

POLICE

v

METUAVAINA BENEDICTA MATAPO

Date: 01 June 2016

Counsel: Ms A Mills for the Police
 Mr W Rasmussen for Defendant

SENTENCING NOTES OF HUGH WILLIAMS J

[1] Metuavaine Benedicta Matapo, at the age of 23 you appear here for sentence having pleaded guilty to four counts of theft as a servant when you were employed by the Bank of the Cook Islands plus one representative count of forgery. In broad terms the offending covered about 12 months.

[2] The maximum sentence on theft as a servant is five years imprisonment and on forgery 10 years imprisonment. A total of \$24,845.30 was obtained by you and used for personal and family expenditure.

[3] The facts are that your fraud was reported on 20 August 2015 and you were identified as the possible perpetrator. You at that stage were the Compliance Officer for the Bank and you worked your way up over the three years of your employment.

[4] You took the amount I have mentioned from 31 loans and savings accounts by wrongful batching, over the counter withdrawals and forging customer signatures including it seemed your uncle's who trusted you with his account. And the amount you obtained was credited to your account and to the uncle's.

[5] You were dismissed in July last year and have only worked spasmodically since. It seems as though, through your family, you have repaid \$10,150.00 of the amount you stole principally from a superannuation payment. Your family is certainly to be commended for rallying around and supporting you in your repayment efforts. But the fact remains that over a period of about a year, you stole money on 31 accounts, forging loan and refinancing applications. There were 14 fraudulent transfer vouchers to your account, 10 went to your uncle's account and there was a cash withdrawal without authority.

[6] A helpful probation report testifies to your family and friends' support. You have had a good education to the point where you enrolled in a tertiary institution in New Zealand but unfortunately you did not finish, you returned to Rarotonga and took up employment with the Bank which lasted 3 years.

[7] The Probation Service says you have no previous convictions. They acknowledge that you took a significant sum in about a year on a number of occasions abusing your position of trust with the Bank in the process.

[8] The Probation Service gives me a schedule of some 20 thefts as a servant and sentence, over about nine years many did not involve a jail sentence but as I said to Mr Rasmussen it is difficult to draw any principle from those results.

[9] Notwithstanding all of that, the Probation Service recommends that you be admitted to probation including part which would be on Community Service.

[10] Ms Mills for the Crown draws my attention to the principles of sentencing, the gravity of the offence, the seriousness of the offence, the numerous occasions on which you stole money. Submits that this was a serious breach of trust, both in relation to the Bank and in relation to your family, which went on for about a year and involved planning, skill, pre-meditation and repeated succumbing to temptation as part of the offending. And of course there was the forgery as well as the theft.

[11] However Ms Mills accepts that your early plea might entitle you to a reduction of about a third of what would otherwise be the sentence and she draws my attention to the reimbursement so far.

[12] There is in the Cook Islands a Court of Appeal decision called *Nicholls v Police*¹ which suggests that the starting point for theft as a servant should be about two and a half to three years in jail. There are exceptional decisions, as I have mentioned to Counsel, to the contrary including *Police v Kamoe*² which Mr Rasmussen relies on and *Police v Quarter*³ but the personal circumstances were different. In particular in *Kamoe* the offender was prepared to assist the Police by giving evidence and that always results in a significant reduction in the sentence to be imposed.

[13] Mr Rasmussen also filed helpful submissions detailing the various issues raised by the facts of the matter. He suggests that in some way the Bank's own system might be at fault. Certainly some laxity in the system certainly enabled you to commit all these offences and the Bank has understandably tightened its procedures since your apprehension but one cannot really criticise the Bank for putting in place systems which you abused repeatedly over a lengthy period.

[14] With intent fraud theft as a servant against a five year maximum, the usual starting point is about half of that term. Here this was a gross breach of trust by a senior employee who knew the systems and worked her way around them on numerous occasions. And, as I said, it is a breach of trust not just against the Bank but against your family as well. There is of course the forgery charge as well plus the fact that you offended on 31 occasions over a year and a very substantial sum of money was stolen and simply used for your personal circumstances. That would justify an increase in the starting point of perhaps another six to 12 months which would take you up to about perhaps as much as three year's imprisonment.

[15] However, you pleaded guilty at an early stage and in doing so saved the cost of delay and trial. Theft as a servant is often an offence which can involve quite detailed evidence and a lengthy trial so you are entitled to a significant reduction in the sentence for that. You have accepted your responsibility, and your family has as well, and, of particular importance, you have paid \$10,150.00 towards your defalcation so you are entitled to at least a reduction of a third of what would otherwise be the sentence.

¹ CA 5/02 11.12.02

² CR 247/14 HCCI 2.12.15 Grice, J

³ CA 3/11 HCCA 9.6.11

[16] I require you to repay the balance of \$14,695.30 under s 415 of the Crimes Act with that sum going to BCI.

[17] You will be sentenced on each of the offences to 18 months imprisonment. The terms will be concurrent that is to say they will run at the same time so you will spend a maximum of 18 months in jail.

[18] Stand down.

A handwritten signature in black ink, appearing to read "Hugh Williams, J.", written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J