

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

**CR NO: 718/2014**

X

**POLICE**

v

**TWIN INGAUA**

Date: 2 December 2015

Counsel: Ms A Mills for the Police  
Mr N George for Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE**

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[1] Mrs Ingaua you appear for sentencing on one charge of Theft as a servant. That's a crime under s.249 of the Crimes Act and it carries a maximum penalty of five years imprisonment.

[2] You were employed as a finance and administration officer for the Cook Islands Red Cross for a number of years. You were trusted to deal with all monies that came in and were paid out of the society. The Red Cross operations are and were funded mainly by donation funds from overseas and by partnerships in particular the New Zealand Red Cross as a large donor.

[3] The Summary of Facts indicates that in early 2014 there were substantial concerns about the financial situation of Red Cross here and they were raised with you. After a review of the accounts which was undertaken in early March, it was concluded that you had been taking money from the Society. Deloitte was engaged to conduct a forensic accounting and investigation into the Society's accounts and that also cost a substantial amount of money. As a result of that investigation it was established that funds of \$32,949.00 had been stolen or was missing from the accounts. It appears that you had used signed blank cheques as well as internet banking facilities and stole cash to take money for your personal use.

[4] You admitted stealing \$20,098.00 but a further investigation revealed an additional \$12,850.00 was missing. To your credit, you accepted the full amount and have made reparation. The only explanation you have offered for taking the money that has any possible mitigating effect is that your husband's mother in New Zealand needed the money to enable her to have an operation. Most of the money as your counsel has candidly indicated was spent on yourself. It seems you did not really need the money.

[5] The principles I am required to take into account in sentencing include punishing you for the crime but also deterring others from similar offending. The sentence must reflect the gravity and seriousness of this offence and hold you accountable and I must also take into account the effect on the victim in this case Red Cross.

[6] Nevertheless, I must take into account your particular circumstances and the circumstances of the offending. Your circumstance include your family background and I must impose the least restrictive sentence that is appropriate in the circumstances and consider whether there is an option which would contribute wholly or partly to your rehabilitation.

[7] In this case, there was a significant breach of trust. You were in a position of high trust with Red Cross. You stole money from a charitable organisation which relies for its existence on donations. Its reputation is important to it. There is some suggestion from your counsel that the systems of the organisation were in disarray and to some extent contributed to the opportunity or the temptation to take the money. Red Cross itself says it has learnt a lot from this incident. Counsel also says that you had a high workload and were doing the work of two to three people. None of this excuses the offending at all. Nevertheless, I take it into account as background.

[8] The victim impact report reflects the effect of this offending on Red Cross. It suffered considerable embarrassment and as a result funding from one major donor was suspended. All international donors expressed concerns and service delivery to communities actually ceased for a while. Nevertheless, Red Cross has shown a generosity of spirit when it comes to making comments about you and what should happen. They acknowledge the reparation has been paid in full of \$32,948.60 and has accepted that in full and final settlement of any claim it has against you. It also recognises that the event led to it being recognised for the open and

transparent process it took in reviewing governance and establishing proper financial management as a result of this incident. This has restored international confidence in the Society. It says that it hopes that you have learnt a lesson that dishonesty can damage and destroy far beyond the money that is taken. The victim therefore has shown a very generous attitude to you. I understand that there were significant discussions between your counsel and Red Cross about the matter very early on to try and resolve it for the best outcome toward everybody including Red Cross.

[9] I also have some testimonials from a number of character witnesses who support you and say this is out of character. A number of people comment on your capability, intelligence and caring approach. You are the mother of two children, are married and supported by your family. You have lost your job but have become self-employed and are working hard to repay the loans that you have taken out to pay the reparation which you paid in a lump sum. You have the support of your Church and I have a testimonial from Karen Ngamata an elder of the Holy Spirit Revival Church.

[10] The range for sentences of this type of offence vary widely. The Crown referred me to the Court of Appeal decision in *Nicholls*<sup>1</sup> as did Mr George. The Court of Appeal expressed its view that this type of offending would normally carry a custodial sentence and it was later affirmed in the decision of *R v. Quarter*<sup>2</sup>. Mr George points out that *Nicholls* was a very different case.

[11] In cases where there has been previous offending, the Court has imposed imprisonment, for instance in *Webb*<sup>3</sup> relating to a theft of some \$27,000.00, a term of two years imprisonment was imposed. The defendant had previously appeared and the circumstances surrounding the offending was different from here. In this case, the Crown also submits that imprisonment may not be appropriate.

[12] Ms Mills says there are significant mitigating factors in your favour. Particularly, the full and timely reimbursement of the money to Red Cross, the provision of a letter of

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<sup>1</sup> *Nicholls v Police* (2002) CKCA 1

<sup>2</sup> *R v Quarter* (2011) CKCA 1

<sup>3</sup> 19/9/2014 Weston CJ

apology. She points out that it is your first appearance and you have pleaded guilty. You have also expressed deep remorse which is reflected in your counsel's submissions and in the letter of apology that you have supplied to Red Cross. This letter has been handed up.

[13] The Crown suggests Probation for a period of 24 months with the first nine months on Community Service.

[14] Mr George submits in mitigation, that it is your first offence, that it is out of character, and that there was a guilty plea despite the fact there was still some dispute about the amount you were responsible for taking. You and your husband have decided to get on with life, to pay the full amount to Red Cross and to plead guilty. He points to the excellent references that I have before me, the apology, including the written apology and in particular the reparation using borrowed money, to make sure it was paid immediately, and now which you and your husband are working to repay those loans. He urged me not to imprison you. He suggested a short term of probation. He also indicated there had been significant discussions with Crown Law and Red Cross seeking leniency in their approach to sentence. It is of course up to the Court to impose the sentence, that is not a negotiation. Nevertheless, that approach and the views of the Crown and Red Cross in the circumstances do count in the mix.

[15] As a result of these submissions, I have carefully considered the position. My initial view was that a short period of imprisonment was appropriate for this offence. However, after hearing both from the Crown and Mr George I am minded to review that position given the factors in your favour and mitigating circumstances. I have set those out above.

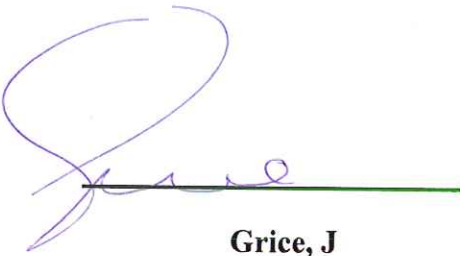
[16] I have come to the conclusion that in those circumstances and bearing in mind the least restrictive sentence and the need to consider rehabilitation a period of probation and community service is appropriate. This will have the effect of expressing denunciation for this type of offence. I do not consider it should be a short period of Probation because this needs to deter others from the same type of offending. It is only by a very small margin that I have come to this conclusion. You have therefore come very close to a sentence of imprisonment on this charge. You are being given a big opportunity to rehabilitate and make sure that you never come before this Court again.

[17] Therefore, I sentence you to a term of 24 months Probation with the first 9 months on Community Service. The Community Service is with the following conditions:

- i. To attend any counselling or workshops as directed by the Probation Service.
- ii. Not to travel or leave the Cook Islands during the probation term unless authorised by the Court.
- iii. I also make an order for Reparation noting that it has already been paid for the sum of \$32,949.60. I do this in case there is any issue of that repayment.

[18] I Order payment of Court costs of \$30.00.

[19] You may stand down.



Grice, J