

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

**CR NO. 647/12**

**CROWN**

v

**TIPORA TERESA TUPOU MAIHIA**

Hearing dates: 29 April to 2 May 2013

Counsel: Messrs M Henry & C King for the Crown  
Mr N George for the Defendant

Sentence: 10 May 2013

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**SENTENCING NOTES OF THE HON. JUSTICE DAME JUDITH POTTER**

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[FTR 09:59:28]

[1] Tipora Maihia is before the Court for sentence on one charge of theft as a servant under s 242(1)(a) and 249(b)(2) of the Crimes Act 1969.

[2] She was found guilty by a jury of her peers in this Court last week. The charge of which she was convicted is a serious one. It carries a maximum of 5 years imprisonment. That maximum sentence recognises the very obvious breach of trust involved when an employee steals from his or her employer.

[3] Briefly the facts of this matter which were traversed in detail at trial, are that Ms Maihia was in the employ of Farm Direct Pearls operated by Lesley and Temu Okotai, from the 8<sup>th</sup> November 2010. Part of her duties included setting up the shop in the mornings, assisting Lesley to do so and closing up the shop at the end of the day. This involved taking items from the safe at the beginning of the day and returning them to the safe at the end of the day. She was essentially a salesperson for Farm Direct Pearls and she carried out those duties both in the retail premises and also on Saturdays at the Punanga Nui Market.

[4] On the 12<sup>th</sup> March 2011 Lesley, when attending the market in relation to Farm Direct Pearls' stall, passed the stall operated by Ms Maihia. To her surprise and distress she saw there a particular pendant that she recognised as being the property of Farm Direct Pearls. She made the identification readily, because the particular pendant had her tag on it, her price marking and her code as the item was entered into the inventory maintained by Farm Direct Pearls. She immediately checked against the inventory.

[5] Following that discovery there was a seizure of pearls from Ms Maihia's stall by police on the 12<sup>th</sup> March and again on the 14<sup>th</sup> May 2011. Ultimately 14 pendants were identified as the property of Farm Direct Pearls. All these were found on the stall operated by Ms Maihia. Ms Maihia for the most part could offer no explanation as to why these pendants were on her stall; others she identified as having been provided by Mr Reremoana.

[6] The charge was in respect of theft as a servant of pendants to the value of \$5000. The Crown this morning has provided a more precise value of \$6125 but for the purposes of sentencing I proceed on the basis that the value was \$5000 as charged.

[7] An aggravating fact of this offending is clearly the breach of trust involved. In mitigation are matters related to the offender personally. She is a first offender. She clearly has a good reputation with her family and the wider community which has been evidenced by references read in Court today by Mr George. It is fair to say that on the basis of those references this criminal offending is out of character.

[8] Mr George has said in Court this morning that Ms Maihia accepts the verdict of the jury and that she is remorseful and ashamed. He noted that she will be tarnished for life by this conviction and there is a good deal of inevitable truth in that submission.

[9] Attached to the pre-sentence reports are victim impact statements from Lesley Okotai and her husband Temu. Lesley describes as daunting, frustrating and stressful the discovery of the missing pendants and the time leading up to the trial.

[10] Temu notes that the employment of Ms Maihia had something to do with the fact that she was a member of his wider family and he has found it disappointing and embarrassing that this offending has come to light. Mr and Mrs Okotai now wish to move on, which indeed is a sensible attitude in these circumstances.

[11] The Crown seeks a custodial sentence. Ms Henry referred the Court to the judgments of the Court of Appeal in *Nicholls*<sup>1</sup> and *Yvonne Quarter*<sup>2</sup>, decisions in 2002 and 2011.

[12] In *Nicholls* the Court took a starting point for sentencing of 3 years imprisonment and with mitigating factors taken into account, the sentence imposed was 18 months imprisonment. The offending extended over a period of 6 months and involved \$19,200 stolen from the Edgewater Resort Hotel. Ms Nicholls was a first offender.

[13] In the case of *Yvonne Quarter* the substantial sum of \$30,000 was taken over a period of 18 months. \$30,000 reparation was ordered. The Court took a starting point of 2 years imprisonment. The end sentence was 12 months imprisonment. In the particular circumstances of that case the Court of Appeal ordered review of the sentence by the High Court, but for present purposes the initial sentencing is relevant.

[14] It is immediately clear that the offending in those two cases is more serious by far than the offending in this case. The amounts involved and the period over which the offending took place, both in my view, place those cases in a different category from this offending. Nevertheless the submission made by the Crown that this sort of offending will usually be met by a custodial sentence is confirmed by these decisions. And in *Quarter* the Court made some very clear statements about the impact of pregnancy in sentencing. At paragraph [13] the Court said the New Zealand authorities are clear that pregnancy or recent birth does not confer any immunity against a custodial sentence, but recognised at paragraph [14] that in appropriate cases pregnancy or recent birth can affect the nature or duration of the sentence to at least some degree.

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<sup>1</sup> *Nicholls v Police* [2002] CKCA1; CA 5.2002 (11 December 2002)

<sup>2</sup> *Yvonne Quarter v The Crown* CKCA; CA 03/11 (9 June 2011)

[15] At the end of its judgment the Court issued a warning at paragraph [24]:

“Nothing in this judgment is to be taken as suggesting that a mother with a very young child will automatically be entitled to a reduction in her sentence. As we have stressed in paragraphs [13] to [15] each case must turn on its own circumstances.”

[16] The principles to be applied in cases of this kind are clearly deterrence, both of the offender and in respect of the community generally, and the offender must be held accountable for her wrongdoing.

[17] While I accept the Crown submission that a custodial sentence would be appropriate in a case such as this, I do not propose to impose a custodial sentence. In reaching that determination I take into account that this offending, serious though it is, is not directly comparable with the offending in the cases of *Nicholls* and *Quarter* to which I have referred. I also take into account Ms Maihia’s personal circumstances.

[18] There is no issue of reparation. However, I do not accept that it is appropriate to meet this offending with a substantial fine, as suggested by Mr George. I consider it necessary that Ms Maihia serve her sentence in the community in which she offended.

[19] I therefore impose a sentence of 18 months probation supervision. You are to carry out any course or workshop directed by the Probation Service.

[20] You are to pay Court costs of \$30. You may stand down.



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**Judith Potter, J**