

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

**IN THE DISTRICT COURT
AT NORTH SHORE**

**CRI-2016-041-002359
[2017] NZDC 19068**

**COMMISSIONER OF INLAND REVENUE
Prosecutor**

V

**DAVID ROBINSON
Defendant**

Hearing: 25 August 2017
Appearances: B Chin for the Prosecutor
J Leaming for the Defendant
Judgment: 25 August 2017

NOTES OF JUDGE J JELAS ON SENTENCING

[1] Mr Robinson you are 56 years old and you are here today for sentencing on 40 charges in respect of offences under the Tax Administration Act 1994. Those charges all carry maximum penalty of five years' imprisonment, or a fine of exceeding \$50,000.

[2] The charges relate to offending over a two year period between May 2012 and April 2014. They relate to the filing of GST returns in respect of five companies that you were operating during that period. The summary of facts will be attached to my sentencing notes when they are transcribed (refer Annexure A)[Editorial note: summary of facts not attached]. During that period, false GST returns were filed by

you and, as a result, you were able to obtain a total tax refund from the Commissioner of \$50,911.24. Of those refunds, \$46,881.46 was actually paid to you.

[3] While reparation is sought by the Commissioner, the Commissioner recognises that full reparation cannot be paid by you due to your limited finances. You are presently receiving a benefit. The Commissioner has elected not to pursue you in the Civil jurisdiction for that debt.

[4] To assist with the sentencing process today, the Department of Corrections had met with you and prepared two reports. The second report was prepared to enable a home detention sentence to be considered, however, there is no address available to you and Ms Leaming, on your behalf, acknowledges that such a sentence cannot be imposed and imprisonment is only realistic outcome today.

[5] You do have a working background but after the company you were working for made you redundant some years ago, you began a taxi company. It is a result of those business endeavours and your mishandling of them that you appear before the Court today. You are described by the report writer as appearing entitled and nonchalant. During the course of your interview you spoke of your company being a limited liability company and, as a result, suggested you held no responsibility for what took place.

[6] However, the summary of facts makes it clear that one of the companies that was established by you was operated by others who were contracted to another of your companies. That person stated to the Commissioner that they operated the business Star Hire from their home and kept their own accounts including bank accounts. That person was unaware that you too were operating a bank account for the same business organisation. There was therefore an element of deception, premeditation and planning by you.

[7] On your behalf today, Ms Leaming realistically acknowledges imprisonment is the only outcome available. She does, however, emphasise in her written submission the factors that you could be entitled to credit for. She seeks credit for

your age and your poor health in recent time and also for the fact that you did plead guilty early.

[8] There is no tariff case for this type of offending and each case must be considered on its own facts. However, the Department has helpfully provided some cases on which they make the submission that the appropriate starting point sentence is in the range of 15 to 18 months' imprisonment. Ms Leaming, on the other hand, submits a starting point sentence of 12 months is appropriate.

[9] The factors necessary to take into account to determine the starting point include the period of time over which the offending occurred which I have already mentioned was a two year period. Further, the number of false GST returns which were filed which were 40. In addition, there must be an assessment of the harm that has occurred as a result of your offending. There have been cases in the past where the Court of Appeal has acknowledged that this type of offending is not a victimless crime but ultimately effects the whole of society and, as a result, a sentence of accountability and denunciation must be imposed. That is because the integrity of the tax system is threatened but such offending given the system substantially relies upon voluntary compliance. In addition, there has been an element of breach of trust in your offending and also an element of premeditation.

[10] Having regard to those cases filed and the overall circumstances of your offending, I have considered that the appropriate starting point is one of 16 months' imprisonment. I accept Ms Leaming's submission that you are entitled to credit for your age and poor health. At age 56, going to prison for the first time has its own inherent hardships and some discounts should be given for that. Further, in recent years you have suffered significant poor health and again, imprisonment will be more difficult for you as a result. A deduction of two months will be given for those factors.

[11] That brings the nominal starting point to 14 months' imprisonment. You are then entitled to credit for your guilty pleas. The maximum credit that is generally available is one of 25 percent and I am prepared to give you the maximum credit. While the plea was not necessarily at the earliest opportunity it was early nonetheless

and prosecutions of this type are resource heavy and there has been significant savings to the system and to the Commissioner by not having to prove these charges against you. Therefore, further credit of four months will be given which result in an end sentence on all charges of 10 months' imprisonment.

[12] So, on all charges you will receive what is called a concurrent sentence; that means at the same time, of 10 months' imprisonment.

[13] In terms of reparation, no reparation order will be made. You have no financial means in the next short while of making any reparation payments and, in any event, your financial resources are limited. Further, I take notice of the fact that the Commissioner has elected not to pursue you civilly because of your limited financial means.

[14] So that is the outcome today, 10 months' imprisonment.

J Jelas
District Court Judge