

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

CR NO: 246-248/2013

POLICE

v

DAVINIA WEBB

Date: 19 September 2014
Counsel: Ms M Henry for the Police
Mr N George for the Defendant

DECISION OF THE HONOURABLE CHIEF JUSTICE TOM WESTON

[1] Ms Webb, you are here today for sentence, having pleaded guilty to three offences of theft, which took place during the course of 2011.

[2] In order to put those in context, I also need to refer to a fourth offence which also took place in or about 2011 and which was discovered prior to these three offences being discovered. You were charged at that earlier time and sentenced by Doherty J on 20 July 2012. That early occasion involved the theft of \$9,000 which as I understand it was repaid. At the time of sentencing, \$5,000 of it was paid with the balance yet to be paid. Doherty J took the reparation into account in imposing an extremely generous sentence of 12 months Community Service, as part of an overall 24 months period of probation.

[3] I have not mentioned so far what, for me, is the most significant part of this offending. This offending all took place while you were a serving police officer. The first of the three charges now before me arose out of the execution of a search warrant of a house during which you stole a certain amount of money that you located.

[4] The second charge before me today relates to the theft of approximately \$20,000 which was stolen by you from the safe then held by the police following the execution of the search warrant just mentioned. The third charge relates to the theft, by you, of some NZ\$4,000 following the execution of a search warrant unrelated to the previously discussed search warrant. These activities all took place around the middle of 2011. While the criminal conduct is similar in each case, all of these three events are truly separate. It was said by Mr George that these were impulsive, but the fact that four events occurred in 2011, in which you abused your position as a Police Officer, is a significant aggravating feature in this case.

[5] Mr George has said that you are ashamed. I have seen a letter that you have prepared addressed to me apologising for what you have done. Notwithstanding that apology, it is clear from the Commissioner's victim impact report that the continuing delays on your part in owning up to what you have done, were regarded by him as a significant aggravating factor.

[6] I have also read the victim impact statement of Mrs Akisi Mussell. It was the Mussell's property that was the subjected of a search warrant. She refers to the difficulties that followed the execution of that search warrant. I understand that ultimately there was no further action taken by the police in relation to the reasons for the execution of that warrant. Undoubtedly, all of that would have been most upsetting for Mr and Mrs Mussell. But I have no doubt that your actions in stealing their assets during the course of the search warrant, and then taking the money from the safe, would have been immensely concerning for them. I have been told the police have now fully reimbursed Mr and Mrs Mussell for all losses occasioned by your activities, but I fully accept what Mrs Mussell says in her statement as to how badly affected they have been by what you did.

[7] The Crown has sought a sentence of four and a half years, which is close to the top end of the maximum available of five years. This is to reflect the seriousness of the charges arising from your position as a Police officer and also to reflect the overall criminality inherent in the number of charges that have arisen from your conduct in 2011.

[8] Mr George initially supported the Probation suggestion of a short sharp term of imprisonment but, on pressing by me, recognised that, that was unduly optimistic in all the circumstances. At the end he accepted that a figure in the range of 12 to 18 months was a likely outcome.

[9] It seems to me that your actions, Ms Webb, are to be regarded at the very serious end of theft as a servant. As a serving Police Officer you were entrusted to act faithfully and honestly, and you failed in that by a huge margin. You have brought the police into this repute, you have caused great upset to Mr and Mrs Mussell. No doubt you have caused great harm to yourself and those you love and who love you.

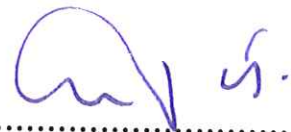
[10] It seems to me that the major factor influencing my sentence is to reflect to the significant offending. I think there is much that justifies Ms Henry's submission that the starting point for my consideration is somewhere around four and a half years. She recommended that the ultimate sentence should be three years, taking account of the usual 30% discount for an early plea.

[11] Mr George reminded me of the advice of Doherty J given in June of this year, which ultimately resulted in guilty pleas being entered here. At that time, the Court was working through the lists of unresolved criminal matters seeking to obtain guilty pleas if that were possible. Sentencing indications were considered and the like. No formal sentencing indication was given in this case but Doherty J advised the parties that an early guilty plea might well receive an extra discount over the standard 30%. I am prepared to take that into account in sentencing you today.

[12] I believe the starting point for this sentence would be somewhere in the range of four to four and a half years. The usual discount would take you somewhere close to around about three years. I am prepared to make a further discount to reflect the circumstances that I have just outlined.

[13] You will be sentenced to a term of imprisonment running from today of 2 years on each of three charges to be served concurrently.

[14] You may stand down.



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Tom Weston CJ