

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

**CR NOS: CR 481, 698, 700/2020**

**POLICE**

v

**TUAKANA MIRIA**

Hearing date: 2 September 2022

Counsel: Ms A Maxwell-Scott for Crown  
Mr N George for Defendant

Sentence: 2 September 2022

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**SENTENCING NOTES OF THE HON. JUSTICE C GRICE**

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[1] Ms Miria faces three charges of conspiring to defraud.<sup>1</sup> The maximum period of imprisonment on each charge is 5 years. I base my factual background on the Statement of Facts, which are accepted by Ms Miria through her counsel.

[2] The first charge of conspiracy to defraud is for the sum of \$100. On 16 September 2017, Ms Miria sent a text to her co-worker which had the effect of conspiring with the co-worker to obtain the sum of \$100 from the Police Service Fund, by taking the money from the Cook Islands Police Driver's Licence float.

[3] The second charge of conspiracy to defraud relates to the amount of \$300. This charge is based on texts between Ms Miria and a co-worker in which the sum of \$100 was taken. Further, on 24 November 2017, following a further exchange of

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<sup>1</sup> Section 280 Crimes Act 1969.

texts with a co-worker indicated that \$200 was taken from public funds. These were again taken from the Cook Islands Police Driver's Licence income. The total amount the subject of that conspiracy charge is \$300.

[4] The third conspiracy charge relates to the sum of \$1,500. It is based on text messages between Ms Miria and a co-worker between 2 February 2018 and 1 March 2018, and a series of text messages indicates a conspiracy to defraud the public of \$1,500 by taking money from the Cook Islands Police Driver's Licence Income Fund.

[5] The Crown notes that Ms Miria was employed by the Police in a position of trust. The funds involved amount to some \$1,900.

[6] The funds taken by Ms Miria in the conspiracies to defraud are substantially less than the sum of approximately \$240,000 taken by the Police Finance Manager, Mrs Thompson-Elui, at about the same time. It appears there was a culture of dishonesty among the civilian finance personnel in the Police Service at that time.

[7] The approach that I must take to sentencing is a two-stage approach. I first consider the offending and an appropriate starting point for the offence itself, taking into account aggravating and mitigating factors. I assess the features of the offending which add to or reduce the seriousness of the conduct and criminality, the overall objective is to adopt a starting point reflecting the culpability inherent in the offending. Then the second step I take is to adjust the start point, applying uplifts and discounts to reflect the aggravating and mitigating factors personal to the offender's circumstances, as well as any guilty plea discount to reach an end sentence.

[8] In approaching sentencing I must take into account the principles and purposes of sentencing. The principles include that I must look at the gravity of the offending in the particular case, including the degree of culpability or blameworthiness of the offender, I must take into account comparisons with other offences, and I must take into account the need to be consistent with other cases of similar nature and their sentences.

[9] I must also take into account information provided to the Court from the victim as to the effect on the victim, and any particular circumstances in relation to Ms Miria's personal circumstances which would make a sentence that might otherwise be appropriate disproportionately severe. So I must take into account Ms Miria's personal circumstances, her family/whanau community and cultural background. But I also must consider rehabilitation.

[10] As to the purposes of sentencing, in this case it is to hold Ms Miria accountable for the harm done to the victim and the community, to promote a sense of responsibility in the offender, to provide for the interests of the victim – that could be by reparation, and to denounce the conduct in which Ms Miria was involved. It must also deter the offender or other persons from committing the same or similar offences and protect the community from the offender.

[11] I have before me information as to Ms Miria's personal circumstances from both the Pre-sentence report and from counsel's submissions.

[12] Turning to the Crown's submissions, on the starting point of the offending it points to the decision of the New Zealand Court of Appeal in *R v Varjan*<sup>2</sup> where the Court Appeal noted that offences of dishonesty vary very widely and the circumstances and culpability in such offending must be assessed in light of guidance to be found in previous decisions. Each particular case depends on its own circumstances and the degree of culpability of the offender.

[13] The Crown also points to Cook Islands decisions in relation to dishonesty offending and taking money from employers. In the recent decision of *Police v Kamana*,<sup>3</sup> the defendant was sentenced on charges relating to theft from her employer, the National Environment Service. She stole \$12,700 over a three-month period, spending the money on personal items. She had worked as the Deputy Director and been at the agency for 20 years. In that case the Chief Justice also referred to previous decisions such as *Nicholls v Police*.<sup>4</sup> where the Court of Appeal indicated an 18 month term of imprisonment was within the range for theft of

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<sup>2</sup> *R v Varjan* CA 97/03, 26 June 2003.

<sup>3</sup> *Police v Kamana*, CR Nos. 515–517/21, 537/21, 22 April 2022.

<sup>4</sup> *Nicholls v Police* 2022 CA 5/02, 11 December 2002.

\$19,200 from Ms Nicholls' resort hotel employer. The sentencing Judge there took into account factors in relation to the offending and started at 2.5 years' imprisonment but brought that imprisonment term by 12 months, which was upheld by the Court of Appeal.<sup>5</sup>

[14] In *Kamana* theft as a servant, as I said, involved \$12,700.35 in a 4 month period. A reduction was made on the start point for community service, that Ms Kamana was the sole income earner in the household, which included her disabled brother. A discount for those factors was about one-third. All in all, a further discount of 60% from the sentence was made leading to a sentence of 4 months, which the Judge described as "possibly", but it recognised in a limited way the contributions to the community and personal circumstances. The period of 4 month's imprisonment also included a term of probation for one year, with a special condition for payment by instalments for the loss suffered of the sum of \$12,735 to the National Environment Service.

[15] In this case the Crown submits that start point of 12 to 18 months is appropriate, but also that a non-custodial outcome would be within range. Reparation was sought.

[16] In my view, an appropriate starting point is 12 months. The sums involved are substantially smaller than the cases cited above, and the offending was not sophisticated as it merely involved taking money from a till and was opportunistic, which is still dishonest and bad enough.

[17] Therefore, adopting the two-stage process in *Moses v R*<sup>6</sup>, the starting point incorporating the aggravating and mitigating factors, in my view, is 12 month's imprisonment. This also recognises the abuse of trust involved in the offending, and it reflects the culpability inherent in the particular offending.<sup>7</sup>

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<sup>5</sup> *Nicholls v Police* at [6].

<sup>6</sup> *Moses v R* 2020 NZCA 296.

<sup>7</sup> *Orchard v R* 2019 NZCA 529, 2022 NZLR 37 at 28 and 32.

[18] I now turn to the second step, which is to adjust the starting point, applying uplifts and discounts that apply to the aggravating and mitigating factors personal to the offender, as well as any guilty plea discount, to reach the end sentence.

[19] In this case the particular principles of sentencing which I particularly take into account are the gravity or seriousness of the offending, which is at the lower level, and the degree of culpability of the offender. Also I must take into account general consistency with appropriate sentencing levels in other cases.

[20] I must take into account Ms Miria's personal family/whanau and community and cultural background.

[21] In relation to factors personal to the offender, Mr George and the Probation report has noted that Ms Miria has seven children and is presently separated. Mr George noted that the children's ages range from 25 years to 9 years. Ms Miria at the moment is looking after a house for relatives. The report notes that Ms Miria has financial problems paying her house loan off currently, and is struggling to make payments also towards her lawyer's fees. Her children are helping to pay off the loan over the loan.

[22] Ms Miria is currently employed as the carer of an elderly woman, so she has some income. She said her family was disappointed with her involvement in the conspiracy to defraud. Her children have suffered at school because of their mother's offending. Ms Miria said she is angry and disappointed with herself and concerned that her children have had to deal with bullying at school because of her.

[23] The victim impact statement noted the overall fraud, not just relating to Ms Miria but involving the Finance Department as a whole. That had affected the delivery of services because of the loss of money, and caused embarrassment to the organisation. The Police Department note the taking of money was a serious breach of trust and it had total disregard for the organisation's integrity and professionalism. No payment has yet been made toward reparation but Mr George has now indicated that a negotiation has occurred with the Crown for that to happen, and Ms Miria accepts she will be making reparation of an amount that I will refer to shortly.

[24] I take particular account of the fact that Ms Miria has children, some of whom are still in primary school. This will be very hard on them. She is responsible for their care and their school fees. She is paying a house loan, which presumably puts a roof over the head of the children, and her children are helping her. She is the carer of an elderly woman and she has some income which she has offered to use in reparation, and she has made an offer to pay \$600 which was the amount agreed by the Crown in reparation.

[25] Mr George, for the defendant, handed up a number of testimonials and I note that they are some two years' old but, nevertheless, they indicate that Ms Miria was a person in the community who is held in respect, who contributed largely to community affairs, especially those of children and teenagers, and had a special involvement in the Girls Brigade. That is to Ms Miria's credit. She expressed, through Mr George, shame and remorse and made the offer for reparation. Mr George emphasised she has no previous convictions, and otherwise lived a blameless life. She apologises for the offending.

[26] In conclusion, I earlier indicated that I considered that a starting point in the range of 12 months' imprisonment would be an appropriate start. Standing back and looking at that as a whole in consistency with other cases, particularly the two other Police cases for sentencing today involving police thefts, given the amount involved and lack of sophistication in this case, I would have taken a start point of 8 months' imprisonment, taking into account those mitigating factors.

[27] To that, I then move to take into account the personal mitigating factors, including the fact Ms Miria is responsible for housing and clothing five children, I consider a discount for her cultural background, her contribution to the community, but particularly her role in caring for young children, leads to a discount of 15%.

[28] A further discount of 20% for the guilty plea is appropriate. It was not a guilty plea at the earliest possible moment so does not attract the 25%. So, therefore, with a start point of 8 months a discount of 35% leads to an end sentence of approximately 5 months' imprisonment. The calculation is not arithmetically precise, nor is it intended to be, but it is a general indication of what the start point

would have been had it not been appropriate to consider other options for sentencing, which I now do.

[29] In this case the fact that Ms Miria is responsible for five children, who are dependent on her, for financing and bringing them up is a significant factor that leans toward a non-custodial sentence. There is ample research which indicates the effect on children of mothers who go to jail is significant and, in my view, that is a very significant factor in considering a custodial sentence. The sentence needs, however, to be sufficient to indicate the denunciation and the community's concern at this type of offending. It involves a gross breach of trust. However, I must bear in mind that I should impose the least restrictive sentence available in the circumstances of the offending, and consider rehabilitation.

[30] As I said, the significant consequences to five children who are dependent on Ms Miria through imprisoning their mother weighs heavily toward a non-custodial sentence. But also a factor in my consideration is the fact that there has been agreement as to reparation and a willingness to make arrangements to pay it in the sum of \$600. That is also a factor that leads me to a conclusion that a non-custodial sentence is appropriate in this case. The children have already suffered through their mother being named as an offender. That is no fault of theirs.

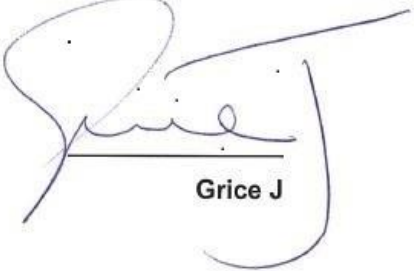
[31] Ms Miria, would you please stand. In the circumstances, I consider a non-custodial sentence is appropriate. In order to achieve consistency with other sentences of a similar nature I impose a probation/supervision period of 12 months is appropriate in this case, with the first 6 months to be served on community service and the following special conditions:

- (a) To pay reparation of \$600 to the victim, the Cook Islands Police Service<sup>8</sup>;
- (b) Not to leave the Cook Islands without approval of the Court.

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<sup>8</sup> Order made under s 415 of the Crimes Act.

[32] Ms Miria, you may now stand down.



Grice J