

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

**CR NO'S 616-619/18**

**POLICE**

v

**JOSEPH WICHMAN**

Date: 19 November 2018  
Counsel: Ms Glassie for Prosecution  
Mr Rasmussen for Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE**

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[10:23:0]

[1] Joseph Wichman, you appear for sentence for four interrelated representative offences of dishonesty – two of forgery within a 3 year span of 20 November 2013 – 16 November 2016; and two of using documents with intent to defraud within the span 14 March 2014 – 15 November 2016.

[2] On 15 July 2013 you were employed as Information and Communications Technology Manager for Edgewater Resort and Club Raro, then under a single name, Island Motels. You were employed for four years, responsible to the Chief Financial Officer. Your duties included computer maintenance, installation of new software and licensing for both resorts.

[3] Purchases you made were reimbursed by your employer and during the relevant period you operated two computer businesses, Tech One Solution and MVPIT Solutions. Your practise was to purchase software products and to invoice your employer, through your businesses, on the receipts you obtained.

[4] Between December 2013 – November 2016 you altered or created invoices, as well as supporting documents, to claim such payments from your employer; repayments for payments you never made. In total, you sent five emails and 38 false invoices. You received \$229,613.20.

[5] Those claims are itemised in the statement of facts, which you have accepted for the purpose of sentence. I need not go into them except to say that they show how systematic you were in this continuing fraud.

[6] In August 2017 the new Edgewater Resort IT team reviewed licence keys against the software purchased, which revealed discrepancies. On 11 October 2017 a formal complaint was made to the police and you were first interviewed on 13 October 2017.

[7] The scale of your offending was such that the Cook Islands Police turned to the New Zealand Serious Fraud Office to make the forensic inquiry called for. That took perhaps a year and once it was complete and representative charges laid you pleaded to them at the first opportunity on advice of your counsel.

[8] The effect on your employer was not simply monetary. The inquiry revealed that the two companies could not rely on the licenses they understood they had. Their victim impact statement also says that this basically cost the Chief Financial Officer his position.

[9] The whole exercise took a great deal of time. The companies had to engage an IT risk and control consultant to review the effect of your fraud. Also, a forensic auditing accountant and counsel. The costs were considerable.

#### Pre-sentence report

[10] Your presentence report shows you to have been well qualified for the role you held with the companies. You have a masters degree in computer science and several certificates. More recently you have been with the Ministry of Education, where you are very well regarded.

[11] You have, since you were charged, lived an increasingly isolated life and you have not disclosed to your parents your circumstances. Your father is currently in hospice in New Zealand.

[12] When asked why you had offended you said that you had been overworked and underpaid for years, working between two hotels. Your offending was retaliatory. By that I understand you to say that you were compensating yourself for a less than proper wage.

[13] You could not be categorical as to the precise amount you had taken because it was some years before. You could not account either for where the money went in any exact way. You said that it went to family and friends.

[14] Whether you felt remorse remained unclear to the report writer. Your report suggests that your remorse and sorrow relate more to you than to your offending. Your report recommends a term of imprisonment.

#### Sentencing principles

[15] In sentencing you I must hold you accountable and impose a sentence which is personally and generally deterrent.

[16] As your counsel says I have also to impose on you a sentence which enables you to rehabilitate into the community to the extent that is consistent with the first of those purposes. But where offending is as serious as your offending is that becomes more difficult.

[17] The offence of forgery attracts a maximum penalty of 10 years and the unlawful use of documents, 5 years. The four offences you face as I have explained are representative of a wider range of offending, of the order of 44 transactions.

[18] There is no tariff for forgery in the Cook Islands and the Crown cautions against too great a reliance on New Zealand authority, because there are differences between the two landscapes.

[19] I must however impose a sentence on you which stands consistently with the sentencing decisions in the Cook Islands in broadly comparable cases involving forgery and theft as a servant.

[20] In *Nichols v Police* [2002] CKCA (11 December 2002) the Court of Appeal endorsed a 2 ½ year starting point for theft from the Edgewater of \$19,500 over six months. In *Police v Matapo* [2016] CK (1 June 2016) a 3 year starting point was taken for theft as a servant and for forgery on representative charges, where the loss was \$24,845.

[21] Other cases referred to are within that range and add nothing material. Clearly your offending was in a different category.

#### Crown submissions

[22] The Crown contends that a lengthy term of imprisonment must be imposed on you because your offending was aggravated by a number of features.

[23] First, a breach of trust. As ICT Manager you occupied a position of responsibility. You had a specialist role. Your employer assumed your invoiced purchases were genuine and that you were entitled to repayment.

[24] Secondly, you acted with premeditation and sophistication. The individual transactions, as the Crown says, speaks for themselves in that respect. Thirdly, the duration of your offending. Your offending spanned approximately three years.

[25] The Crown does accept that you have not previously appeared and that, in that sense, you have the benefit of good character. However, as the Crown also says, that very fact enabled you to offend for as long as you did.

[26] The Crown does accept that you entered a plea at the first realistic opportunity after the NZSFO enquiry and you are entitled to a full credit for your plea. The Crown however invites me to impose on you a commensurate sentence for what was a significant commercial fraud unprecedented in the Cook Islands.

### Defence submissions

[27] Your counsel confirmed that once the NZSFO report was to hand you immediately pleaded to this offending on his advice.

[28] He says that your offending occurred in what appears to have been a vacuum in which you never faced up to the cumulative effect of each dishonest transaction. They simply grew.

[29] He does say to me that you are remorseful. You accept the scale of your offending and that you are responsible. He says also, and this is certainly consistent with your presentence report, that you are quite clearly affected by the consequences, especially for your family.

[30] Reparation, he accepts, would only be feasible if you retained employment. He has been unable to point to me any other source of income. He has confirmed that you do not have an asset of worth, which might be turned to account. Your house belongs to your wider family and you pay rent.

[31] He asks me to take into account the letter which Mr Simpson, the New Zealand chartered accountant with whom you had much contact a few years ago. It stands in contrast to your presentence report.

[32] Mr Simpson who had transactions here and more widely in the Pacific speaks extremely highly of you. He had many instances to test your honesty. He found you a man of probity. He was unable to comment, of course, about this offending.

### Conclusion

[33] Mr Wichman, the Crown is right to say that your fraud, involving forgery and dishonest use of documents, is unprecedented in the Cook Islands in its duration, scale and the sum of money stolen. It stands well above any comparable case.

[34] As the Crown says, you could not have offended over three years unless you had been trusted, and you acted in breach of trust. Or unless you had acted in a

premeditated and sophisticated way and the individual transactions show your claims for repayment were clearly convincing.

[35] The sum you obtained was very considerable and the cost to your employer went well beyond that sum. It resulted in a major disruption and your immediate superior lost his job. You are unable to offer any reparation and so the company will have bear the loss.

[36] The scale of your offending, set against the maximum penalty stands much higher than any comparable case and I take a starting point of 6 years. There is only one mitigating factor, I consider, and that is your early plea on advice for which you are entitled to full benefit. I reduce my starting point by 2 years to 4 years.

[37] For the forgery offences I sentence you to 4 years imprisonment. For the unlawful use of documents I sentence you to 2 years imprisonment. Those sentences are to be concurrent. Your sentence is 4 years imprisonment.



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**Patrick Keane, J**