain principles in relation to sentencing. These include punishing you for the offending but also imposing a sentence which deters others from similar offending. The sentence must reflect the gravity and seriousness of this offence and hold you accountable for it. It also has to take into account the effect on the victim, in this case Westpac and the other effects to its staff, the community in general and the reputation of the Cook Islands in the banking industry.

[5] Nevertheless I must also take into account the particular circumstances your particular circumstances including your family background and whanau. I must impose the least restrictive sentence that is appropriate in the circumstances and also consider whether there are options for rehabilitation.

[6] I understand that your family who would also look to you for financial support have been fundraising. Your share is going toward paying back the money you stole. Your sister is keeping your share of the money and that apparently, your counsel advises me, now amounts to about \$3000 to \$3,500.

[7] The fact that you are working to pay back the money counts in your favour. It also reflects the love and support of your family which has been badly betrayed.

[8] This offending has affected them as well as you and damaged their trust in you. You have lost your job over this. From the probation report it looks as though that you had great career prospects in front of you. You have been well educated, you had attended Waikato Polytech in New Zealand, and this assisted you in obtaining a job with the bank as soon as you left school.

[9] You have now severely limited your job opportunities for the future, luckily you have obtained another job at the moment which involves you handling accounts, but you are forbidden from physically handling cash. This offence will follow you forever.

[10] You are described as a good worker. Your present employer says it is awaiting the outcome of this case before deciding your future employment. At present you are earning about \$200 to \$300 a week, you are the only one working for the family, your husband does fish to supplement the small income, you have children to support and they are still young.

[11] In your favour as your counsel has said. You are very young aged 24 years I think and it is your first appearance for any criminal offence. You accepted responsibility for your actions by pleading guilty to the offending, you co-operated with the police and now are assisting them with other matters. You acknowledged your wrong doing and are remorseful for your actions.

[12] Mr Rasmussen produced a number of supportive testimonials. These include a testimonial from the Acting Manager and Public Health Nurse who testifies to your good character. I have another reference from Miles Ratu who says you carry responsibility well, you are hard working and reliable and you have always been honest and open in your dealings with him.

[13] I take into account those mitigating factors, the fact that you have taken responsibility, that you have apologised to the bank, that you entered an early guilty plea, you were co-operating with the Police and now assisting with another matter as well as working toward full reparation to the bank.

[14] Mr Rasmussen also notes that through the time you were working you had a daughter who was seriously ill and had to be treated in New Zealand. Before this you were regarded as a model bank employee but sadly gave in to temptation.

[15] Mr Rasmussen says that this is different from the case of *Nicholls*¹ a Court of Appeal decision which indicated that the appropriate starting point for these types of offences was a custodial sentence.

[16] The range of sentencing in the Cook Islands for this type of offending is wide.

[17] Where there has been previous offending the Court has imposed terms of imprisonment. For instance in *Webb*² relating to a theft of some \$27,000 a term of 2 years imprisonment was

¹ (2002) CKCA 1

² 19/4/14 Weston CJ

imposed. The defendant had previously appeared and the circumstances were different from this.

[18] This morning I had another similar matter before me in *Ingaua*³ and I imposed a period of 24 months probation, with 9 months on Community Service. That case had mitigating factors but in some respects was more serious in this case. In this case while you are not able to pay immediate reparation as in the *Ingaua* case, you are working toward that as best you can and your family is supporting you in this and providing funds. You are assisting the police have shown remorse. The Crown pointed out that you reside in Aitutaki with your family and a term of imprisonment would be very harsh on you given those circumstances.

[19] As a result of submissions I have heard this morning I have very carefully considered your position. The starting point is that Court of Appeal indication in *Nicholls* of a term of imprisonment. However the Crown has suggested that there are mitigating factors in this case which dictate a non custodial sentence. Mr Rasmussen has urged that there be a non custodial sentence applied and I have referred to the range of mitigating circumstances which apply in this case.

[20] I have come to the conclusion to both punish you and denounce this type of behaviour as well as deterring others while taking into account the need to impose the least restrictive sentence possible, that a period of probation and community service is appropriate. I will also order reparation.

[21] In these type of cases the first consideration is a term of imprisonment. You are very fortunate not to be facing a jail term. The Crown suggests a term of 18 months probation with the first 6 months on community service. There is a breach of trust involved here which does demand a reasonable term of probation.

[22] I therefore sentence you to a period of 18 months probation with the first 6 months to be served on Community Service. The special conditions to be imposed are:

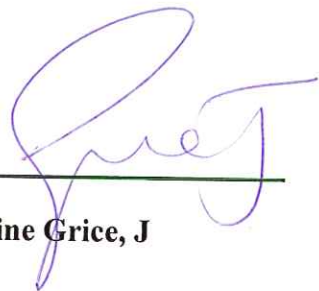
- 1) To serve your probation term on the island of Aitutaki.

³ CRN 718/2014, 2/12/15. Grice J.(HC)

- 2) To pay reparation of \$15,000 to Westpac and for this to be paid prior to the expiration of your probation term. This is to be paid in instalments. You will need to discuss this with your Probation Officer and your Counsel to make those arrangements.
- 3) You are not to leave the jurisdiction of the Cook Islands without the approval of this Court.
- 4) You are to attend any training or workshops directed by the Probation Service.

[23] I also order Court cost of \$30.

[24] You may stand down.



Christine Grice, J