

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

CR NO. 511/12

POLICE

v

DAVINIA WEBB

Hearing: 20 July 2012
Counsel: Ms King for the Crown
Ms Rokoika for the Defendant
Sentence: 20 July 2012

SENTENCING NOTES OF DOHERTY J

[1] Davinia Webb, you are here for sentence now for your breach of trust as a Police constable in the execution of your duty when you found yourself in circumstances where there was available two sums of cash, \$5,220 in US dollars and \$220 in New Zealand currency. The Cook Islands equivalent today is approximately \$9,000.

[2] You were in the execution of your duty in the sense that you were part of a team who recovered an abandoned or bereft yacht and money was found in it. You

took the opportunity to take it for yourself. There seems to be no real explanation as to why you did that but I presume it was because you needed money.

[3] You say that you threw away the US dollars although no-one seems to believe that that was the case. Certainly the Commissioner of Police did not and I have had a report from him. He, of course, is understandably upset that the honesty and integrity that is demanded from the members of the Police force has been breached here and that as your counsel accepts is the overwhelming aggravating feature apart from the fact that \$9,000 is a lot of money.

[4] You have not been before the Court before.

[5] I have had the benefit of a Probation report. It tells me that you resigned from the Police pretty much the time that you accepted your responsibility for this offending. You have been working as a waitress since. You are in a supportive, personal relationship of some eight years and I note through the Probation report that your partner was still supportive but despite his disappointment at your actions.

[6] You say that you are remorseful. How that has been manifested is being a little troubling for me. You did not own up to this offending for some six months. That had a number of effects. It cast aspersions on the Police generally, and also you have cast aspersions on those you were working with at the time. Everyone knew the money went missing but no-one actually knew who took it.

[7] I spoke to you a day or two ago when you were first here. I said to you that the best expression of remorse in these circumstances is an ability to pay the money back. I also told you that the starting point for Police officers who act corruptively like this is imprisonment, and it still is to this day.

[8] The Probation Service and the Crown, because of your age and the fact that you have now pleaded guilty, do not seek a sentence of imprisonment but instead community service and maybe probation. That has been reinforced by your counsel and she has presented to me written submissions which I have read and she has added to them today. She accentuates or highlights the fact that you did plead guilty,

that you are of a young age, rehabilitation is something that will be of benefit for you and that you have put in her firm's trust account funds for the majority of the \$9,000 and you have a willingness to pay off the balance within a relatively short period.

[9] The purpose of sentencing is to denounce your conduct, show that you are going to be held responsible for it, it is to make you accountable, but more importantly it is also to be a deterrent, and that deterrent aspect must mean that for corruption by Police officers in any of its forms, the starting point for general deterrence purposes must be imprisonment.

[10] There is a breach of trust inherent in this charge. You are charged for theft as a servant. Servants or employees have responsibilities to their employer and that is one of trust and the law has long recognised that. But there are some occupations which carry with them the additional weight of integrity, and Police officers are in that category. You take on that job with the knowledge and that knowledge is that, by and large, the Police are implicitly trusted by the community. Police officers, in my view, are in a different category to others because of that and it is not all that helpful really to compare other cases.

[11] But while the starting point is imprisonment it is not necessarily the end for you. You have pleaded guilty, you are a young woman with promise, you have made good in the sense that \$5,000 of the \$9,000 has been paid into your account with your counsel's trust account and that has been paid immediately, and that you do have the ability to pay the balance.

[12] So I intend to impose a sentence which is a shorter imprisonment but for those special reasons.

[13] The sentence that I am going to impose will not be easy. It is the one recommended by the Probation Service, accepted by your counsel and by the Crown.

[14] So you are convicted and sentenced to a 12 month community service order, followed by 12 months probation with the special condition that is set out in the Probation report of the 11th July 2012, to attend any training or workshop as directed

by the Probation Service, and that is part of the rehabilitation. I do not think that deterrence for you personally is now an issue.

[15] You are also ordered to pay reparation of \$9,000. \$5,000 of that is to be paid immediately and \$4,000 is to be paid within three months.



Colin Doherty J