

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

**CRI-2016-043-001131
[2018] NZDC 3109**

THE QUEEN

v

NADENE CHEREE CHAPMAN

Hearing: 16 February 2018
Appearances: J M Marinovich for the Crown
S Hughes QC for the Defendant
Judgment: 16 February 2018

NOTES OF JUDGE J E MACDONALD ON SENTENCING

[1] Ms Chapman, you are for sentence on five charges. There are four charges of dishonestly using a document, two of which are representative charges, and one representative charge of theft by a person in a special relationship. Each charge carries a maximum penalty of seven years' imprisonment.

[2] I acknowledge that you have the support of your parents, partner, and one or other of your children and I acknowledge too that present in the Court are a number of the victims of your offending. I appreciate that standing there in the dock, only a few feet from all those victims may not be overly comfortable for you.

[3] The details of your offending are fully set out in the summary of facts and I imagine that it has previously been read to the Court or at least provided to the press. I am not going to go through it sentence by sentence as the salient features of your offending can be stated fairly simply. You were a travel consultant operating a travel

company. You accepted money from clients who wished to book holidays through you. You used their money to pay for the travel arrangements of other people from whom you had already accepted money.

[4] I accept that this was, in the end, a situation of robbing Peter to pay Paul. You offended over a significant period of about one year and eight months. Your offending involved a large number of victims. Mr Marinovich places the number at 91 in all, including the [victim Travel Agency].

[5] The total amount of money paid to you by the victims and not used for their travel was just under \$708,000 and that is the amount of fraud that I am dealing with.

[6] There has been some discussion about reparation. I cannot make reparation orders to cover the losses suffered by the insurance companies, but theoretically at least, reparation orders could be made to cover the losses suffered by individuals and that is just over \$44,000. There is just over \$98,000 owing to the [victim] Bank and just under \$237,000 to the [victim Travel Agency].

[7] You have been able to borrow or obtain \$10,000 from your family which you now offer by way of reparation. Clearly I am going to make an order in that sum which can then be apportioned amongst the victims but beyond that any offer depends on you being in the community and being able to make weekly payments from your wages.

[8] I think to the probation officer you said that you would be able to pay \$300 per week from your wages. Some quick arithmetic suggests that would net perhaps \$15,600 a year but it would take a long time to pay the total amount. I accept though that it would be a meaningful sum.

[9] Of course, if I send you to prison, that option is not there, but at the same time, I cannot tailor the sentence just for that purpose. However, I acknowledge your offer nonetheless.

[10] I have read a number of victim impact statements. I have also read the reports from the restorative justice conference. I accept Ms Hughes' characterisation of that. It was quite a lengthy process and somewhat unusual. I acknowledge that you apologised and were able to meet with some of the victims. I acknowledge too that you placed an apology in the local newspaper directed at the Waitara community of which you were a part.

[11] What I take from the victim impact statements, however, is that this is a situation where you were regarded as a reputable travel agent in Waitara. Your offending involved a gross breach of trust in all this. You caused considerable stress, hurt and upset to a number of people. On one level, having read what you did and bearing in mind that you had direct contact with your customers and victims and often on a daily basis, I must say that I find it difficult to understand how you could act in such a dishonest and deceitful way over such a considerable period.

[12] At the same time, I appreciate that life is not necessarily simple and I do take into account the explanation you offered at the restorative justice conference. What you said, of course, does not excuse what you did but it helps explain how it happened and I acknowledge that.

[13] At the age of 43, you have no prior criminal convictions and so I accept that this offending is quite out of character. Your current situation is that you are currently employed. You are living in Hamilton with your partner and a daughter. You have other family support and I have read letters from them as well. I have read your letters of apology. I see that the probation officer described you as being remorseful, and there is no reason for me to doubt that.

[14] The issue then comes down to what sentence to impose and in that regard I have received written submissions both from the Crown and from your counsel, Ms Hughes.

[15] For the Crown Mr Marinovich referred to the general culpability factors with theft offending and he referred to the case of *R v Varjan*¹. He submits that the relevant

¹ *R v Varjan* CA 97/03 26 June 2003.

aggravating factors are the extent of the loss, the harm to the victims, the gross breach of trust involved, the pre-meditation, the period over which the offending occurred, the number of victims and the amount of the fraud. Ms Hughes takes no issue with that general description of the aggravating factors.

[16] Given those factors, Mr Marinovich submits that the appropriate starting point is between five and five and a half years' imprisonment. In making that submission, Mr Marinovich has referred to three authorities or comparable cases in particular. *R v Staples*², *McGregor v R*³ and *Tither v Police*⁴ and I have considered them.

[17] When it comes to deductions, or matters that can reduce the starting point, Mr Marinovich submits that you are not entitled to a discount for previous good character, given the period over which this offending has occurred. He acknowledges, however, that your participation in restorative justice can be recognised and he submits that a discount of around 10 percent may be appropriate.

[18] As for your guilty pleas, Mr Marinovich submits that a discount of between 20 and 25 percent may be appropriate but I did not understand him to be arguing strenuously against the maximum discount that I can give to you which is 25 percent. Overall his submission is that the end sentence should be in the region of three years' imprisonment.

[19] I have done the arithmetic on the Crown's figures and I think the range is really between three years four months and three years 10 months if my arithmetic is correct but I simply mention that in passing.

[20] On your behalf, Ms Hughes, as I said, did not argue with the aggravating factors that I have identified but she did emphasise the motivation behind your offending. You offended to repay debts in relation to another business rather than to fund your own lifestyle. You are characterised as a naïve businesswoman and in some respects, out of your depth. You accept that you should have closed the business down earlier. You were astonished at the quantum of the money missing.

² *R v Staples* CA 215/04 30 August 2004.

³ *McGregor v R* [2015] NZCA 565.

⁴ *Tither v New Zealand Police* [2014] NZHC 904.

[21] Ms Hughes accepted that by reference to the various other comparable cases a starting point of between four and a half and five years' imprisonment would be appropriate. However, relying on the case of *James v R*⁵, her submission is that four years six months would be appropriate.

[22] We then come to the issue of what deductions can be made and here, Ms Hughes takes a different view to Mr Marinovich. In her submission you should be entitled to a discount for your prior good character and says that there are differences with the case of *McGregor* relied upon by the Crown. And in this regard, of course, at the age of 43 you have no previous convictions. Your offending started I see in December 2014, so you had, on the face of it, an offence-free lifestyle prior to that.

[23] Ms Hughes seeks a further discount of 15 percent because you participated in the restorative justice process and that is really because of the magnitude of the process in this case. It is further submitted that you should receive 25 percent for your guilty pleas. Ms Hughes has dealt with the reasons why there has been delay in sentencing. That means that I would get to an end sentence of two years six months' imprisonment and from there Ms Hughes submits that I should make a further deduction of six months, which in effect amounts to a further 20 percent for the offer to meet reparation.

[24] I imagine that the submission she is making relies, not only on the \$10,000 payment that is immediately available, but on your willingness to pay beyond that on a weekly basis if you are not sent to prison. In Ms Hughes' submission I can legitimately get to two years' imprisonment which means that home detention becomes a possible option. You would be a suitable candidate for that sentence.

[25] Can I just say to you that if I did get to two years' imprisonment I would accept her submission that with no previous convictions, home detention would be appropriate.

[26] However, I need to make an assessment of the circumstances and make a decision on this.

⁵ *James v R* [2017] NZHC 1186.

[27] In terms of the starting point I accept that the aggravating factors of your offending have been properly identified. Dishonesty offending can occur in a wide range of circumstances and none of the cases referred to by counsel are precisely the same as yours. Some of them involve offending over a greater period and some involve fewer victims. As I say there are differences.

[28] In the end, having regard to the aggravating factors, comparable cases, the number of victims and the amount involved, I adopt a global starting point of five years' imprisonment.

[29] When it comes to mitigating factors, I deal first with remorse which is covered under s 9(2)(f) Sentencing Act 2002. I have read your letters of apology. You have engaged in the restorative justice process which reflects remorse. The probation officer has commented on that and I accept that.

[30] Remorse, under this section of the Sentencing Act also includes offers to pay reparation under s 10 of the Act. I have indicated the circumstances of your offer. I am in a position where if I send you to prison, the only amount that realistically will be paid by way of reparation will be the \$10,000 offered now. If that is the case then of course that is only a small percentage of the overall loss and it needs to be viewed on that basis.

[31] You have in effect sought a 15 percent discount for your participation in the restorative justice process, plus a further six months for payment of reparation which I have said is 20 percent. Overall it means a 35 percent discount for remorse and for the offer of reparation. In my view that is excessive.

[32] I am prepared to allow a combined discount of 15 percent to cover your remorse as reflected in your attendance at restorative justice and for the offer of reparation.

[33] When it comes to good character, which is dealt with under another subsection of s 9 you seek a discount of five percent. The Crown argues against that. I think there is force in Ms Hughes' submission that your case is distinguishable from

McGregor. I have already commented on the fact that you have no prior convictions and your offending started in December 2014. I allow five percent discount for your prior good character.

[34] When it comes to your guilty pleas, I allow a deduction of 25 percent. So if you still follow what I am saying, from a starting point of five years' imprisonment, I deduct 20 percent for the personal factors; namely your remorse which covers, as I say, the attendance at restorative justice and reparation, and also your prior good character. That brings me down to four years' imprisonment.

[35] I then deduct 25 percent for your guilty pleas to reach an end sentence of three years' imprisonment.

[36] That is the sentence I impose on each charge with the terms being concurrent.

[37] I make an order for reparation in the sum of \$10,000.

J E Macdonald
District Court Judge