

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

**CR NO: 348/2021**

**POLICE**

v

**MOKOROA KI AITU RIANNA ANNETTE PEPE**

Hearing date: 1 September 2022

Counsel: Ms A Maxwell-Scott for Crown  
Mr B Mason for Defendant

Sentence: 1 September 2022

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**SENTENCING NOTES OF THE HON. JUSTICE C GRICE**

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[1] Ms Pepe appears for sentencing on one charge of theft as a servant.<sup>1</sup>

[2] For the purposes of the sentencing the Court must accept all the facts, either expressed or implied, that are essential to a plea of guilty or finding of guilt, and I base my sentence on the Summary of Facts which has been filed and which has been accepted by Ms Pepe.

[3] Ms Pepe was an employee of the Ministry of Justice as a cashier and administrative officer from 2019. In the period July 2019 to October 2019, Ms Pepe used her position as cashier to steal money. She would receive money from paying customers and take the money from the till and use it for personal experiences. At the

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<sup>1</sup> Theft as a servant, s 242(1)(a) and 249(b)(ii) of the Crimes Act 1961. Maximum penalty 5 years' imprisonment.

end of the day she would reconcile the daily banking of previous takings from previous days and this contributed to the irregular banking which was noted by her supervisor. The amount Ms Pepe stole has been set at \$5,000. Ms Pepe at the time admitted that she had taken the money, but she said she had borrowed it from the till, and she claimed then that she had repaid all the money she had borrowed.

[4] The Crown points to a number of cases to assist me in setting a start point, as do the Defence. The Crown points to the case *R v Kamana*,<sup>2</sup> which is a decision of the Chief Justice when, on charges of theft as a servant, the defendant had taken \$12,700. In that case a starting point of 3 years' imprisonment was taken; a reduction was made in that case, bringing the matter down to 2 years' imprisonment or slightly less for community service and other contributions. That was a case where the defendant had assisted the Court, and a further reduction was applied leading to a final sentence of 4 months' imprisonment with 12 months' probation to follow. The Defence refer to a number of cases which relate to smaller amounts of theft.

[5] The Crown submit that it would be appropriate to take a starting point of 12 to 18 months' imprisonment but support, in this case, a community-based sentence given the circumstances of the defendant and, in particular, her youth at the time of the offending. She was 19 years of age at that time.

[6] I now turn to the approach I must take to sentencing. In sentencing an offender I must follow the general two-step approach to sentencing which was introduced to New Zealand in *Moses v R*<sup>3</sup>. In doing so I take into account the principles of sentencing. The first step is to calculate the starting point, incorporating aggravating and mitigating factors of the offence. At this step I assess a number of features which add to or reduce the seriousness of the conduct and criminality involved. The overall objective is to adopt a starting point reflecting the culpability inherent in the particular offending, and in that regard I refer to the decision of *Orchard v R*.<sup>4</sup>

[7] The second step is to adjust the starting point, applying uplifts and discounts that reflect the aggravating and mitigating factors personal to the offender as well as

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<sup>2</sup> *R v Kamana*, CKCH, CR 514–517/2021; 538/2021. 22 April 2022 (Hugh Williams CJ).

<sup>3</sup> *Moses v R* [2020] NZCA 296.

<sup>4</sup> *Orchard v R* [2019] NZCA 529.

any guilty plea discount, to reach the end sentence. In the Cook Islands it appears that the personal aggravating and mitigating factors tend to have a greater weight than they do in New Zealand. I anticipate that is because of the circumstances of the particular society here. Nevertheless, I must take into account all the factors in relation to the offence first, and then the pertinent factors second.

[8] I mention the principles of sentencing that are relevant to this matter. The first is I must take into account the gravity of the offending, the seriousness of the offending compared to other types of offences, as indicated by the maximum penalty which, in this case, has a maximum penalty of 5 years' imprisonment as theft as a servant. And I must impose a sentence which is generally consistent with other cases of this sort. I also take into account the information put before the Court by way of a Probation Report and submissions of counsel, and I must impose the least restrictive outcome that is appropriate in the circumstances.

[9] I must also consider the purposes of sentencing. The main purposes in offending of this nature is to hold Ms Pepe accountable for harm done to the community in general and to the Ministry of Justice, to promote a sense of responsibility in Ms Pepe, and an acknowledgement of the harm. And also to provide for reparation in relation to the offending, as well as denounce the conduct of the offender, and to deter other offenders from doing the same. However, I must also consider assisting in Ms Pepe's rehabilitation and integration in the community. So I must consider all those purposes.

[10] In this case I have before me a Pre-sentence Report, which notes that Ms Pepe lives at home with her parents, and is the only child at home living with them. She is heavily involved, the report says, in community activities such as netball and soccer. She is very supported by her family who are truly disappointed in her actions. She is presently employed. The explanation she gave at the time of the offending was that she "hoped she wouldn't get caught". However, since then she has reflected on it and I received submissions, which have been accepted by the Crown, that Ms Pepe is genuinely remorseful; in fact, she has offered to pay reparation. Importantly, this is her first appearance and she has an otherwise unblemished record.

[11] Turning to the aggravating factors of the offence. The key factor is this was an abuse of trust. Ms Pepe was in a trusted position, handling money for the Ministry of Justice, and she abused that trust.

[12] Mitigating that is the offending is relatively unsophisticated, essentially it was taking money from the till. It was not a sophisticated fraud scheme which was put in place using computers and other equipment.

[13] Noting the decision referred to by the Crown of *R v Kamana*, which led to a period of 12 months' imprisonment in relation to a more complicated theft, by apparently an older person than the present offender, and involved \$12,700. I also refer to the decision of *Quarter v R*,<sup>5</sup> which is a decision of the Court of Appeal. The Court was considering on appeal against a sentence of 12 months' imprisonment and reparation of \$30,000. Again, that is substantially more than the amount involved here, and in that case there were special circumstances relating to a child of the offender that led the Court of Appeal setting aside the sentence and sending it back to sentencing.

[14] I was also referred to the decision of *Police v Matapo*,<sup>6</sup> where theft and fraud charges related to the taking of a total of nearly \$25,000 over 12 months. It was described as a gross breach of trust. A starting point was taken of 2.5 years' imprisonment, moving it up to 3 years' imprisonment due to aggravating factors. An early guilty plea and the saving of a lengthy trial, as well as reparation, led to a sentence of 18 months' imprisonment.

[15] However, the Defence has referred me to the decision of Potter J in *Police v Ming*<sup>7</sup> where three charges of theft totalling \$6,934 resulted in a sentence of probation, and there are a number of other cases cited by Defence counsel which had similar outcomes. I bear in mind that the amount in *Police v Ming* is similar to the amount here rather than the higher amounts in the earlier cases cited. In this case it is a smaller amount of money than was the case in the earlier authorities of *R v Kamana* and

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<sup>5</sup> *Quarter v R* Court of Appeal, Cook Islands CA03/11, 9 June 2011.

<sup>6</sup> *Police v Matapo* CR 530/15–540/15, CKHC 1 June 2016.

<sup>7</sup> *Police v Ming* CR 525–627/2015, CKHC 11 March 2016.

*Quarter v R*. This case did not involve sophisticated offending and was over a shorter period.

[16] A start point of 6 months' imprisonment would be appropriate, compared to the offending in *Matapo*, which was much worse, and in the other two earlier decisions I have referred to that resulted in periods of imprisonment.

[17] I now turn to look at the personal factors. You were only 19 years-old at the time, which is very young. You have no previous convictions and an unblemished record. You are in employment. You have a supportive family and, to all accounts, this offending is entirely out of character. You have now agreed to pay the money back and you have apologised, realising the extent of the damage you have done and the seriousness of the offending.

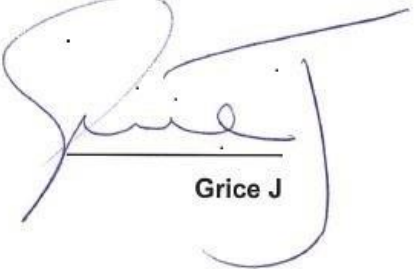
[18] You entered an early guilty plea which saved a lengthy trial and delay. And for those matters I would allow a discount of somewhere in the range of 40%, leaving approximately 2.5 months' imprisonment.

[19] Nevertheless, I have listened to the submissions of the Crown, which accepted essentially that a community-based sentence is more appropriate, and I have also read the substantial submissions of your counsel. I consider the factor of youth is a significant discounting factor. You are only 19 years of age and there are a number of authorities referring to the significance of a period of imprisonment for a very young offender, and also the effects of youthful thinking processes and taking of responsibility.

[20] Therefore, I am persuaded that you should not be sentenced to imprisonment on this occasion. I also bear in mind consistency with the decision in *Ming*. Therefore, as in *Ming*, I sentence you to:

- (i) a period of 18 months' probation with the first six months to be served in community service;

- (ii) to pay reparation to the Ministry of Justice of \$5,000, under s 415 of the Crimes Act;
- (iii) you are not to leave the Cook Islands without the approval of the High Court; and
- (iv) you are to attend any training or workshops directed by the Probation Service.



Grice J