

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

CR NO'S 588-596/16

POLICE

v

ROSA GEORGE

Date: 8 March 2017

Counsel: Ms A Herman for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[9:38:03]

- [1] Ms George, at the age of 27 you appear for sentencing having pleaded guilty to nine counts of theft as a servant from the Business Trade and Investment Board (“BTIB”) between 26 May and 8 July 2015. On each of the counts you could go to jail for five years.
- [2] The sums stolen were for the most part fairly small – in the region of \$150-\$175 – but there was one occasion when you stole \$750. You stole \$1,700 in total.
- [3] You were charged in July last year and entered the plea on 8 December 2016 after a somewhat chequered career in which bench warrants were issued for your non-appearance.
- [4] The thefts were fairly unsophisticated. You were employed in April 2015 by the BTIB as an administrator with responsibility for receiving cash payments for the night market, vendors fees, the BCI Trade Day, foreign enterprise application fees, levy, exemption fees and the like. For the most part you receipted those payments correctly but took the money so the bankings did not line up and it is made a little more serious

by the fact that some of these payments were what are called ROBOC payments, that is to say monies paid to BTIB on behalf of the Crown, essentially trust money.

- [5] To your credit, when the complaint was made to the police you admitted your offending.
- [6] As a result of the Probations Service's investigations, Mr Short's helpful enquiries and what has passed between us this morning I now have a reasonably broad understanding of your background, certainly a better understanding than for most people coming up for sentence.
- [7] You come from Mauke from a large family but one which gave you good family support. You passed NCEA levels 2 and 3 so you have had a reasonably good education and in fact obtained a tertiary qualification, a Certificate in Tourism Studies. So you are more intelligent and better educated than a lot of people who stand in that dock.
- [8] After you qualified you managed to get some good jobs. You spent 6 years with the Financial Supervisory Commission ("FSC").
- [9] But during that time you met up with a chap Trevor Tiro who has stood in that dock himself a good number of times and is well-known to the police and to the Courts. The relationship seems to be a bit off and on, a bit more on than off. One of the consequences is that your family has disowned you.
- [10] Because he is such a poor father you took time off from the job to care for your son, now 3 years old, and that led to your being sacked by the FSC. You managed to get the job with BTIB last year but again your relationship with Tiro meant that your working relationship suffered. Despite that BTIB said that they are "sad to encounter the experience" of your stealing from them and they wish you well for the future. Mr Short has given me a testimonial from Café Salsa who also speak well of you in your work habits and your dedication to your job.
- [11] But you are unlikely to be a really satisfactory employee while your loyalties are divided between your son and your job on the one hand and Tiro on the other.

- [12] So you are now working for Café Salsa. To your credit you managed to get a job. To their credit they were prepared to take you on even though they knew the predicament you were in.
- [13] You have begun to undertake counselling at Punanga Tauturu. Hopefully they will be able to enable you to see your situation clearly and decide what is really best for your future and for your boy's future.
- [14] You have been attending church in the last few months. Again hopefully the church's assistance will enable you to look at your own position very clearly.
- [15] The Crown has been very fair in their submissions. They point out that this is serious offending, repeated offending, offending that probably would have gone on occurring if it had not been that BTIB found out something was wrong and made a complaint. Offences could so easily have been more.
- [16] Your offending was a breach of trust. You were given responsibility for handling BTIB's money correctly, instead of which you filched it.
- [17] There are a number of cases of this sort coming before the Courts and Ms Herman for the Crown tells me that the police and the authorities are concerned that this kind of offending is becoming prevalent in the Cook Islands.
- [18] Just looking at some of the earlier cases in the Court of Appeal decision in 2002 in *Nicholls*¹, the Court said that for theft as a servant a judge should start the search for the appropriate penalty with a jail term of about 3 years and that remains the law here. In July 2013 in *Mokoha*² there were six charges of stealing from tourists and the accused was given 6 months on each in jail.
- [19] Ms Herman draws my attention to a case called *Quarter*³ where it was only one charge but it was \$30,000 and where sentencing was complicated by the fact that Ms Quarter had got herself pregnant and given birth to a baby just a few days before sentence. The Court of Appeal made clear that the fact of pregnancy or an offender

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

² *Mokoha v Police*, JP Appeal 5/13, 19 July 2013

³ *Quarter v R*, CA 3/11, 9 June 2011

having a young child certainly does not guarantee they will not go to jail. So your 3 year old does not mean that you cannot be sent to prison.

[20] In March 2012 *Metuakore*⁴, there were two frauds, 18 months probation was the result. In November 2014 in *Teinangaro*⁵, there were two thefts as a servant, two false accountings by a customs and tax officer. She too was pregnant at the time and was given 18 months probation.

[21] So when I look at your situation this is very serious offending by taking Crown money. But I accept that you succumbed to temptation when you found that you could get away with it because of your desperate financial situation. You had a good job, you were no doubt earning well, but the costs of supporting your household, supporting yourself, your son and Tiro who is unemployed just caught up with you and overwhelmed you.

[22] But in accordance with *Nicholls* I need to consider a jail term for you to begin with.

[23] But you are a puzzle to be here. You are intelligent. You are qualified. You come from a good family background. Your grandmother is still supporting you in the sense of looking after your boy. You have had really good jobs in government agencies. Until you were about 21 your life was good and you had significant achievements and prospects. But everything has gone downhill from there, although given your continuing relationship with Tiro you may not see it that way.

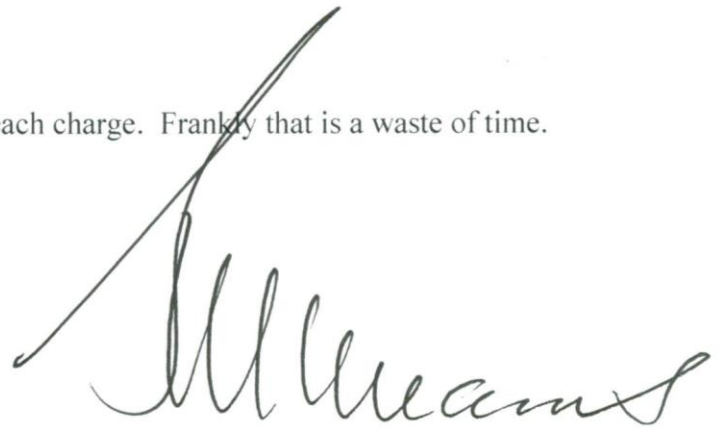
[24] But here you are, finishing up in the dock for the first time, facing nine dishonesty charges and convictions for those dishonesty offences will stand against your name forever. In terms of punishment the fact of those convictions is going to limit your prospects for the rest of your life. Instead of having good jobs like BTIB and the FSC you are a kitchen-hand in a restaurant.

[25] I am going to accept the Probation Office recommendation but extend it as the Crown suggests. You will be convicted and placed on probation for 24 months, 2 years, that is the maximum.

⁴ Police v Metuakore, CR 231 & 232/12, 30 September 2012

⁵ Police v Teinangaro, CR 596-9/14, 28 November 2014

- [26] I agree with Mr Short that there is not much point in ordering that part of that be served on community service because that will just cut into your capacity to earn on Saturdays which is already fairly limited.
- [27] You are ordered to pay reparation to the BTIB of \$1,700 at the rate of \$20 per week. Realistically that will be about as much as you can manage. As you have heard Probation say, if you fail to pay that amount under the Court's order you can be back before the Court for breach of probation.
- [28] You are to attend any training or workshop for rehabilitative purposes as directed by Probation and you are not to leave the Cook Islands without the approval of the Court.
- [29] That sentence is by no means the end of your troubles. You have still to sort out how you are going to care for your son. You are still going to be financially strained but it is important in my view that as part of your punishment, in addition to the convictions against your name, you repay the \$1700 to BTIB at \$20 per week over the two years of your probation. You should be able to achieve that as long as you stick to what you have been ordered to pay.
- [30] You can stand down.
- [31] The Crown asks for \$50 Court costs for each charge. Frankly that is a waste of time.

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

Hugh Williams, CJ