

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN  
[SQUARE BRACKETS]

**IN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**CRI-2019-085-001762  
[2020] NZDC 18445**

**INLAND REVENUE DEPARTMENT**  
Prosecutor

v

**DHIRAJ GOGNA**  
Defendant

Hearing: 7 September 2020

Appearances: D Lancaster and T Carr for the Prosecutor  
D McLay for the Defendant

Judgment: 7 September 2020

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**NOTES OF JUDGE S M HARROP ON SENTENCING**

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[1] Mr Gogna, you are 41 and you are here for sentencing having pleaded guilty to a total of 30 charges laid by the Inland Revenue Department to which you pleaded guilty on 18 June. That was promptly following a sentence indication that I gave you on 11 June.

[2] There are three charging documents in which those charges are contained. The first one relates to your aiding the evasion of GST of \$88,404.32 payable by your company Gogna Investments Limited in 2016.

[3] Then there are two charging documents respectively containing 14 and 15 charges of aiding that company to knowingly provide false GST returns and

that covers a five year period in total, between September 2009 and August 2014. Each of the charges carries a five year prison sentence and a fine of \$50,000.

[4] The sentence indication I gave was reasonably detailed and I will just briefly mention the points that I made there in paragraphs 3 to 6. I mentioned there that that first charge relating to the \$88,404.32 was a failure to pay the tax payable on the sale of a property for which an input tax had been claimed as a deduction. So when your company was wound up the company was obliged to pay that sum as an output tax and it failed to do so and instead filed a nil return.

[5] Then there are these 29 charges relating to the five year period and those charges involved a loss of \$39,068.34. They were refunds that were granted over and above what the company was entitled to. So the total loss to the revenue is \$127,472.66.

[6] I mentioned it then and I will repeat now that the Court regards this as theft from the community. All New Zealanders are the victims of this offending because the Government needs money to do all the things we expect the Government to do, so these are not victimless crimes and, of course, not only was there a significant sum involved here but the offending occurred over a five year period, so in principle there was plenty of opportunity for you to realise that you were doing something wrong on behalf of the company and to put it right, but that did not happen. It was only when matters came to the attention of the department that these things have been detected.

[7] There is no tariff for sentencing of this kind but the focus on sentencing has to be on deterrence and denunciation, and holding the offender to account, because this kind of offending is not easy to detect and the department on behalf of the community relies on tax payers to be honest, so there is an element of trust involved in the whole system, and if people breach that trust then the rest of the community and particularly those who do honour their obligations to the department need to see that there is a punitive response, a deterrent response which discourages not only you from doing it again but anybody else who might be so minded.

[8] That important consideration was what led me to give an indication of a sentence of home detention rather than community detention as Mr McLay had submitted could be appropriate here.

[9] I adopted a starting point of imprisonment of 22 months covering all the charges, but then with recognition for guilty pleas, some remorse and certainly your previous good character because at the age of 41 you have got no previous convictions.

[10] I said an end sentence of around 14 months' imprisonment would be appropriate. But I also said that if recommended by a pre-sentence report six months' home detention and 100 hours' community work would be appropriate if you had no ability to pay any reparation. But I said that if there was a significant offer made for reparation that you could afford and would honour then there would be a potential for a 10 to 15 per cent discount reducing that home detention sentence further.

[11] Since then I have received the pre-sentence report and Mr McLay's helpful written submissions. The pre-sentence report recommends home detention at [address deleted] in Strathmore where you live and it notes that you are able to keep working at your business in Kent Terrace and that you are prepared to limit your working activities to that location to allow you to do that work even though you would normally be travelling to various roadshows to promote the sales of your Oh Bubbles business, but in your absence I understand that your wife and other employees can attend these roadshow events in your place.

[12] So I have no hesitation in following through with my side of the bargain, if you like, in imposing home detention in this case rather than imprisonment. You are a first offender who has acknowledged responsibility and is willing to pay reparation and there is no reason at all to think that home detention would not be an appropriate penalty in your case.

[13] The key issue today, as you have heard, has been what reparation are you able to pay realistically and what further discount is appropriate to reflect that payment and promise of payment for reparation. The sum claimed for reparation, of course, is substantial, \$127,472.66, and as I have mentioned earlier that does not include interest

or penalty, so at least in theory you or your company has had the use of the money for many years without having to pay for that.

[14] Mr McLay notes the adverse effects of the COVID-19 pandemic on your business and therefore your income and submits that a lower reparation order than might otherwise be appropriate would be the safe and prudent step I agree. I also readily accept the sense of your wish to repay the IRD in a way that does not put you at risk of imprisonment because of your non-compliance with the reparation order.

[15] Mr McLay mentions that you have paid the \$5,000 on 3 September and Mr Lancaster has confirmed that the IRD has received this. So now the balance is \$122,472.66, and I am told today that although in theory the department has the ability to pursue you in the civil jurisdiction it is not likely to do so if a substantial reparation order is made and you comply with that.

[16] In the criminal jurisdiction no matter how well deserved a reparation order is by the complainant the Court may only make an order commensurate with the defendant's ability to pay, and as Mr McLay put it any reparation order needs to be realistic and that is correct, and clearly the uncertainty of the COVID-19 impact on your income makes it difficult to predict what you will safely be able to pay. You have offered to pay \$2000 a month and you agreed to pay \$78,000 provided that that was all that the department sought.

[17] I have come to the view that an order in this jurisdiction of \$60,000 which is about half of what is owing is an appropriate reparation order. It is going to take you 30 months to pay that if you can pay \$2,000 a month and I acknowledge that that may be problematic depending on how things go.

[18] If that order is made, and I will make that order, and taking into account the fact that you have paid the 5,000 as well, I accept that a further 15 per cent discount is warranted and that would bring the sentence down to 12 months' imprisonment which means six months' home detention. But as I said previously I am going to reduce that to five months and order you to undertake 100 hours' community work instead of the six months' home detention.

[19] So to confirm, and I have applied this sentence to the charge ending 726 which relates to the 88,000 GST evasion. On that charge you will be sentenced to five months' home detention to be served at [address deleted] in Strathmore. There will be a special condition as set out in the pre-sentence report which simply relates to your obligation to advise any change of employment and that special post-detention condition to apply until six months after the detention end date.

[20] You are also sentenced to 100 hours' community work, as I have indicated, and I order you to pay \$60,000 reparation at the rate of \$2,000 per month, first payment by 7 October this year. But I have note is to be the subject of discussion between you and the registrar of the court if your circumstances mean that this monthly payment is not possible. So the onus is on you to keep in touch with the court and to discuss alternative arrangements if you have difficulty with that.

[21] On the other two charges I simply impose concurrent sentences of four months' home detention on the same basis and 100 hours' community work. So the total remains five months' home detention and 100 hours' community work of course.

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Judge S M Harrop  
District Court Judge

Date of authentication: 14/09/2020

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.