

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

**CR NO's 482/2020
703-705/2020**

POLICE

v

ELLA NAPARA

Hearing date: 12 March 2021

Counsel: Ms M Iro for prosecution
Mr M Short for defendant

Sentence: 12 March 2021

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[3.14.46]

[1] Ellen Napara, at the age of 34 you appear here today for sentencing on four counts of conspiring to defraud the Cook Islands Police; conspiring with Daniel Thompson or Ngariki Atini Thompson. The first, 703/20, was on 2nd or 3rd March to October 2018 and the conspiracy there was to defraud the Police of \$600; the second, between January and October 2019, to defraud the Police of \$2,455; the third, 705/20, was on 7 August 2018 to defraud the Police of \$800; and 199/21 between 17 April and 24 December 2018, conspiring to defraud the Police of \$1,850. On each of those, the maximum sentence is 5 years imprisonment. You were employed by the Police for something over a decade as a finance officer and an operations manager and you worked with the various conspirators to defraud the Police of a total of \$5,705.

[2] The summary of facts show that you sent text messages to Daniel Thompson on thirteen occasions between 17 April and 24 December 2018 asking for him to send

you relatively small amounts of money. In fact it would almost be more accurate to say imploring him to send you small amounts of money.

[3] Then there were other text messages to the other conspirators, again asking, or imploring, for small amounts of money to be sent to you. In particular nine further text messages to Daniel Thompson between 9 January 2019 and 9 October that year seeking payment of the small sums of money. In those text messages, over and over again, you say "I know I should not be asking you to do this", but you did so anyway.

[4] All the money that you received was from the sales and renewals of the driver's licence scheme here in the Cook Islands.

[5] There is before me a victim impact statement prepared by the Acting Commissioner. I do not intend to read it in full but it can be taken as part of the sentencing notes. In particular the Acting Commissioner says the Police have been "suffering financially in the last four years largely due to the serious misconduct and the offending by the defendants and co-defendants who had active roles in the administration and management of the financial affairs of our organisation". The offending has brought about the long period of negative publicity about the Police.

[6] Perhaps somewhat surprisingly against that background, the Probation Service, and now the prosecution, recommend a non-custodial sentence, that you be placed on probation for a period, despite the seriousness of the offence.

[7] The Probation Service points to your good childhood and that the fact that you became depressed in 2018 and that continued for a period, largely because of a medical event which is known to cause such problems and as a result you resorted to alcohol to try and deal with your medical event whilst, and I quote, "trying to stay on top financially and supporting your family in the outer islands".

[8] The Probation Service mentions your shame, your apologies, your regret, and that is amply backed up by the number of testimonials Mr Short has proffered in support.

[9] Therefore the Probation Service recommended that notwithstanding your offending but because of your pleas of guilty and the other matters, that you be admitted to probation. And as I have said the Crown now supports the same outcome, whilst acknowledging that this was on any measure a very serious breach of trust by an employee of a public organisation such as the Police, which shows planning and premeditation over a lengthy 18 month period from April 2018 until October 2019.

[10] The Crown however acknowledges, in reduction of what would be the appropriate outcome, that you have repaid the whole of the funds that you took. The Crown also directs my attention to a number of earlier cases where the Court of Appeal and other Courts have said that imprisonment is almost invariably the outcome for conviction on offences such as yours.

[11] Mr Short, naturally, adopts the Probation Service and the Crown's recommendation. He points to your repayment of the full sum stolen, your plea at effectively the earliest opportunity, and he said the offending arose out of your medical event, the stress and pressure that that brought about and the stress of your job as well. And he puts in front of me a very large number of testimonials supporting you including a considerable number from members of the Police, and including some eminent persons here in the Cook Islands. So Mr Short points to your early pleas, your reimbursement, the fact that this is your first offence and the fact that you voluntarily undertook counselling. In your own explanation in your instructions to Mr Short you said:

"I was desperate for money at the time and asking Mr Thompson to help was easy. I just got so wrapped up with bills and had nowhere else to turn but to ask Mr Thompson for money which I knew was wrong. I never got the chance to pay back the amount as bills still kept piling up on me. I started to travel to New Zealand for family functions and also family funerals which made things worse for me. I continued to ask Mr Thompson for money as it was easier asking him. I had only managed to get back on my feet this year but then my past finally caught up with me."

[12] In deciding on the appropriate sentence Ms Napara I need to try and fashion an outcome which reflects the gravity of your offending, the considerable thefts of

money, public money from your employer, the seriousness of the offence, the maximum sentence of 5 years imprisonment, try to bring about a feeling of accountability for harm done to the Police and to the community, promote a sense of responsibility in you and denounce the conduct in which you were involved and deter others.

[13] I will be candid with you Ms Napara. When I first started to read this file, despite the recommendations of the Probation Service, the prosecution and now Mr Short, I could see no alternative but to send you to jail. And in terms of decisions such as *Nichols*¹ and *Quarter*,² a jail sentence of something like a year to 2 ½ years seemed to be appropriate.

[14] The serious aggravating factors, include the 18 month period during which you were offending, the number of times you offended – at least 27 – the amount you took – \$5,705 – you were in a position of trust with public money, and the whole enterprise was premeditated and planned.

[15] Against that is your early plea, the very deep remorse, shame and embarrassment that you clearly feel, and the fact that you made full repayment. Despite your offending, you are obviously well regarded and it seems that the offending may have been triggered by the medical event mentioned. And you are a first offender.

[16] Sentencing is never easy and in the Cook Islands it is made particularly difficult because there is no sentence available between fines, probation, community service and the like, and imprisonment. Here we have no sentences of home detention or suspended sentence or outcomes of that sort.

[17] So the task of a sentencing Judge is often to decide whether the probable outcome of a jail sentence can be put to one side by the countervailing and mitigating circumstances.

¹ *Nicholls v Police*, CA 5/02, 11 December 2002.

² *Quarter v R*, CA 3/11, 9 June 2011.

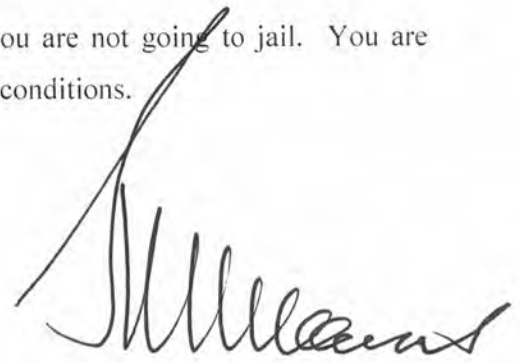
[18] In this case, and I acknowledge it is by a very small margin, I do not intend to send you to jail. The convictions alone will be a significant penalty which will affect you and your earning capacity for the rest of your life. My obligation is to find not only the just result but the least restrictive outcome for you. And so, as I said, by a small margin, my initial thought that jail was inevitable is set aside.

[19] You will be sentenced to 2 years on probation. You will do the first 9 months on community service and you are not to leave the Cook Islands without the approval of the High Court.

[20] That is by some measure, a lenient outcome but it is an outcome which in your case, unusually, is justified by the support you have received from so many people including members of the police and by your significant contributions to the society in which we all live.

[21] You may count yourself fortunate that you are not going to jail. You are sentenced as I said to 2 years' probation on those conditions.

[22] 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