

EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE BEEN DELETED.

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2016-009-007413
[2017] NZDC 5075**

INLAND REVENUE DEPARTMENT
Prosecutor

v

LANCE SHEPHERD GRAY
Defendant

Hearing: 10 March 2017

Appearances: J Thomson for the Prosecutor
K Feltham for the Defendant

Judgment: 10 March 2017

NOTES OF JUDGE T J GILBERT ON SENTENCING

[1] Mr Gray you are for sentence in relation to one representative charge and it relates to your failure to pass on tax deductions under the tax laws which apply in this country.

[2] The summary of facts record that you aided and abetted a construction company, LPM, to commit these offences. LPM was a company which you incorporated to provide project management services here in Christchurch in the post earthquake environment. You were a director and held the bulk of the company's shares. On 1 October that company was placed into liquidation leaving behind a substantial debt including one of just over \$300,000 to the Commissioner of Inland Revenue.

[3] On several occasions the Commissioner warned you about the implications of failing to return employer monthly schedules and PAYE deductions on time. Despite that, the company, LPM, continued to offend and failed to account for just over \$101,000 to the Commissioner for PAYE deductions, child support deductions, Kiwi Saver deductions, student loan, Kiwi Saver employer contributions and superannuation cash contributions.

[4] There were 17 periods of non-compliance between July 2013 and August 2015.

[5] When you were asked to an interview about this you were co-operative.

[6] The sum of money is undoubtedly significant and that will be money which is never likely returned to the New Zealand taxpayer as a collective. There will be a significant public loss and a small private loss to those employees for whom you were responsible for paying employer contributions for Kiwi Saver. You have indicated you want to make that right. I am not going to impose formal reparation orders on you (as I do not have the requisite information) but as I have commented, whether or not you fix up those debts, will be between you and your conscience.

[7] I accept that in general terms you are in a parlous financial state and whilst your company has gone down the tubes, you largely have as well.

[8] You have no previous convictions and I acknowledge that being here today will be in itself a very uncomfortable position to be in. You are not by nature a criminal and from the array of references I have read in relation to you, quite the opposite, you are in fact one of the good guys. But that does not excuse the fact that over a very long period you persistently failed to comply with your obligation and as a result of that have incurred a substantial loss.

[9] The pre-sentence report is positive in the sense that you clearly accept responsibility, you are a low risk of re-offending, you are in general terms as I have already commented, a productive member of the community. It is for that reason

that a non custodial sentence is recommended despite the fact that the amounts involved are substantial.

[10] I have received helpful submissions from your lawyer, Ms Feltham, and also from the Commissioner.

[11] The prosecution submits that home detention is in order, somewhere in the five month area and that that would be consistent with other cases, particularly because reparation is not something which is likely to materialise in any meaningful way.

[12] Ms Feltham has acknowledged that a starting point of about 12 months' imprisonment is appropriate based on the cases that have been cited by Ms Thomson, and I agree with that.

[13] She has urged me to impose a sentence of community detention rather than home detention. In her submission she notes a number of factors which relate to you personally including the recent breakdown of your marriage, the fact that you have not personally gained from this offending, that you have some health issues at the moment, and your prior lack of convictions. All of that suggests that life is at a low ebb for you at the moment. But the good news is you have clearly got plenty of friends out there who are willing to lend you a hand.

[14] In sentencing you I need to hold you accountable and promote in you a sense of responsibility although I get the sense that you have achieved those two purposes of sentencing off your own bat.

[15] I need to denounce what you have done and importantly I need to deter you, but others as well, from doing this kind of thing in the future. Our tax system relies largely on honesty and as a result of that, deterrence in the sentencing process is one of the key considerations that I as a Judge need to take into account.

[16] I have borne in mind the seriousness of this offending in comparison to others and as I have already commented that a hundred odd thousand dollars will unlikely be recovered.

[17] I have to be consistent with other sentences that have been imposed in the past for this kind of thing and in that regard I have Ms Thomson's helpful submissions which Mr Feltham does not really take any issue with.

[18] I also need to impose the least restrictive outcome and reserve sentences of imprisonment for cases where I think it is truly warranted. As I said before, there is no point at all in sending you to prison. It is not going to help you and it is certainly not going to help the community.

[19] The aggravating features are the extent of the loss which has been incurred, the abuse of trust that is placed in you as a person who is required to hand on tax deductions to the Commissioner, the fact that this was premeditated in my view, it occurred following warnings and on multiple occasions over the period of a couple of years. So whilst I accept that you hoped, vainly as it turned out, to repay the money, you knew full well that you were breaching your obligations.

[20] The mitigating features are your guilty plea, your previous good character, your acceptance of responsibility and remorse.

[21] I would adopt a starting point of somewhere in the region of 12 to 13 months' imprisonment for this offending. In my view a reduction of around about two months is appropriate to take account of your personal mitigating features which brings me back down to 10 months and then I need to apply a discount for your plea of guilty which was early on in the piece. That brings me down to a sentence of somewhere in the region of eight months' imprisonment. I am prepared to commute that to home detention.

[22] The normal calculation we apply is to divide the sentence of imprisonment by two because there is no parole eligibility on home detention. So the eight months'

prison becomes four months' home detention. That is, in my view, broadly consistent with the cases that have been cited to me.

[23] I do not think that community detention would sufficiently meet the purposes and principles of sentencing. In particular I do not think it would have a sufficient deterrent effect if you were only to be curfewed to your house during the evenings. For that the sentence will be home detention rather than community detention and it will be for four months which is to be served at [address details deleted] in Christchurch. There will be standard post detention conditions for six months following detention end date.

[24] Now that brings me to the subject of community work. The community is the entity at large which has suffered. I think community work in these cases is appropriate and I also think given the amount of money involved, it needs to be a substantial number of hours of community work.

[25] You do not have any previous convictions and I would have thought you would be a perfect person to perform your community work at an agency placement. So hopefully the Corrections Department can tee that up so that you can contribute some of your skills to a worthy cause. The number of hours will be 250 hours. That will also give you an opportunity to regularly get out of the house which you will be curfewed to over the next four months.

[26] So the sentence is four months' home detention, and 250 hours' community work.

T J Gilbert
District Court Judge