

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

CR NO'S 667/13 – 668/13

CROWN

v

MAARA TEARAITOA

Hearing: 6 December 2013
Counsel: Ms King for the Crown
Mr Mason for the Defendant
Sentence: 6 December 2013

SENTENCING NOTES OF GRICE J

(translated at sentencing for the defendant by the Registrar)

[FTR 15:22:52]

[1] Mr Tearaito, you are here for sentencing today on a number of charges – 12 charges of using a document for pecuniary advantage, each of which has a maximum penalty of 5 years imprisonment.

[2] These are serious charges. You changed some pay cheques so that you would get more money from your employer than was owing to you. On one occasion you took a blank cheque and filled it out for \$320. The cheques that you took and increased the amounts on together with the cheque that you wrote on the blank cheque form, totalled \$2,200 over a period of three or four months from your employer.

[3] You took advantage of your employer and what is more you put the person who cashed those cheques in a very difficult position.

[4] As the Crown submitted in the Cook Islands the sentencing principles set out in the New Zealand Sentencing Act are applied.

[5] Those principles include: punishment, deterrence (or being an example to others to make sure they don't do the same thing to prevent these offences), and to send a signal to the community that it will not tolerate the offending. The principles also include to rehabilitate and finally to restore or repair the damage done to others, in this case your employer.

[6] I bear these principles in mind as I move to sentencing. The Crown submits that the paramount purpose is to hold you accountable and to promote a sense a sense of responsibility in you as well as deterrence.

[7] This type of offending is a breach of trust in relation to your employer. He had employed you for three years and you stole off him. It is never easy for small businesses, in any event, but these times are more difficult and it is hard enough to make a profit without having employees stealing off the business.

[8] A further factor is that it happened over 3 or 4 months, it just was not a once-off.

[9] Your counsel Mr Mason puts before me submissions which emphasise the rehabilitation and restoration purposes of sentencing. I have listened to those and I will address them shortly. The Crown has submitted that given the seriousness of the offence, a term of imprisonment might be considered and referred me to similar cases with a range of penalties.

[10] The Probation Service has provided a comprehensive report which confirms what counsel tells me about your background and the fact that this is the first time that you have offended.

[11] He says that a very good sign of your remorsefulness and indeed the best expression of remorse is repayment. I note that you have already paid \$350 into Mr Mason's trust account to enable him to repay your employer.

[12] I also note from the reports and from Mr Mason's submissions that this is out of character for you. You worked hard all your life and you are old enough to know better. It is a shame for your family that you have carried out these offences when you have such a blameless past. You pleaded guilty rather than having a trial and dragging witnesses over from Atiu.

[13] Your counsel realistically submitted that the sentence needed to be a deterrent but at the same time reform and reparation is important. He urged me to impose a sentence which would reflect that. Importantly we heard from your former employer today in Court. Dr Roger Malcolm told the Court that he held you no malice, that you had been a good worker and he merely sought reparation, a recognition of what had happened and an apology, and I take that into account.

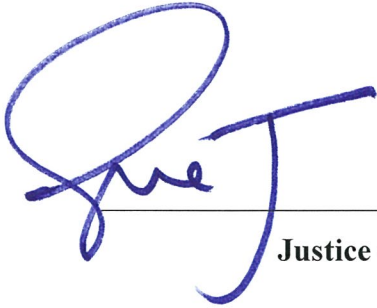
[14] Taking all that into account – the submissions that I have read, the Probation report, the submissions I have heard from counsel this morning and from Dr Malcolm I accept the submission that probation is an appropriate sentence for you this afternoon.

[15] Therefore you are convicted and sentenced on each charge to:

- (a) a period of 18 months Probation with the first six months to be served on community service (to be served concurrently); and
- (b) A total sum for reparation of \$2,220 to be paid to your employer (total for all charges); and
- (c) Court costs on four charges only of \$30 each (a total of \$120).

[16] I understand from the Probation Service that the probation can be served on Atiu and I will leave that for you to make arrangements with the Probation Service. Please speak to the Service before you go and to your lawyer to make those

arrangements and I understand that the repayment arrangements are in place and they can be finalised with the Registrar.



Justice Grice