

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

**CR NOS. 492/21, 532/21, 536/21,
577/21, 578/21, 579/21, 581/21**

K

v

DIANE MOEROA-O-TARE CHARLIE-PUNA

Hearing: 22 March 2023

Appearances: P Wicks KC, K Hogan and J Crawford for the Crown
B Mason for D Charlie-Puna

Sentence: 22 March 2024

SENTENCING NOTES OF PJ KEANE, CJ

[1] Diane Puna, you appear for sentence for six offences: five cheque frauds between 8 July 2019–7 April 2020 and conspiracy to defraud between 9 September–11 October 2019.

Edgewater fraud

[2] First, between 5–8 July 2019, you, your husband, and some of your children, stayed at the Edgewater Resort to celebrate your birthday at a cost of \$3,035, which you met by ICI cheque.

[3] In September 2019, the Public Service Commission investigated, and you were stood down as ICI head. On 9 September, you and your husband agreed to justify your stay as a management retreat with your minister, Robert Tapaitau.

[4] Mr Tapaitau was essential to your fraud, and you recruited him that day. You drafted a four-page memo recreating your imaginary retreat. You and your husband drafted a letter from Mr Tapaitau to the Prime Minister, Mr Henry Puna, protesting you had been prejudged.

[5] This worked. You were reinstated. In 2021, however, when the Police looked into it more closely you admitted the fraud. You repaid ICI \$3,454. You pleaded guilty to the theft (since, to a substituted cheque fraud instead), and to the conspiracy.

Tapaitau fraud

[6] Second, between 16–18 July 2019, shortly after your Edgewater stay, and as a favour this time to Mr Tapaitau, you committed three cheque frauds totalling \$3454.00.

[7] Mr Tapaitau wanted to fly to New Zealand to attend his uncle's funeral, but did not have the money. You had ICI fund the trip. You authorised and co-signed three ICI cheques, on the basis he was travelling as ICI Minister.

[8] You justified this expenditure on the basis that Mr Tapaitau, as Minister, needed to travel to Auckland to ensure a long delayed bitumen truck was transported immediately from Palmerston North, and shipped immediately by Matson.

[9] You knew from the beginning, as you confirmed in contemporary texts, that this was untrue. The truck was about to be transported to Auckland and was already booked with Matson. Nothing needed to be sorted out then or later.

Motor scooter fraud

[10] Third, on 13 January 2020, you and your husband engaged in a further cheque fraud to buy a motorbike costing \$5,000.00 for your adoptive mother on Aitutaki.

[11] You were going to buy this bike on hire purchase. But you bought it outright using cash, the source of which was an NES cheque, cashed on 13 January 2020, which had been issued to fund NES work relating to Manauae.

[12] Your husband clearly authorised the issue and cashing of the cheque. But, on the evidence, you knew it was to issue. You wanted that to happen and encouraged it. You went to NES to collect the cash. You were fully complicit.

[13] You have today paid a further sum of money, \$675.00, on account of that purchase by way of restitution; and that is to your credit.

Pre-sentence report

[14] Your presentence report sets your offending against the very positive aspects of your public, community and family life.

[15] What is especially impressive is that you have nurtured your five daughters, and managed to reconcile that with the pressures you faced obtaining tertiary qualifications, and eventually heading ICI. As your report says, your accomplishments are remarkable.

[16] No less impressive, your reports says, is your reputation for professionalism, vast expertise, compassion, and selflessness. As a result of those last two capacities especially, you have suffered great distress these last two years.

[17] Your report says, however, that you must be sentenced on the basis that you offended, as I have found, and that you must be held accountable for your misuse of your high authority, and the related breaches of trust. It recommends imprisonment.

Sentencing principles

[18] I sentence you on the same principles as I sentenced Mr Tapaitau, and I need not repeat them, except to say this.

[19] First, I must give first place to your abuse of office as ICI Secretary. High public office carries high authority, and high accountability, as the Court of Appeal so recently said a case close to yours, *R v Kamana*¹.

[20] Second, I must fix your sentence starting point by reference to that affirmed on that appeal for offending closely like yours; and, as the Court of Appeal there required, give first place to the principles of accountability and deterrence.

[21] Third, I must give you credit for your plea to two offences, your impressive contributions in public, community, church and family life, and how essential you are to the welfare of your younger children especially.

¹ *R v Kamana* [2022] CKCA 2.

Offences

[22] In your case also, the first and fundamental issue is what starting point I must take in sentencing you; and, as to that, the Crown and your counsel differ only by degree.

Crown submission

[23] The Crown contends for a global 4 year starting point synthesising starting points of 2 years, 6 months, for the conspiracy and 3 years for the cheque frauds.

[24] On sentence, as at trial, the Crown contends what makes your offending so serious is not the public money you misappropriated, which totalled \$11,489.00. It is the fact it was public money.

[25] The Crown submits you abused your high public office as permanent ICI head. You unlawfully used public money, as if it were your own, or those of your co- offenders. You fraudulently justified or concealed those misappropriations.

[26] Furthermore, the Crown points out, you offended over a six-month span, July 2019 – January 2021; and, relying on *Kamana*, contends for a four year starting point.

Defence submission

[27] Your counsel contends by contrast for a starting point of three years, six months', imprisonment.

[28] Your counsel does not dispute that the conspiracy, your lead offence, and your related Edgewater fraud, were what they were. As to those offences he seeks, rather, a maximum credit for plea.

[29] As to your three cheque frauds funding Mr Tapaitau's Auckland trip, he submits, you did not yourself benefit; and, though there were three cheques, this was in reality a single fraud.

[30] As to your motorbike purchase fraud, he submits, your husband committed the offence and you were, essentially, passive; a submission, I have to say, that does not reconcile with my findings of fact.

Conclusion

[31] When you became ICI permanent head, Mrs Puna, you were invested with high public responsibility and trust; and your six offences are abuses of both.

[32] The public money you misappropriated, \$11,489.00, was relatively modest. But, as the Court of Appeal has held, that is not decisive. What is decisive is that it was public money and you so completely abused your authority.

[33] You offended yourself and you encouraged and assisted your co-offenders, Mr Tapaitau, the Minister to whom you responsible, and your husband, a public servant almost as highly ranked as you were.

[34] That is how corruption spreads, public money becomes misused and dissipated, and how the integrity of the public service becomes eroded. And that is why the sentence I impose on you must be deterrent.

[35] The Crown's starting point, four years may be proportionate. But for the reasons your counsel gave, I consider, may be too high. On the totality principle, and just to be sure, my starting point will be 3 years, 6 months.

Character and contributions

[36] I accept fully the tenor of your character references. You are highly regarded, and trusted. You have made large contributions to your own island, Aitutaki, and here on Rarotonga; to your church and family.

[37] What I find so hard to understand, and so regrettable – so very regrettable in your case too, is how a woman of your obvious talent, energy, and decency, so trusted and admired, could commit the offences for which you are for sentence.

[38] As the Crown says, dishonest offenders, who are trusted and admired, are able to take advantage of that trust, and often do. But, as the Crown accepts, it is open to me to reduce your sentence by a credit, conventionally within the range 10–15%.

[39] Your contributions have been so real and positive, I consider, that I should allow you a rounded 15% credit; and so reduce your sentence by 6.5 months.

Guilty plea

[40] You are entitled, secondly, to a credit for your guilty pleas to your Edgewater cheque fraud, and the conspiracy to conceal it. The issue is in what percentage.

Defence submission

[41] Your counsel seeks a full one-third credit, reducing your global sentence, although you pleaded only to those two offences and went to trial as to the balance and I convicted you of four.

[42] He submits credits for plea, like other issues on sentence, cannot be reduced to a sliding scale. All the features of the offending and the offender, which will always be singular, must be weighed against the need for consistency.²

[43] That always calls, he submits, for an exercise of discretion, and he invites me to allow you a full credit on the basis that you did accept full responsibility for the cheque fraud and conspiracy in July 2021.

[44] You wrote a letter of resignation. You repaid ICI \$3035.00. Your guilty plea may not have been at the first opportunity, but there was a need for disclosure, COVID intervened, a change of counsel, and the need to agree a fact summary.

[45] Your co-offenders went to trial on the conspiracy, and that remained a live issue. But that should not, he submits, deprive you of a full credit. Your remorse was and remains real.

Conclusion

[46] The difficulty is, as I have said in my minute, and as the Crown now submits, that full credits for plea are normally reserved for pleas disposing of all charges for trial, as in *Kamana*.

[47] A full credit may, exceptionally, be given for less than complete pleas, but that cannot be so in your case. You denied the balance of the charges against you, and I found you guilty of four at trial.

² *Hessell v R* [2010] NZSC 135.

[48] The Crown contends that the largest credit to which you may be entitled is 10–15%. The lower end of that range seems to me too slight, and I have considered whether you may be entitled to in excess of 15%.

[49] I have concluded the charges you denied at trial are too significant, relative to those you admitted, to justify a credit greater than 15%, reducing your sentence by a further 6.5 months.

Children’s welfare

[50] The final issue is what credit you may be entitled to as a result of the fact that you and your husband are about to be imprisoned, and care of your two youngest children will fall to your oldest daughter.

[51] In submission, your counsel graphically outlined the effect of your joint prosecution, trial and conviction has already had on your five daughters; and the even more marked effect sentences of imprisonment will have.

[52] I do not intend to say more than that, because they need to be shielded, as best we can achieve it, from the effect of this public process. But I will say that the effect on all five has been very marked already.

[53] As a result, I issued a minute to counsel, relying on an recent sentence of this Court where the same issue arose³, proposing a further credit, because your sentence will be shorter than your husband’s, you will be released first, and you are essential to the children’s welfare.

[54] In principle, the Crown accepts such a credit, which has been allowed in New Zealand since 2001. What size depends on the case.⁴ Such a credit, the Crown accepts also, is consistent with the mercy and forgiveness principle, recognised here in 2019 in *Goodwin*.⁵

[55] The Crown submits that any credit should be in the range 10–15%. Your counsel has simply left that to me as a matter of discretion.

[56] I consider, for my outlined reasons, that a larger credit than the Crown concedes is called for. A credit of the order of 25%, reducing your sentence by further 11 months.

³ *R v Samuel & Ahiao* HC Rarotonga CR 447/21, 8 August 2023, Potter J.

⁴ *Philip v R* [2022] NZSC 149.

⁵ *Goodwin v R* [2019] CA 11/2018, 3 May 2019, [47]-[48].

Conclusion

[57] I confirm I have already convicted you of your six offences; and I now sentence you, concurrently, for those offences to imprisonment for 1 year, 6 months.



PJ Keane, CJ