

IN THE DISTRICT COURT
AT WELLINGTON

CRI-2016-096-000771
[2017] NZDC 27494

MINISTRY OF SOCIAL DEVELOPMENT
Prosecutor

v

NABJEET SINGH
Defendant

Hearing: 14 September 2017
Appearances: H Goodhew for the Prosecutor
R Lithgow QC for the Defendant
Judgment: 14 September 2017

NOTES OF JUDGE P A H HOBBS ON SENTENCING

[1] Mr Singh you appear before me today for sentence on 51 charges. 41 charges of using a document to obtain a pecuniary advantage, seven charges of dishonesty using a document, one of dishonesty, accessing a computer system with the intent to obtain pecuniary advantage and two of knowingly providing false information to the Commissioner of Inland Revenue.

[2] You pleaded guilty to the charges after I provided you with a sentencing indication on 11 August of this year. My indication to you on that occasion was an end sentence of two years and 10 months' imprisonment.

[3] **[Judge's note: (At this point I am advised that the recording system in Court failed and recording did not recommence for approximately 11 minutes.)**

As a result, from this point to paragraph [10] is a best efforts reconstruction of what was said based on previous sentencing indication notes and other documents but should not be regarded as a verbatim record of what was said.)) As is customary Judges leave open the possibility of other factors that were not known or available at the time of the sentencing indication to be considered at sentencing. Mr Lithgow filed supplementary submissions for sentencing. Much of what was contained in the supplementary submissions had been canvassed and dealt with at the sentencing indication hearing. Mr Lithgow also suggested that there had been a pre-emptive rejection of home detention. That is not the case. The sentencing indication was two years and 10 months which means home detention is not available. There was one matter that required some recognition on sentencing and that was the short period of time the defendant spent on a restricted curfew while in Australia.

[4] In terms of the facts you are a former employee of the Ministry of Social Development. You worked for the Ministry between 1999 and 2011. During your time working for the Ministry of Social Development you created four fictitious beneficiaries in order to receive benefit payments through those fictitious beneficiaries that you were not entitled to. You created names for the fictitious beneficiaries and used various documents to obtain benefits for the fictitious beneficiaries. You accessed the Ministry's computer system to enable payments to be made to the fictitious beneficiaries for the benefit of yourself and your partner. You also accessed the Ministry's records to alter the phone numbers on record for the purposes of these fictitious beneficiaries. You used the Ministry's systems extensively to access, amend and review records for the fictitious beneficiaries that you had created.

[5] With respect to the Inland Revenue charges following an investigation Inland Revenue established that you had claimed under the Working for Families tax credit scheme for a child that your partner was already claiming for. Only one parent is entitled to claim in respect of any given child. You did this over a period of four years between 2006 and 2010. You also made a claim by completing and signing an application for Working for Families tax credit under a false identity in respect of a fictitious child between 2001 and 2005.

[6] With respect to the offending involving the Ministry of Social Development you obtained an estimated \$358,866 of allowances, grants and benefits to which you were not entitled. Over the four year period with respect to the Inland Revenue charges you received a total of \$21,123.97 in Working for Families tax credits that you were not entitled to, both by claiming in respect of your child and the fictitious child. Combining both sets of offending you obtained a total of \$379,989.97.

[7] There is no tariff or guideline judgment for offending of this kind. That recognises the many and varied circumstances in which offending of this kind can occur. Offending of this kind does fall on a continuum from the most serious to the least serious. Ms Carter for the Crown endeavoured to assist me by referring to a number of appellate decisions in relation to what is commonly described as benefit fraud. Those cases included *Issako v Police*¹, *Aupouri v Ministry of Social Development*.²

[8] Reaching starting points by reference to other cases is fraught. It is not a mathematical or scientific exercise. Those cases are provided as some guidance but each case must be looked at on its own unique set of facts and circumstances and that is recognised by the fact that there is no appellate or guideline decision for this kind of offending. Ms Carter submitted that the starting point should be five to five and a half years. Mr Lithgow submitted to me that a starting point of three and a half years would be appropriate.

[9] Mr Lithgow submitted to me that I must take into account when assessing this matter the fact that a significant amount of money namely \$265,577.24 has been recovered by the State under the Criminal Proceeds (Recovery) Act 2009. Ms Carter for the Crown submitted that little if any credit should be given for that recovery because it was not voluntary but rather through a forced process. Mr Lithgow made a number of submissions about the behaviour or conduct of the Crown which he described as underhand which was rejected by Ms Carter. Both Ms Carter and Mr Lithgow referred me to the Court of Appeal decision of *R v Patterson*³ in relation

¹ *Issako v Police* HC Christchurch CRI 2004-409-156 16 September 2004.

² *Aupouri v Ministry of Social Development* [2015] NZHC 581.

³ *R v Patterson* [2008] NZCA 75.

to the issue of reparation. The facts and circumstances in relation to that case are quite different from those that apply today.

[10] It seems to me, however, that the case is of some relevance in that the Court of Appeal was accepting that frauds where there is no recovery are more serious than those frauds where there is complete recovery, or at least some recovery.

[11] The Court seem to me to be suggesting that there is some credit available for that recovery whether compelled to provide the recovery or not and that is because of the loss to the victim is more transitory than permanent if there is no recovery available. However, the Court went on to say there cannot be much credit because the defendant is still a fraudster and would not have voluntarily returned the money but for being caught.

[12] I think some allowance can be made for the fact that there has been recovery of funds however that recovery occurred. I think that recognition comes in the starting point because the Court has said that offending is less serious because the loss is more transitory.

[13] Clearly, there are some significant aggravating features to your offending. It occurred over a 12 year period. There was a significant level of sophistication. It was not passive offending as described by others but active fraud involving a significant degree of premeditation, planning and sophistication over a lengthy period of time.

[14] You were employed by the Ministry of Social Development during this period. This does, therefore, amount to a serious breach of trust on your part. The amount taken and received by you was significant. Many of the cases referred to by the Crown involve a significantly lower sum of money.

[15] Ms Carter said the purpose of providing those cases is to show that even in those cases where the offending has fallen into significantly lower level starting points of three years or at least two years is appropriate.

[16] As I have said ultimately the Crown submit that a starting point of five to five and a half years is appropriate.

[17] Mr Lithgow says that three to three and a half.

[18] Your offending cannot be characterised as anything less than a serious case of fraud. As I have said it involved offending over a 12 year period. A significant breach of trust, a significant level of sophistication and premeditation and a significant amount of money was obtain fraudulently.

[19] With that in mind and taking into account to the extent that they are helpful, the cases that I have been referred to, and also taking into account the fact that there has been some recovery of monies, I think a starting point of four years is appropriate. Had there been no recovery at all then I would have thought four and a half to five would have been more appropriate.

[20] I also think, as I have previously indicated, that you are entitled to some credit for the fact that you have no previous convictions. I acknowledge the fact that your offending occurred over an extended period of time. That must reduce the amount of credit you can receive for previous good character but there must be some credit. I set that at no more than five percent which reduces that nominal sentence by two months.

[21] I also reduce the sentence by a further two months to take into account the very short period of time that you spent on remand and subject to restrictive conditions. That reduces the sentence to one of 44 months. The Crown accepts that you are entitled to full credit for your guilty pleas.

[22] Mr Lithgow submits to me that discrete credit must be given for remorse. Your remorse is reflected in the fact that you ultimately pleaded guilty. There is nothing in the material before me that would suggest you are entitled to any further credit because of extraordinary remorse. You are receiving the full amount of credit that is entitled to you as a result of you guilty pleas, which is a further 11 months, which reduces the end sentence to one of two years and nine months' imprisonment.

[23] You are therefore, Mr Singh, on each of the charges sentenced to imprisonment for a period of two years and nine months, except the accessing the computer system charge, on that charge you are sentenced to imprisonment for 18 months. They will be served concurrently.

[24] The effective sentence is two years and nine months' imprisonment.

P A H Hobbs
District Court Judge