

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2015-004-005798
[2016] NZDC 3837**

NEW ZEALAND POLICE
Prosecutor

v

VICTORIA TANOI
Defendant

Hearing: 4 March 2016
Appearances: Sergeant M Royal for the Prosecutor
J Grainger for the Defendant
Judgment: 4 March 2016

NOTES OF JUDGE R G RONAYNE ON SENTENCING

[1] Ms Tanoi, you sought from me on 5 February a sentence indication. That was given and it was declined. That does not, I want to make very clear, affect the sentencing outcome in any way today. Nevertheless, having declined the sentence indication given you pleaded guilty to the charges that you face. Those charges are one charge of false accounting pursuant to s 260(a) Crimes Act 1961, for which the maximum penalty is 10 years' imprisonment, and eight charges of accessing a computer for dishonest purposes pursuant to s 249 Crimes Act. The maximum penalty for those charges is seven years' imprisonment.

[2] I now refer to the summary of facts which is an agreed document before the Court. I note that at the beginning of that you are referred to as Victoria Oasa-Tavana but I am sentencing you today as Victoria Tanoi.

[3] You were originally employed by Portacom as a receptionist on 3 May 2004 but you changed to working in accounts payable on 1 January 2009. Since that time, you were the senior accounts payable clerk until your employment was terminated on 9 February 2015. In your role as the senior accounts payable clerk your responsibilities included accounts payable, the total package of payment runs and reconciling statements as well as hire processor. One of your tasks was to put all the paperwork together in relation to payments for suppliers and create a payment run in the company's accounting software, Pronto. From there Pronto produced a cheque listing or a list of payments to be made. You would then open Portacom's [name of bank account deleted] which is an online banking arrangement and initiate a template for either of the two batch payments that Portacom did each month. If new suppliers needed to be entered you would do that at that stage as well as entering and changing bank accounts. You would then close the template off and generate the batch listing by manually adding the dollars to be paid to each vendor. Once this was completed you would give this [name of bank deleted] batch listing along with the Pronto cheque listing to either the managing director or the office manager to check the dollar amounts and then authorise the payments in [name of bank account deleted].

[4] On 3 February 2015, Portacom staff became suspicious when a creditor phoned complaining that they had not been paid as promised by you. When it was confirmed that the payment had instead gone into your personal bank account an investigation was initiated. This investigation discovered that you had been defrauding Portacom New Zealand Limited since December 2009 by arranging for funds to be paid into your own bank accounts or those of your family. The total amount defrauded was \$1,189,899.66. You made some payments to suppliers using the defrauded funds. Those payments amounted to \$152,544.38. Portacom New Zealand Limited's total loss was therefore \$1,037,355.28. You declined to make a statement, except to say that you had done a silly thing.

[5] On 20 September 2007 you appeared before the Manukau District Court on two charges, one of accessing a computer system for a dishonest purpose and the other of taking or using a document for pecuniary advantage. Those offences appear to have been committed respectively in October 2003 and April 2003. You were sentenced to 300 hours' community work and nine months' supervision with special

conditions attached. That fraud amounted to approximately \$100,000 involving around 17 separate transactions.

[6] A pre-sentence report has been prepared for today's sentencing. In part, it says the previous sanctions from the Court, those to which I have just made reference, have not deterred your recidivist offending. It seems that for that reason the likelihood of you re-offending in relation to matters of dishonesty is assessed by the report writer as high. The main factor contributing to your offending is said by the report writer to be your addiction to gambling, your lack of consequential thinking and impact on your family, as well as greed. The report goes on to say that reparation has been sought, "But Ms Tanoi has advised that given her current circumstances she is in no position to make any reparation." The report then goes on to say that despite you advising that you have no means to make reparation, you are the co-owner of your current property and you are aware that the victim of your offending may pursue civil proceedings. I am told by your counsel, who checked with you in Court, that you have owned your property for around 16 years and that it is an Auckland property. Later in the report this is reported by the writer and I quote, "No victim empathy was expressed by Ms Tanoi." It goes on to say, "It appears during the interview that she is more concerned about her own welfare as well as her family. In discussing reparation, Ms Tanoi appears unwilling to offer any amount." You then gave a financial breakdown, which revealed a relatively small weekly surplus. Finally, the report has this to say on this topic and I quote, "She has been advised that given the large amount of money involved, the victim involved may be seeking redress via a private legal action to seek reparation. Ms Tanoi advised that she will take her chances when the time comes. Meanwhile she has discussed with her counsel in relation to seeking an application to release her KiwiSaver funds on hardship grounds." I note that no offer is made today to make any amount available for reparation. I am also told that you have in excess of \$300,000 equity available in your house, although presumably that would have to be shared with your husband.

[7] For you, it is submitted that the Court should not approach this matter as a fraud for personal gain and yet there is nothing in the pre-sentence report to suggest that it was anything other than that. It may well have been largely for gambling, but how you spent the money is largely irrelevant. You took money for yourself, but of

course if it was largely driven by a gambling habit then that at least improves in some way the prospects of rehabilitation in the future.

[8] A five year starting point is submitted by your counsel as appropriate. The Crown on the other hand submits that, by reference to various cases and the aggravating features submitted to exist, I should adopt a starting point of six years' imprisonment. I should then uplift by six months to reflect your previous relevant offending and I should give you a discount for your guilty plea.

[9] The aggravating features of the offending are these. First, the amount of the loss. It seems that this loss is absolute given your attitude to reparation. As I said, the loss net is \$1,037,355. Secondly, there was persistence and a long period over which you offended. Put another way, it was planned and premeditated. Your offending involved 270 deliberate acts of dishonesty over about five and a quarter years. Thirdly, it is my assessment that your motivation was greed. It was for your gambling, it was for travel and it was for assisting family and friends. That is what you indicated to the report writer. Fourthly, and importantly, your offending involved abuse of a position of trust. This was a significant abuse of trust and is self-evident. You were a senior accounts payable clerk in a position of trust, which position you used to steal. And lastly at a personal level there is the aggravating feature of your previous fraud convictions.

[10] I am asked to give you a credit for the mitigating factor of remorse. In my view, given those portions of the pre-sentence report to which I have made specific reference and assessing the matter overall, I do not consider that there is any sufficiently meaningful remorse on your part to give you any credit for it. Today through counsel you claim to be deeply remorseful. That is somewhat at odds with what is contained in the pre-sentence report. I am also going to give you a discount for your guilty plea. In my view, the starting point is appropriately set at five and a half years.

[11] There should be an uplift for your relevant and reasonably recent prior offending. I say "reasonably recent" because when your current offending started, and that was in December 2009, only a little more than two years had passed since

you had been sentenced to 300 hours and nine months' supervision. As I said earlier, that offending involved about \$100,000 in losses to the victim and involved around 17 separate transactions. So in my view, it is highly relevant and it fully justifies a measured and considered uplift. That uplift is four months. That then brings the notional sentence to one of five years and 10 months.

[12] Taking all of the circumstances surrounding the entry of your guilty plea into account, of which timing is only one, I give you a 20 percent discount. That is a period of 14 months. That then leaves a sentence of imprisonment of four years and eight months. On each charge you are sentenced accordingly to four years and eight months' imprisonment.

R G Ronayne
District Court Judge