

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

**CRN 291/16**

**POLICE**

**v**

**RAVINDRA NATH**

Date: 12 September 2016  
Counsel: Ms A Mills for the Police  
Mr M Short for the Defendant

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**DECISION OF THE HONOURABLE CHIEF JUSTICE THOMAS WESTON**

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[10:58:25]

- [1] Mr Nath, you are here today for sentence having pleaded guilty to five theft charges, four of which are theft as a servant. These charges arose in the course of your employment by each of Muri Beach Club Hotel and by a Mr Anton Hayward.
- [2] The first charge CR 139/16 involved you issuing invoices and then writing cheques payable in relation to those invoices with you taking the proceeds of that exercise. The total involved here was \$4,391.66.
- [3] Mr Short in your defence has said that there is an explanation for this offending but he accepts that that information is inconsistent with the Police statement of facts and that you have pleaded guilty on the basis of that Police statement of facts. That summary records that the invoices were fictitious and were used by you to receive monies. The Police statement notes that there may have been vegetables delivered or there may not have been vegetables delivered in relation to those invoices. That is uncertain.
- [4] The second charge, which is CR 290/16, is theft as a servant in relation to overstated rent. It is said that you received the sum of \$4,400 and kept that for yourself. This

related to the rental by your employer of a residence in Muri owned by Ella Stephens. This was used for staff accommodation by the hotel.

- [5] The charges in CR 139/16 and 290/16 are the joint lead charges.
- [6] The third charge is CR 293/16 which also relates to the rental accommodation and it is alleged that you withheld rent of \$2,320 also due to the owner of the property Ms Stephens.
- [7] The fourth charge is CR 294/16 which alleges that you stole \$1,000 belonging to Mr Hayward which was to be applied towards the car park upgrades.
- [8] The fifth charge is CR 291/16 which alleges that you stole dried goods and other produce from the hotel to the value of \$562.38.
- [9] The monies taken in relation to the third and fourth of these offences has been repaid by you. The total of your dishonesty was \$12,674.04. The Crown, following your repayments, now seeks reparation of \$9,354.04 under s 415 of the Crimes Act.
- [10] The Crown has pointed out that the offending shows a systemic pattern of offending over a 10 month period commencing 8 April 2015. The Crown has made various submissions in relation to the Victim Impact Statements that have been received from four persons and which I have read.
- [11] Ms Mills has advised me that Mr Scott, in addition to the reparation of \$9,354.04, also seeks reparation under some additional heads including in relation to further allegations of dishonesty that he has made but which are not the subject of the charges. Ms Mills has discussed in broad outline these extra heads claimed by Mr Scott and I am satisfied that the Crown has acted appropriately in limiting the claim to \$9,354.04.
- [12] Ms Mills has drawn my attention to the sentencing principles which are to hold the offender accountable for the harm done not only to the victim but also to the community as well. She has emphasized that this case is not simply a trade off between reparation on the one hand and a non-custodial sentence on the other. She said that the Court's sentence must reflect the harm that has been done to society as well as the harm done to the direct victims of Mr Nath's dishonesty.

- [13] The sentencing principles also require me to take into account the promotion in the offender of a sense of responsibility and to deter other persons from committing the same or similar offending.
- [14] Ms Mills has submitted that the aggravating factors here include the obvious breach of trust of an employee. She says that the offending spanned a 10 month period and involved multiple incidents of deception. She acknowledged that there was an argument that the offending had occurred because of the lax business systems of the victims but said that that is not a matter that I should take into account. She referred to the authority of Justice Williams in *Police v Matapo* where his Honour concluded that, while laxity in an employer's systems might explain offending, it does not provide a defence or a mitigation for that offending.
- [15] So far as mitigating factors are concerned Ms Mills noted that this was Mr Nath's first appearance in the Court and she also noted that there had been the reimbursements that I have already acknowledged above. In addition, there is of course the guilty plea to each of the five charges.
- [16] Ms Mills then reviewed the various authorities and concluded that the starting point for sentence should be around about two to two and a half years imprisonment for the pattern of offending that is before me. She also sought reparations in the outstanding amount of \$9,354.04. She submitted that a term of imprisonment and reparation would appropriately reflect the overall criminality of the offending.
- [17] Mr Short provided me with written submissions. Ultimately he concluded that I should impose a non-custodial sentence of 6 months on community service together with 15 months probation supervision and an Order to pay the reparation of \$9,354.04.
- [18] This submission by Mr Short reflects the recommendation made in the Probation report. Mr Short drew my attention (as does the Probation report) to the fact that the defendant is 39 years old. He has a 15 year old daughter living in Fiji and a young son aged 6 who lives with the defendant and also his wife in Rarotonga. Both Nath and his wife are immigrant workers from Fiji and they both work here while their young son attends the local school. They do not have any other family members living in the Cook Islands.

- [19] Mr Short makes something of the fact that the business systems in the hotel were poor but I have already addressed that and said that I do not believe that is a particularly material consequence.
- [20] Mr Short has said that the defendant has sought to have this matter determined as soon as possible and that explains why he has pleaded guilty.
- [21] I also understand that Mr Short, in a personal sense, has provided for Mr Nath and his family and has arranged for employment for him.
- [22] In mitigation Mr Short draws attention to the early guilty plea and the fact the defendant has been co-operative with the Police. He says this is the defendant's first appearance before the Court and he has never been involved in this sort of offending before. He says that Mr Nath acknowledges that what he did was wrong and is now remorseful and apologetic for what he has done. He says that he is willing to make reparations. I enquired of him as to how quickly such reparations could be made he said that, with the multiple jobs that he and his wife now undertake, he would be able to pay those monies within three months.
- [23] The Probation report traverses Mr Nath's background in Fiji and other matters that have also been drawn to my attention by Mr Short. The Probation officer spoke also to Mr Nath's wife and her position is recorded in this report. The assessment by Probation is that taking all factors into account a term of supervision and community service is recommended.
- [24] Those are the matters Mr Nath that are before me today. I am faced with a fairly stark choice, one of which is that you should go to prison for a period of up to 2 years and the other is that you should have a period of community service plus probation.
- [25] I have discussed with Counsel that I do not believe that I am in a position to order reparation if, at the same time, I sentence you to prison. That is because there is no evidence before me that there are any other funds presently available to you to pay reparation. It is not my practice to order a prisoner to pay reparation if they have no visible means of support. It simply runs the risk of bringing the law into disrepute. I acknowledge that under s 415 I am able to order reparation in such circumstances and I am aware that in other cases, in different circumstances, Judges have made such

orders. However as I have said it is not my practice to make such orders if I cannot see there is any prospect of them being carried into effect.

[26] On balance I have decided to accept the recommendation that you should not go to prison. I am doing this as a true exception to what I think should be the usual sentence in a case such as this.

[27] I accept the Crown's submission that in the ordinary course, offending of the character that I am sentencing today should lead to a sentence of imprisonment. I have given considerable and detailed thought to that but, ultimately, I have decided that I should enter a conviction and sentence you on each of the two lead charges (to be served concurrently) as follows:

- a) There will be a term of 12 months community service starting from today
- b) There will be a term of 24 months probation starting today
- c) You are ordered to repay the sum of \$9,354.04 to the Muri Beach Club Hotel within 3 months from today's date
- d) You are not to leave the Cook Islands without the approval of this Court
- e) There will be Court costs payable of \$30 on each of the five charges that you should pay immediately.

[28] On the other three charges you are convicted and discharged.

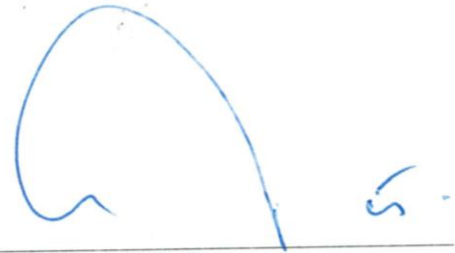
[29] Now Mr Nath, you need to understand that you have been given the biggest opportunity of your life here.

[30] I have found this an extremely difficult case to sentence and in the normal case I have no doubt that you would be in prison for what you have done.

[31] So this is your chance to get it right and, in coming to that sentence, I took account of your family circumstances: that you have a wife and a young child here that you have to look after and that you are in a foreign country. You have a job and you have Mr Short's active support. There are also the other features drawn to my attention by counsel.

[32] But let me also say that, as someone who is a visitor in this country, what you did was completely wrong. It abused the trust that this country has placed in you and that may have immigration consequences for you. I do not know. But I just want to repeat that there better be no repetition of this offending again, because the Court in the future will certainly not be so lenient.

[33] You may stand down.



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**Tom Weston**  
Chief Justice