

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-001395
[2017] NZDC 3186**

NEW ZEALAND POLICE
Prosecutor

v

KALPANA NARAYAN
Defendant

Hearing: 17 February 2017
Appearances: Sergeant G Walker for the Prosecutor
A Simpson for the Defendant
Judgment: 17 February 2017

NOTES OF JUDGE S E C McAUSLAN ON SENTENCING

[1] Ms Narayan, you are finally for sentence with respect to a very large number of matters and they are:

[2] On 11 December 2015 there is passport fraud, on 31 December 2015 theft of jewellery that attracts a maximum penalty of seven years' imprisonment because it was worth \$2000, on 2 January 2016 there is more theft of jewellery, again \$1000, on 21 March theft of money \$2000, and on 2 April theft of numerous items, including a laptop and a bag to the value of \$1000, on 9 April theft of \$1570, between 13 April and 14 April there is a using a document charge, and on 16 and 17 April theft of a dress and bag, on 19 April there is a failing to appear in this Court, and then between 4 and 11 May an obtaining by deception, another obtaining by deception on 6 July, between 6 and 22 July there is theft of jewellery and other matters, and on 15 July there are two obtaining by deception charges. Together with

all of those police matters there are probation matters also. On 27 January last year breach of supervision, 17 February last year another breach of supervision, 20 February a breach of community work. An application to cancel the sentence of community work has already been granted and there is to be a re-sentencing exercise on those matters.

[3] I have, in addition to the large number of charges, a large number of probation reports prepared about you. There are many summaries of facts and a raft of victim impact statements. I have helpful written submissions from the prosecution and from Mr Simpson, on your behalf, and I have read them and they have all been helpful, although the prosecution and Mr Simpson are somewhat at variance with the appropriate outcome for you, but clearly the least restrictive outcome possible in your circumstances is a term of imprisonment. You have been on remand for some time.

[4] One summary states that you are the current holder of a Fijian passport and a New Zealand learner driver licence. Applications for a New Zealand passport are made to the Department of Internal Affairs. On 11 December 2015 at 2.15 pm you arrived at the Department of Internal Affairs office in Auckland City, you enquired about an application for a New Zealand passport. You completed an urgent same day application for a New Zealand passport giving the name of Aisha Ali with an incorrect date of birth, you ticked the box that you were born in New Zealand and you said that your name at birth was Aisha Ali, that was false. You submitted the application, signing the document under the warning disclaimer that “it is an offence to knowingly or recklessly make a false statement.” Enquiries by the Department of Internal Affairs revealed that you were not born in New Zealand that was not your real name, nor your correct date of birth. In explanation you said you had recently been married into the Muslim faith and you had been renamed as Aisha Ali in June 2015, but you had not legally changed your name from Kalpana Narayan, and you said that the different date of birth was because your mother had told you, you were born in New Zealand and given that as the date of birth.

[5] Those explanations have to be seen in the light of your extensive history of dishonesty and the lies and deception that you have been employing for a

considerable length of time, it would seem that you just say whatever suits you at any particular time with very little regard for the truth.

[6] Another summary states: on 31 December 2015 you were invited by the victim of this offending to a family dinner. About 8.30 pm you were about to leave the address and said you were just going to get your bag from the kitchen. As you left to get your bag you walked into the victim's bedroom and searched through her wardrobe. You took a jewellery box and a handful of jewellery and put them into your handbag before leaving undetected. On 1 January last year you were invited back to her house for another family dinner. At 1.00 am on Saturday 2 January you were about to leave and said you needed to get your handbag from the kitchen. You walked into her bedroom, again took a handful of jewellery and placed it in your bag. You then walked to another victim's bedroom where you located another jewellery box and another handful of jewellery, again put in your handbag before you left. That jewellery is estimated to be worth \$17,000. Reparation was sought. Reparation has been paid, as I understand it, by your mother, the last payment being by way of a cheque today. You are entitled to credit for the outstanding reparation having been paid.

[7] Another summary states: On 29 March last year you were sharing a room at a safe house. The victim placed a backpack containing her laptop, headphones and other items in a cupboard by her bed. She discovered on 2 April that it was missing. Consequent inquiries revealed that you were seen leaving the address on CCTV carrying the victim's bag. You went to Cash Converters and pawned her items for money. You did not return to that safe house. On 13 April last year you were stopped by the police while driving in Otahuhu and checks revealed that you were wanted with regard to this matter and you were arrested for theft. You said you needed some urgent cash.

[8] On 3 April last year you moved into another of your victim's home addresses in Papatoetoe. You moved out on 8 April taking all your belongings other than one bag. On 9 April you returned to the address when the victim was not at home and uplifted the remainder of your belongings, but you also took with you items belonging to the victim, bedding and linen, watches, jewellery and various other

things valued at \$1570. You denied taking those items at the time. Again reparation was sought and has been paid.

[9] On 10 April last year you were at Pearce Brothers Car Dealership in Papatoetoe. Also present was another of your victims. You accompanied the victim to the car dealership where the victim wanted to purchase a vehicle. He left his BNZ bankcard on the desk prior to leaving the office while you were alone in the room. Then on 13 April you withdrew money from his bank account and did so again on 14 April, transactions totalled \$600. You said you received money from the victim. Again reparation was sought and has been paid.

[10] At 9.00 pm on 16 April last year and 7.00 am on 17 April you were staying at an address in Manurewa at the home of another one of your victims who let you stay the night because you had said you had nowhere else to stay. You went into that victim's bedroom without her knowing and took a dress and a Fossil handbag and then left the address. They have a combined value of \$400.

[11] Another summary states: This is the obtaining by deception which makes particularly distressing reading. In May of last year this victim was having problems with an ex-girlfriend which he told you about. You said to him that you were a lawyer and you would be able to help him. You are not and never have been a lawyer. On 4 May last year you sent a message to him that you were getting a summons served on his ex-girlfriend to appear at Court and you said to him that there were two options, privately or through the Government. You said the Government summons would be free but took 30 days; a privately served one was actioned within 48 hours and would cost \$195. The victim said he wanted the privately served summons and you said that the file for submission would be \$195 and to serve a trespass notice on her an additional \$220. Accordingly, that money was transferred into your bank account. On 5 May you told him that the summons had been served on his ex-girlfriend, on 9 May you sent him a message saying that an assault charge had been filed by her against him and she was seeking mental and physical compensation. You told him his ex-girlfriend had provided evidence of the assault, as well as a recorded admission of guilt from the victim. On 10 May you went to the address of the victim to have a meeting with him about that. You later

messed to him and said that the Judge in charge of the assault file had emailed you and told you that the Court date was on 30 May and that you would appear on his behalf. Again, you gave him two options, either pay a bond of \$6550 that apparently would ensure he would stay in Auckland and show up at Court or report to the police handing himself in and he would be put into custody. You said a warrant would be activated and he would be in custody if he did not pay that rather large sum of money. You also said if he would like to seek compensation for mental stress as he had been put through this by his ex-girlfriend and you talked of figures of \$10,000 and \$35,000. The victim not wanting to be placed in custody transferred \$6550 into your bank account. You then told him that you would tell the Judge the money had been paid.

[12] On 11 May you sent him a message saying if he would cover Court fees of \$385 and that sum was deposited into your bank account. On 13 May you told him his ex-girlfriend had laid a harassment charge against him and it had been dismissed due to lack of evidence, and you said that he would now be eligible for the compensation. You said a friend of the ex-girlfriend had appeared at Court and given evidence against him. On 16 May you sent him a message saying that you had again spoken to the Judge and the Judge had told you that you would lose the assault charge and it would cost the victim another \$15,000. You said you knew the Judge personally and that the victim would need to pay the Court \$15,000 to show that you accepted the assault charge. You said that as you knew the Judge you would be able to have the \$15,000 refunded or have a way of wiping his criminal record. At this point he finally suspected something was not right and phoned the law firm that you had stated you worked for. That firm told him that you did not work for them. He then phoned the Court and his ex-girlfriend and established that no charge has ever been laid against him. You said that you had a lot of debt to pay back after a failed marriage and that was what the money was for.

[13] Another summary states: In the evening of 6 July last year you used another victim's phone to log-on to that victim's ASB bank application and you transferred \$5000 into your own Kiwibank account. On 15 July again you used the victim's phone to log into the victim's ANZ bank application and \$2000 was transferred. On 15 July you used the victim's phone to log into the ANZ bank application and

transferred \$1000 into your Kiwibank account. On 22 July the victim of this offending and you were at the victim's house, when the victim went outside to work in the garden you said you would have a lie down, but you did not, instead you took multiple jewellery items and a tin of money from the victim's bedroom. The value of those items is said to be \$8335. You said you intended to spend the money and that you had halved the money with the victim's son and spent the remainder on a trip to the Bay of Islands.

[14] Another summary states: In October 2015 you and this victim, Mr Ali were married in a cultural wedding, you moved into a rented property in Papatoetoe. You were aware of his personal Westpac business account. And then in March 2016 your relationship broke down and you agreed to vacate the rental property. On 21 March you transferred \$2000 from that business account into your personal account and you said you did it because you were mad at him. Those are all the police summaries.

[15] Probation note your poor compliance with a sentence of supervision and your poor compliance with community work. You were sentenced to 200 hours' community work on five fraud matters and you only did 15, according to this summary. I have read the Judge's sentencing notes he gave you what he clearly considered to be a lenient sentence in an endeavour to keep you out of jail, which is where you are now and where you are going to remain.

[16] The probation report essentially is negative. There is only one possible recommendation given the scale of this offending and that it is further imprisonment. It notes that you told Probation your mother was paying the large sum of reparation. You were not considered to have any remorse for your victims and you are more focused on your own predicament than expressing victim empathy. The likelihood of your re-offending is considered to be moderate to high. I would have thought high, and the risk of harm to the community low to medium due to the financial impact on your many victims. Again that would seem to be a very low assessment. Your attitude and sense of reality is concerning and probation say your word cannot be relied upon because you are not above telling lies and being deceptive. A prison case note, according to this, also reflects your ability to manipulate situations to your advantage.

[17] \$82,987.93 is your fines balance and the bulk of that is reparation for the matters for which you were sentenced earlier which has not been paid. Apparently an offer to pay the victim in instalments was made, but he did not wish that, he wants his money in full, and he has not received any of it.

[18] Turning to victim impact statements, I have read them and they make very distressing reading. The breach of trust is just appalling and many of these victims were known to you so the upset and loss is compounded by this terrible feeling of abuse of trust. In one case you had married into the family and then you stole from family members. You also stole from someone in a safe house, that is particularly reprehensible, and the victim of the matter involving the Courts makes distressing reading also. You were allowed into their home, you said you had nowhere else to live and so you were taken in and to then steal and lie in such a fashion is truly reprehensible. Another victim states how you took advantage of her and is particularly sad because her son has passed away and leading up to his death you were particularly manipulative, deceitful and caused him and that victim considerable loss.

[19] Your relevant previous convictions are the fraud matters for which you received community detention, community work and supervision. I am told that you did do the community detention, but you certainly did not do the balance of that sentence.

[20] The prosecution then notes the charges and the facts, your history and the victim impact statements and seeks a starting point for you of 42 months that is to allow for an uplift of 12 months for the re-sentence on the other five passport charges. The prosecutor notes that that sentence was reduced due to the large amount of reparation being ordered, but of course that has not been paid.

[21] So that then is on the totality and it does take into account the significant additional offending and that the aggravating features include that the majority of it took place while you were on bail and for your five previous convictions. You are then entitled to a discount for the early guilty pleas. The purposes and principles of sentencing are correctly noted here and the aggravating features, in particular, the

harm done to the victims, that some of this offending was on bail, the abuse of the position of trust and that there are no mitigating factors, as far as the offending is concerned, and that is quite correct. Then a number of authorities are provided in support of the starting point, including *Simpson v Police*¹ and they have all been helpful.

[22] Issue is taken with Mr Simpson's submissions because there is a clear disparity between the police view and your view on many things, for example, you said you withdrew your false passport application, but as far as the prosecution are concerned that was due to the investigation done by the Immigration Department and not done voluntarily by you.

[23] I accept that you have preyed on people who have tried to assist you, family and friends and many of your victims were gullible or vulnerable or both; and then finally, those submissions refer to an electronically monitored outcome not being appropriate. It is not appropriate but the length of imprisonment precludes the Court considering that in any event.

[24] Dealing then with Mr Simpson's submissions. He reminds the Court that at the time you were originally sentenced on the matters for which you are to be re-sentenced, you were a first offender with no previous convictions and relatively youthful, and that you were only unable to continue paying reparation because you lost your employment and you were incarcerated. You will address reparation on release. You also completed a significant part of that sentence, you did the six months' community detention and so he seeks, on the re-sentence, that only six months' imprisonment be imposed, with one month on the breaches of community work and supervision, and then concurrent sentences on the dishonesty. In terms of mitigation the Court must take into account that the reparation on these matters has not only been offered it has been paid, that it was the victim that did not want to take part in restorative justice not yourself. You are entitled to credit for the guilty pleas and he maintains that you are remorseful despite what probation has said. You should then have a 25 percent discount for guilty pleas and a further 15 percent for other additional mitigating factors. On the lead charges then those are the ones that

¹ *Simpson v Police* HC Auckland, 12 August 2005, CRI-2005-4040-68

carry the seven years, the end sentence should be 15 months, five months on the passport offending, the theft in March 2016 should be a washing up matter apparently because you have been prejudiced by the delay, and so the end sentence should be 29 months.

[25] I have carefully considered all of the submissions and in my view there is clear merit in the prosecution submissions, and I am satisfied that the start point on the totality of all of this offending should be one of 30 months' imprisonment. There then has to be an uplift on the re-sentencing. I would have that somewhat less than the prosecution has so that would be nine months on the re-sentencing which takes you to 39 months. You are then entitled to credit for the guilty pleas 20 percent which takes you down to 31 months on the most favourable outcome for you and then a further slight reduction for the reparation.

[26] The end sentence on all the dishonesty that carries seven years is two years and four months' imprisonment. That is on everything, including the passport matter.

[27] On the matters that carry imprisonment for three months, it will be two months.

[28] On the breach of bail, convicted and discharged.

[29] The deception charges are seven years so the sentence will be the same.

[30] Then on the breaches of supervision two months.

[31] And on the community work two months.

[32] And on the application, it is nine months imprisonment.

S E C McAuslan
District Court Judge