

POLICE

v

TYRONNE BANDULA JAYAWADANA WEERASINGHE

Hearing dates: 14-15 March 2019

Counsel: Ms Herman for the Crown
Mr Rasmussen for the Defendant

Sentence: 4 April 2019

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[9:55:20]

[1] Tyronne Bandula Jayawadana Weerasinghe, at the age of 54 you come here for sentence today having been found guilty by a jury, after an unusually brief retirement, of 59 charges of theft by conversion.

[2] The offences occurred between 4 March 2015 and 10 February 2017, about a two year period, and you stole \$30,700 from the Cook Islands Government.

[3] In the run up to the trial you faced only one global, representative charge which encompassed all the offences of which you were subsequently convicted. Had you pleaded guilty to that charge the Crown would have accepted that as representing your level of criminality. But you went to trial, as you are of course

entitled, but the jury plainly found the evidence of your guilt on each of the 59 charges overwhelming.

[4] In going to trial you deprived yourself, first of the possibility of any reduction in sentence to be gained from a plea of guilty, late though it would have been, and you now have the possibility that the Court could consider cumulative sentences instead of just a single sentence on a single charge.

[5] On each of the 59 occasions in that two year period you went, each fortnight, to the bank and withdrew in cash most, if not all, of the \$605 per fortnight which was credited to your bank account automatically as a result of some error or action in payment on the part of a Government agency. Indeed, if there had not, by chance, been an audit you might still have been drawing that money.

[6] You face the maximum sentence of 5 years imprisonment on 55 of the charges. On the charges numbered 171, 181, 193 and 204, because of the state of your bank account and the amount of the withdrawal, the maximum sentence you face is one year's imprisonment on each.

[7] Sri Lankan by birth, you came to the Cook Islands from Nauru in 2004, accepted employment with the Ministry of Education and taught in various schools in the Northern Group for a decade.

[8] The Ministry made clear that they find it very difficult to obtain teachers who are prepared to stay in the Northern Group and work for long periods, so you are entitled to a certain measure of credit for that.

[9] At two of the schools where you were employed in the north, you were the Principal and in that role you employed relievers from the relievers' pool for each of the schools so knew how that worked.

[10] But in 2004 there were complaints about you. They were investigated and were found to have sufficient substance, first, that you were demoted from Principal

to a teacher, and then you were brought back to Rarotonga late 2014 or early 2015. There was then a period where it seems you were ill for quite a long space of time.

[11] In summing up to the jury I suggested they might find it helpful to divide the period of your offending into four sections, the first of which was up to the beginning of the period of the charges, 4 March 2015.

[12] It is clear that on 26 January 2015 there was a meeting here with Mr Utanga of the Ministry in which he told you that you would be going onto the relief teachers' roll and that as a relief teacher you would not get paid unless you worked – an obviously sensible stance for the Ministry to take – that you would receive no leave or sick pay from that point onwards and that you were on unpaid leave unless your services were called upon.

[13] It is also noteworthy that at about that time, probably February 2015, your passport expired. You remained on the teachers' registration roll, but that was revoked a year later on 8 February 2016. In order to take up work as a teacher, whether relief or fulltime, you needed both a valid passport and be on the teacher registration roll and to have a work permit.

[14] The next period I invited the jury to consider was the period from about the beginning of your offending, 4 March 2015, until 20 October 2015.

[15] You were enabled to offend as you did because on 6 March 2015 instructions were given to terminate your pay – because of the change to your being on the reliever roll and being paid only when you worked – but for some reason that instruction was reversed a few days later, 9 March. The evidence showed how it was done, by whom it was done, and, as I have said, when it was done, but there was no evidence as to why it was done. It may have been a simple error on the part of the computer operator. It may have been some other reason although there was no evidence that you were in any way knowledgeable of, or involved with, the person who actually erroneously reversed the computer notification which would have terminated your wages.

[16] That second period I regard as one of the two periods of lead offences, major offending, on your part because between 4 March 2015 and 20 October 2015 you were employed fulltime as a teacher at Nukutere College and paid, of course, during that period.

[17] Even if, unfathomably, you deluded yourself into believing that you were entitled to be paid simply for being on the relieving teachers' roll, irrespective of whether you worked, it was impossible for you to believe during that period that you were entitled to be paid by the Ministry because you were not available for relieving teaching at that stage. You were fulltime employed by Nukutere College and paid by them.

[18] The third period I put to the jury was between about October 2015 and February 2016 where you did not work. You considered a job on Mauke but it was pointed out to you that unless you had a valid passport you could not be considered for that position, so if you held that belief to which I referred, that you were entitled to be paid simply for being on the relievers' roll irrespective of working, you knew during that period you were not available to take up teaching because you had no valid passport.

[19] The fourth period covered about the last year of your offending, from 8 March 2016 until 10 February 2017.

[20] Your offending during this period – every fortnight cashing the amount erroneously credited to your account – is also one of the major periods of your offending, because there was a meeting on 8 February 2016 at which you were told that your teacher registration was being cancelled, so it was impossible for you to believe you were on the reliever's roll from that point onwards because you had no valid passport and you had no registration as a teacher.

[21] Not only were you told that, a letter advising you that your registration had been cancelled was emailed to you that day.

[22] In evidence, and to the Police, you said you, reluctantly, accepted you got that email but said you never opened or read the attachment.

[23] Millions of people around the globe every day receive emails with attachments and know enough to open them. You were an IT teacher. Of course you knew you should open attachments to emails. But, according to you, you never did so.

[24] That is part of your response to these charges: that it was never your fault. It was the Ministry's job to do everything for you and to document each stage of the way. Well on that occasion, 8 February 2016, they did document it and they told you your registration was cancelled and it is unbelievable that you did not open the attachment which confirmed Mr Utanga's advice.

[25] So for the whole of that last year you continued, each fortnight, to uplift the cash the Ministry was erroneously crediting to your account. And throughout the whole of that two year period, despite maintaining reasonably friendly relationships with Mr Utanga and the Ministry, you never ever once hinted that the Ministry was paying you every fortnight and you were uplifting those wages.

[26] An honest person would, right at the outset of the period, have immediately gone to the Ministry and said, "hey here is a mistake here, you are still paying me, what is happening?" But instead of that you kept quiet over two years until, as I said, it was entirely by chance, not by any action on your part, that the Ministry recognised their mistake and countermanded it.

[27] Looking at the material put before me on sentence, I have read the very helpful Probation report but I have to say that the suggestion on the Probation Services' part that your offending merits only a non-custodial sentence is completely unrealistic in the circumstances.

[28] And, while I can easily accept that, as a matter of Christian charity, the Bishop and the gentlemen from the Catholic Church who are present to support you

today were hoping for a sentence that does not involve imprisonment, that, too, in light of the breadth of your offending is an unrealistic outcome.

[29] To the Police, in evidence and again via the Probation Service on a number of occasions, you and your supporters blame the Ministry. You said “Because of their failure I am in this situation”.

[30] Certainly, initially there was the error reversing the notice of termination for your pay. But for two years, fortnight by fortnight, 59 times, you went and collected your pay and never breathed a word to the Ministry to correct their mistake.

[31] You blamed the Ministry of Education for failing to renew your passport. It is easy to accept that when you are in the Northern Group, the Ministry holds the passport of teachers for safekeeping. But you had two years. Your passport expired in February 2015, you had two years to renew it and provide the personal details of renewal required. It seems you did nothing effective about it. So it is not appropriate to blame the Ministry for your predicament.

[32] There is a suggestion in the Probation Services’ report, amplified by Mr Rasmussen on your behalf this morning, that you could repay the money you stole from the Government. That is too indefinite an offer to play much part in sentencing. If you were genuine about a wish and capacity to repay then something much more concrete could have been done in the time leading up to this sentencing.

[33] It would a factor – and if repayment had been made it would certainly be quite a potent factor – affecting the outcome of your sentencing, but here it is merely phrased in terms of possibilities, either from the National Superannuation Fund or from your family trust and its lack of precision means it is not a matter to which I can give great weight on sentencing.

[34] The Crown realistically recommend that a jail sentence be imposed and they also given me a victim impact report from Mr Utanga.

[35] They refer me to three cases, *Nichols*¹, *Quarter*² and *Matapo*³ which have some echoes of your offending. *Nichols* is probably the closest where there had been offending over six months and \$19,000-odd had been stolen. In those cases it is suggested that a starting point for offending of, comparably, the magnitude of your offending should be about half the maximum term of 5 years.

[36] Here the Crown points to the length of your offending, the number of your offences and the sly way in which you went about it, to suggest there was breach of trust which needs to be met on sentencing.

[37] I should mention that in *Matapo* where about \$25,000 had been stolen, about \$10,000 had actually been repaid at the time of sentencing. That reduced the sentence from about 3 years to 18 months.

[38] Mr Rasmussen has said all that could be said on your behalf and particularly gave the detail of the possibility of the Superannuation Fund payment and payment from your family trust. He said that you have now reached the point where and I quote, “within his thinking he appreciates he should not have continued with the offending in this case”. That is good, but far too late.

[39] In trying to fashion a sentence for you which is appropriate I need to take into account of course the seriousness of the charge, the gravity of your offending, the length and number of charges. I need to try and do something for the victim, the Ministry. I need to denounce what you did and try and deter others from taking advantage of mistakes like this. And ultimately try and find the least restrictive income compatible with the totality of offending which is quite a major feature because there are so many charges on which you are to be sentenced.

[40] As mentioned, you have opened yourself, in the way you approached this matter, to the possibility of cumulative sentencing, adding one sentence on top of another. Ultimately, despite the length of your offending and the number of offences, because all the offences are the same – going to the bank every fortnight,

¹ CA 5/02, 11.12.2007.

² CA 3/11, 9.6.2011.

³ CR 530-540/14, 1.6.2016.

cashing the erroneous credit – it seems to me that cumulative sentencing would not be appropriate.

[41] In cases such as *Nichols* and *Matapo* the starting point was about half the maximum. Your offending is significantly worse than the offenders in those cases and justifies a significant increase from the starting point of about 2½ years because of the number of offences, the breach of trust, the length of offending and the fact that you did nothing yourself to bring it to the notice of the authorities. In my view that increases the appropriate sentencing to about three quarters of the maximum, somewhere around 3 years and 9 months.

[42] There are really no mitigating factors reducing the sentence, although I can give you some credit for your lengthy service in the north and the fact that, due to bench warrants and other matters, leading up to this trial you have been in custody for a couple of months or thereabouts.

[43] What I intend to do is, first, grant the Crown's application for leave to withdraw the initial global charge. Secondly, I will order reparation of \$30,700 and comment that if you are able to repay that sum then the way to have that contribution possibly recognised would be for you to appeal out of time against the sentence today. If you were to do that, the Court of Appeal might consider that your contribution acts in reduction of sentence, whether to a non-custodial level or not I rather doubt, but it would certainly redound to your credit.

[44] On the four minor charges – 171, 181, 193 and 204 – I will sentence you to two-thirds of the maximum of one year, so you are sentenced to 8 months imprisonment of those charges with all those sentences running in parallel rather than being cumulative.

[45] On all the rest of the charges, from the appropriate starting point reached earlier of 3 years, 9 months, I will take 3 months off for the mitigating factors and sentence you to 3½ years' imprisonment on each of those. Again, all of those are to be concurrent running in parallel and they will also run in parallel with the minor charges.

[46] The result is that you will spend 3½ years in jail.

[47] Stand down.

A handwritten signature in cursive script, appearing to read "H Williams", written in black ink. The signature is fluid and somewhat stylized, with a long, sweeping initial "H" and a trailing flourish at the end.

Hugh Williams, CJ