

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

CRN. 180/18

POLICE

v

TONY TOU

Date: 14 May 2019
Counsel: Senior Sergeant Tararo for Prosecution
Mr M Short for the Defendant
Sentence: 14 May 2019

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[9/15/14]

[1] Tony Tou is before the Court for sentence on a single charge of theft as a servant to which he has pleaded guilty. Between 2nd September 2015 and 31st May 2016 he stole from his employer \$4,197.40. He has made repayment of \$700 of that sum of money leaving a balance owing of \$3,497.40 to Turama Pacific Group which was his employer.

[2] The background facts are that Mr Tou was employed as manager for Raro Tour Transports, a branch of Turama Pacific Travel Group, from 12 October 2015 to 23 February 2017.

[3] During that period discrepancies were noticed in the accounting records and the employer conducted an extensive investigation resulting in a report dated 16 February 2017 which revealed the fact that Mr Tou had been taking money from his employer for his own use.

It is depressing to note that the course of dishonesty started very soon after Mr Tou commenced employment.

[4] He was clearly under financial pressure having a family to support, including four children, three of whom were still dependant on the family. But that sort of pressure is borne by many families and is no answer or excuse for the course of dishonest conduct upon which Mr Tou embarked.

[5] Mr Tou accepted responsibility for the theft of money and signed an agreement that he would repay the total sum of \$4,197.40 within thirty days but he has not honoured that agreement except to the extent of \$700.

[6] Mr Tou appears before the Court as a first offender. He clearly has a long record as a reliable member of the community both here and in New Zealand. Several letters of support filed with Mr Short's submissions attest to that. He entered an early plea of guilty to this offending and he is clearly remorseful and embarrassed in respect of his offending, both for himself and his family. He has suffered the unenviable experience of the publicity of this matter reflecting on him and his family in the wider community so that he has been unable to regain employment. This is an inevitable consequence of this type of offending in a small community – everybody gets to know very quickly, and they do not forget.

[7] I understand from Mr Short that Mr Tou has recently started his own business in the tourist industry. It is hoped that this will be successful and that he will be able to benefit from his industry in that respect, to restore his credibility and that of his family in the community. Also to earn income which will enable him to pay the significant debt he still owes to his former employer.

[8] Mr Tou's offending involved a breach of trust. His thefts and dishonest conduct covered a period of nine months starting, as I said, very soon after he commenced employment with his employer.

[9] I have received a helpful probation report and submissions from both the police and Mr Short. I propose to adopt for sentencing the recommendations in the police submission. They differ little from those in the probation report and those supported by Mr Short. As I explained

to Mr Tou this morning, I will sentence him to 18 months probation supervision because I wish him to have that close supervision while he embarks on his new business venture and endeavours to repay the reparation which I shall order.

[10] So the sentence is for 18 months probation, subject to the following conditions:

- a) Mr Tou is not to leave Rarotonga without the prior approval of a High Court Judge;
- b) He is to attend counselling or workshops as directed by the Probation Service;
- c) He is to pay reparation of \$3,497.40 to Turama Pacific Group. Payments are to be made through the Court registry so that they may be monitored through the Court;
- d) He is to serve the first 9 months of his sentence on community service.

[11] Thank you Mr Tou, you may stand down.



Judith Potter, J