

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

**CR NO's 514-517/2021
538/2021**

POLICE

v

INANGARO TAPUTAPUATEA KAMANA

Hearing date: 22 April 2022 (via Zoom)

Counsel: Ms A Maxwell-Scott for the Crown
Mr M Short for defendant

Sentence: 22 April 2022

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[11:02:56]

[1] Inangaro Taputapuatea Kamana, at the age of 60 you appear before the Court for the first time charged that between 28th November 2019 and 28th February 2020 on five occasions you as a servant stole cheques totalling \$12,700.35. You face a possible sentence of five years imprisonment on each. The charges were laid on 14 October 2021 and you pleaded guilty on 25 February this year.

[2] At the time you were the Deputy Director of the National Environment Service. You worked for over 20 years for the Service. You were highly respected in that role.

[3] It is relevant to note that at the time your salary was \$49,000 a year but you say you committed these offences because you were short of money.

[4] The way in which you committed these thefts as a servant was to sign five cheques and have them countersigned by members of the Environment Service and

pay them into your bank account. The amounts of the cheques were \$3,750; \$2,640; \$1,595; \$2,020 and \$2,750; all below the \$5,000 limit at which the payments would have required the prior approval of the Ministry of Finance and Economic Management, something you undoubtedly knew as a result of your employment by the National Environment Service. You must have adopted that method of stealing to avoid detection.

[5] The proceeds of the cheques were paid into your account and all used for private purposes: personal bookings with a local restaurant, sending your grandchildren to New Zealand for educational purposes, and using the proceeds of the cheques for your own household and other private purposes. None of the money has been repaid as yet. Although there is a suggestion in the papers that you may have paid some money to your lawyer to be used towards reparation; nothing has eventuated.

[6] The Probation Service informs me about your background. You have had an excellent upbringing. You are well educated. They say you have told them that you were brought up as a child to do what was the right thing and take ownership for any wrongdoing. You may have taken ownership on this occasion but you certainly did not do what was right.

[7] You are the sole provider for your household which includes a disabled brother who uses some part out of his benefit to help with the household expenses. You are in receipt of two pensions, one from New Zealand and one from the Cook Islands which bring you in \$1,757 a month. But you still say you were struggling financially. and initially claimed you borrowed this money with approval from the Director.

[8] The Probation Service recommends that you be placed on probation and not given a custodial sentence – because of your personal situation, particularly looking after your brother – and it says because you have started making payments in reparation. None have eventuated according to the papers before me. They suggest that probationary term of 12 months with the first four months on community service, with counselling, workshops, and not leaving the Cook Islands.

[9] Ms Maxwell-Scott for the Crown submits that the circumstances of this offending are far too serious to consider probation as the only outcome. She acknowledges that you have provided lengthy witness statements to the police in relation to the matter, detailing the financial arrangements and processes for the National Environment Service. Those statements involve the Director who is himself the subject of criminal prosecution.

[10] Ms Maxwell-Scott points to the use of the funds for personal expenditure on your part and in helpful submissions refers me to the various aggravating factors including the serious breach of trust, and the planning and premeditation involved in your offending: over three months and on five occasions. The only mitigating features are your plea and the fact that it is your first offence.

[11] There is no tariff judgment in New Zealand or the Cook Islands in relation to theft as a servant but Ms Maxwell-Scott refers me to the New Zealand Court of Appeal case of the *R v. Varjan*¹ which relies on the *R v. Rose*², but there is no established benchmark and the whole of the circumstances need to be taken into account, including the magnitude of the theft, the sophistication of the offending, the number of victims, motivation, the amounts involved, losses for period over which the offending occurred, and the seriousness of the breaches of trust.

[12] In the Cook Islands in *Nicholls*³ the Court of Appeal has made clear that a sentence of imprisonment is inevitably at least the starting point for offences involving theft as a servant. In *Nicholls* the starting point was two and a half years imprisonment; *Matapo* the starting point is again the same, and much the same in *Webb*⁴.

[13] There is a suggestion in the Crown submissions that although you have given the statements implicating the Director and thus assisting the police and the prosecution which has been brought against him, you may not give evidence against him. You could of course be subpoenaed.

¹ NZCA 97/03, 26 June 2003.

² (1990) 5 CRNZ 636, 642.

³ *Nicholls v. Police* [2002] CA 3/11, 9 June 2011.

⁴ *Police v. Davina Webb*, CKHC 19 September 2014.

[14] Mr Short's submissions emphasize your early plea and your contributions to the community, particularly your church where you have been repeatedly involved in fundraising and organisation, and your help to the community. You are a Deacon in the community. Indeed, your involvement with the community has reached the level where on occasions you have deputized for Traditional Chiefs in the discharge of their duties. You are very remorseful

[15] In terms of the principles applying to sentencing you, there is of course and a major factor here is the gross breach of trust against an organisation you faithfully served for many years. It is a breach of trust which occurred over a number of months and on a number of occasions, and in significant sums of money. The gravity of the offences is therefore considerable.

[16] In terms of your accountability and to try to promote a sense of responsibility, the sentencing needs to denounce your conduct and try and deter others similarly minded.

[17] It was relatively sophisticated offending particularly in what would appear to have been deliberate choice of funds below the limit at which MFEM authority was required. All of that suggests that a sentence of imprisonment should be regarded as the starting point for sentencing and that the indication from the authorities is that the starting point should be in the region of two to three years jail. In my view the circumstances of the offending suggest that the starting point should be towards the top of that range, particularly because of the aggravating features to which I have referred, especially the gross breach of trust and the theft of public money.

[18] You are entitled to a reduction in that starting point for your years of community service. I make a certain allowance for the fact that you are the sole income earner in a household which includes your disabled brother. But in terms of *Nicholls*, *Matapo* and *Teiri-Karaiti* a starting point of around two and half to three years jail is indicated.

[19] The reduction in that for the mitigating features should be about a third. So that suggests that, before considering your assistance to the authorities, the sentence

to be imposed on you should be one of about two years imprisonment or possibly slightly less.

[20] In terms of assistance to the authorities the Crown has provided me with a passage from *Adams on Criminal Law*⁵, which deals with the circumstances in which assistance normally arises, and the consequences in terms of sentencing.

[21] Assistance to the authority normally has two limbs. The first is the provision of information which may not otherwise be available to the prosecution authorities and which enables them to charge such persons. The second limb is usually whether or not the person giving the assistance is willing to give evidence – that can be ensured by the use of subpoenas – but more importantly whether they come up to brief in the evidence they give.

[22] However, you have given assistance to the prosecution and in terms of authorities such as *Hadfield*⁶ and *FF v. R*⁷, that entitles you to a reduction of about 60% from the sentence that would otherwise be imposed. It should immediately be noted that if you fail to come up to brief and do not give evidence in accordance with your statements, the authorities say the Crown can apply for leave to appeal out of time to have your sentence increased.

[23] On that basis if a 60% reduction is applied to the possible sentence of about two years or less, the outcome is that you should be sentenced to imprisonment for a term of four months. That is possibly a lenient outcome when the arithmetical calculations are undertaken, but recognises in a limited way your contributions to the community and your personal circumstances.

[24] Because that sentence is less than a year in jail, the Criminal Procedure Act 1980-1 empowers me to impose a term of probation for one year. A term of probation for one year will be imposed to follow your discharge from prison. The conditions applying will be that you do not leave the Cook Islands without the approval of the High Court, that you attend such workshops or counselling as the Probation Service

⁵ SA 8.12

⁶ *R v. Hadfield*, NZCA CA 337/06, 14 December 2006.

⁷ *FF v. R*, CA 383/2016, [2017] NZCA 294.

recommends and that, within such period and by such instalments as may from time to time be directed by a probation officer, you pay by way of damages or compensation for the loss suffered by the National Environment Service the sum of \$12,735. A further condition will be that to assist in recovery of that sum, you cooperate with the Probation Service and sign such documents as may be required to facilitate the recovery of that money from any superannuation credit to which you may be entitled or from other sources.

[25] So the ultimate outcome is that you go to jail for four months, you serve 12 months' probation following your discharge on the conditions I have just outlined.

[26] You may now stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ