

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

**IN THE DISTRICT COURT
AT WANGANUI**

**CRI-2016-083-000862
[2017] NZDC 19583**

NEW ZEALAND POLICE
Prosecutor

v

WILLIAM EDWARD HARDING
Defendant

Hearing: 7 August 2017

Appearances: Sergeant S Butler for the Prosecutor
S Ross for the Defendant

Judgment: 7 August 2017

NOTES OF JUDGE P P CRAYTON ON SENTENCING

[1] William Harding, you face sentence on three offences involving the obtaining of a pecuniary advantage by deception, \$5000 from [victim 1]. Obtaining a pecuniary advantage by deception \$4800 from [victim 2]. Those both occurred on 16 June, or thereabouts, 2015. The third offence occurred some six months later mid January to 9 February where you caused loss by deception to the [victim 3] of \$6000. The maximum sentence for each of those offences is seven years' imprisonment.

[2] You were bailed by this Court and you failed to attend. As a consequence you face a further charge and sentence of failing to attend on 9 August. That carries a maximum sentence of one year's imprisonment.

[3] You entered guilty pleas to all the matters on 15 June 2017. It has to be said that that was somewhat belated, it followed your remand in custody.

[4] The summary of facts for each of these offences can be dealt with relatively shortly. You were friends with both of your first two victims. You got to know them separately. It does not appear that the reason for the friendship was that you were going to commit fraud against them but the platform, the foundation of your offending was that friendship. You requested money from them with a deceit that you had inherited property from a deceased sibling and you required money to ship property to Wanganui from Dunedin. You borrowed money on the basis you would repay it. The money was deposited into your bank account, it was that \$9800. You have paid some \$250 or thereabouts to [victim 2]. No other money has passed. The story, the deceit was a lie, there was no brother who had passed away, there was no inheritance, and there was no property to be shipped.

[5] It is said that in regards each of those amounts, you used the money in order to purchase property for your third victim. That was a victim who you met shortly after it seems her husband of many years had passed. You were living with that lady and family. You had inveigled your way utterly into that victim's life. You were in her eyes looked upon as a life partner.

[6] Together you went to look at a property for you both to live in. During that process you said you were going to receive an inheritance from a deceased sibling and you were going to use those funds to purchase the property. That property was viewed on 19 January and a sale and purchase agreement was to be signed. There was no arrangement or expectation from your victim that she would be any part of that process but at the time of the signing you wanted her to sign. You insisted she sign. She was taken by surprise. In the circumstances she relented and she signed.

[7] The consequence was that when, with an inevitability, 2 February and the deposit be paid came and went, there was no such money available. It cannot have been anything but anticipated by you and you showed perhaps in the clearest way the nature of your relationship with that victim, when on the morning of 2 February you

said you were going to the dairy. You left, you did not return and she heard no more from you.

[8] You left her by your acts, by your insistence, with a property sale and the liability for that sale and purchase agreement. It cost by way of settlement \$6000 and a further \$1800 in legal fees. When spoken to, you accepted you had lied to her and you said you were going to be getting a bank loan and that when you did not, then you left.

[9] The prosecution in written submissions identified the aggravating features as what they described as sophisticated premeditation and premeditated cruelty. The vulnerability of your victims, that this is repeated offending, that there is significant victim harm financial, significant victim harm emotional and there has been a significant breach of trust. They identify your personal aggravating factors as being your previous offending history.

[10] They commend to the Court the case of *R v Varjan*¹ as regards approach to sentencing in this type of offending. They also refer to the case of *R v Jones*² where a caregiver stole \$6000 over a period. The starting point was two years six months with regard to the victims and the manipulation and the breach of trust.

[11] They refer to the case of *Blackmore v R*³ where the starting point was three years. In the present case the prosecution submit that the starting point for your offending of fraud should be three years. That there should be an uplift for your previous convictions of nine months and an uplift for failing to attend because having regard to the age of the complainants, this continued the delay in resolution, it did not allow them to have peace of mind, and that in the circumstances an uplift of three months is appropriate.

[12] The prosecution submit the end starting point should be four years' imprisonment. That you should receive credit for your plea of 10 to 15 percent and

¹ *R v Varjan* CA97/03, 26 June 2003

² *R v Jones* [2016] NZHC 1660

³ *R v Blackmore* [2014] NZCA 109

the end sentence should be somewhere between 41 months and 43 months, and that reparation should be ordered.

[13] Mr Ross, on your behalf, has filed submissions where he identifies that the relationship with victim three was the genesis of your offending. That your willingness to spin lies to create the facade in obtaining money was what led to the offending against victim one and two, and that was in order to maintain the relationship. He submits that signing the document was not intended to cause loss but that he accepts, on your behalf, that leaving that victim to carry the can was despicable.

[14] Mr Ross also refers to *R v Varjan*, in particular he accepts the observations of the Court at paragraph 22 of that decision, that culpability is to be assessed by reference to the circumstances and such factors as the nature of the offending, its magnitude and sophistication, the type, circumstances and number of victims. The motivation for the offending, the amounts involved, the losses, the period over which the offending occurred, the seriousness of breaches of trust involved and the impact on the victims.

[15] He refers the Court to *Police v McMahon*⁴ where theft from accounts of an elderly father and disabled brother, a three year starting point was identified as being towards the top of the range. I hope I do not do Mr Ross any justice in the submissions he makes on your behalf. In short his submissions are that compared to the approach of the offending in *Police v McMahon* the sentence here should be two years' imprisonment.

[16] He accepts there has to be an uplift for previous convictions but that in the light of your previous history and the time that has passed since your last offending, that should be kept to a minimum. He submits that credit of 12 to 15 percent would be appropriate and you should also receive credit for your offer at attending restorative justice, and that he has forwarded to the prosecution letters you have written of apology. It will be for the victims to determine whether they wish to receive those but you have written them.

⁴ *Police v McMahon* [2017] NZDC 1517

[17] Mr Ross of course identifies that although reparation of \$17,000 is sought, you are someone who has no financial means and will not have when you are on your release. Mr Ross accepts that the sentence has to be one of imprisonment, the question is the length of that sentence.

[18] In sentencing you today I have to bear in mind the purposes and principles of sentencing. Denunciation of this offending, deterrence of others who may think that offending in this way is a means to obtain easy money but deterrence particularly of you, to deter you from further offending of this type. I have to hold you accountable for the offending and engender in you a responsibility for the offending. There is also though, for offending of this type committed by you in this manner, a need to protect the community, particularly the vulnerable on who you prey. It seems your credibility is increased rather than decreased due to your advancing age but there has to be a consistency with sentences imposed on other people offending in the same fashion in similar circumstances as you.

[19] In approaching sentence I have heard victim impact statements read to me from each of the victims or their family members. There was a suggestion of other offending referred to in victim impact statements. I have put that utterly to one side. It is not relevant, there are no charges before the Court to suggest it is relevant. I approach your sentencing for what you are charged with and to the offences you have pleaded guilty. In the same way, whilst expressions of a desire on behalf of your victims for a stern if not maximum sentence whilst understandable, that is not something which I can have regard to. I put to one side that aspect of those victim impact statements and I approach sentence on a principled basis.

[20] However, I cannot ignore the victim impact statements on behalf of your first victim which identifies a degree of manipulation and an extent of harm which is absolutely clear. On behalf of the second victim, 88 years old, the stress and worry you caused to someone who you knew well, who you knew was caring for an elderly sibling and who was saving for hearing aids, and you offended against her. The harm you caused rings through from that victim impact statement. It was significant emotional harm, it was significant and real harm to that victim's health and well-being.

[21] Your third victim had been recently widowed. You robbed her of her self-confidence, you affected her fiscal and mental well-being. She identifies, understandably, she wishes the community to be protected from you. She is in perhaps the best position of anybody to know the harm that your offending does.

[22] What is plain is that each of your vulnerable victims have had their lives affected in a real and substantial way. Your actions have impacted both on their emotional well-being but also on their quality of life. What is plain as regards your first two victims is that you identified each as having a friendship with you which could be exploited, a friendship which allowed you to manipulate them. People who were trusting sufficiently that they would lend you the money they had. Not a small amount of money but essentially everything they had available. They were vulnerable, you practiced deceit and manipulation.

[23] The third victim you inveigled your way it seems into her family. You were viewed as someone who was going to be a life partner. It is said on your behalf that the money obtained from the first two victims was so you could provide and support that relationship by means of gifts it seems. Of course the value to you of that relationship, whilst it subsisted, was it provided you with stability and support. Its emotional value is clearly demonstrated by the fact that you walked out of that door without a second thought. You left your victim utterly without any knowledge or explanation.

[24] When I look at the third offence, the only possible reason for having her sign that document could be, however misguided or as Mr Ross says deluded, the hope that in some way that would place her with the responsibility she could meet. You said to the police you hoped that you would be able to borrow the money. I have to say, Mr Harding, I utterly reject that. There is no way with your history and your circumstances that you could have had any anticipation, however much you wished to fool yourself, that you could ever have raised a loan legitimately and honestly.

[25] You are someone who at the age of 78 now has a 44 year history as a thief and a fraudster. In 2004, for what has to be said, larger amounts of money being obtained by strikingly similar offending between 1996 and 2002, you were sentenced to three

years four months' imprisonment. Your offending between 1972 and 1995 shows regular convictions for dishonest use of a document on four occasions, obtaining by false pretences on five occasions, theft, theft as a servant or by failing to account on three occasions. You have repeatedly received terms of imprisonment. As Mr Ross says though, there are periods when you have managed not to be before the Court for dishonesty offending. You clearly can lead a life without the need to resort to deception, manipulation and fraud.

[26] I have had a report on behalf of you from the probation officer. It describes you as having poor relationship skills, your attitude lacks empathy for your victims, that your risk of re-offending is ascertained as being low. Therefore you will not qualify for intervention through a departmental programme, but your potential for harm is moderate because of the nature of your offending and because your offending has targeted older women who are less able to recover financially.

[27] I have to say on my assessment of your history and this offending, your risk of offending in the future should be considered as high.

[28] When looking at the restorative justice meeting, your offer is clearly made but what is clear from the discussions of the department with you in preparation of that report is that you were centred on yourself rather than on your victims, that there was victim blaming going on, that effectively in some way the third victim was responsible for your offending. That you, it is clear, and if that comment alone is taken it is obvious you lack victim empathy and you show in truth other than by your plea, little remorse.

[29] The case of *R v Varjan* is of assistance. There is here premeditation. Each of your victims was vulnerable by age and/or circumstances. There is repeated offending, there are three separate offences, three separate sets of offending, the first two so you could maintain the figment of your relationship with your third victim. There was in each instance a significant breach of trust. Each of the first two victims believed you were a friend, the third victim believed you were a partner. You betrayed that trust in each instance. There was significant victim harm, that was financial for each of these three victims, it was emotional for each of the victims, it affected their health, it affected their well-being. Your motivation in short was your own needs.

[30] For the third victim you knew you could not maintain pretence if you could not obtain money from elsewhere. As I have already said it is inconceivable that you could have obtained legitimately any loan. What then was the inevitable consequence of your actions? It was that you were going to leave your victim with a liability and you were just going to walk out the door because that is the only way in all those circumstances that could have ended.

[31] I do accept that *Police v McMahon* and *R v Blackmore* of assistance but also of assistance are the cases of *R v Simpson*⁵, where four offences totalling \$19,000, where there are elderly victims who could ill afford to lose the money, where there was an inveterate fraudster with a terrible history, the Court identified that five to five and a half years was not excessive as a starting point. What the Court in that case observed was as follows; paragraph 15, “The protection of the community assumes added importance in cases of recidivist offending against vulnerable members of the community.” They identified there additional cases and then said, “In our view, a starting point in the range indicated” (which of course in that case which was substantially higher than in the case of either *Police v McMahon* or *R v Blackmore*) “gives appropriate recognition to the need for protection of the community while maintaining a reasonable relationship with the gravity of the offending” and that was citing *R v Ward*⁶ at page 591.

[32] The Court also referred to *Woodcock v Police*⁷ where a four and a half year sentence was imposed, a minimum period of three years where there was repeated small scale offending against vulnerable victims. The appeal there was only allowed as regards the length of the minimum period.

[33] Here I identify that in my assessment of all the surrounding circumstances your offending calls for a stern response. A response which will denounce and deter you, which will particularly protect vulnerable members of the community upon whom you have preyed. On my assessment the very least appropriate, to reflect the aggravating factors, reflected by each of the obtaining by deception or causing loss by deception,

⁵ *R v Simpson* [2008] NZCA 467

⁶ *R v Ward* [1976] 1 NZLR 588

⁷ *Woodcock v Police* HC Christchurch A 140-02, 20 December 2002

is three years' imprisonment. Your history of course is part of the reason why that starting point is appropriate. Any uplift needs to be tempered to avoid double counting and I agree with Mr Ross that I can take into account in assessing the appropriate period of uplift your history, the time since your last offending but it does need to be marked. The least uplift I identify is one of four months.

[34] The failing to attend at Court in August of 2016, that was in circumstances where you clearly decided to evade being held accountable for this offending. In doing so by not appearing, you caused ongoing stress and anxiety for your victims and their families, and of course it needs to be understood plainly that anyone who does not appear in such circumstances and by doing so continues the anxiety of the victims, delays their ability to put the matter to an end. A cumulative term has to be anticipated. It increases your culpability, the uplift I identify in all the circumstances against a maximum sentence of one year is moderated for reasons of totality to three months.

[35] For your offer of restorative justice and the letters you have written to the victims, I allow five percent or thereabouts, which is two months. I agree that you should be given credit for your pleas even though they were much delayed. They have avoided trial and have finally brought to an end this matter for your victims. Twelve percent is appropriate in all the circumstances. It brings the end sentence to one of three years.

[36] I bear in mind your age when considering whether a minimum period of imprisonment should be imposed. You now are at an age when time in custody is likely to take its toll. The Parole Board in my assessment are best placed to determine the risk you continue to pose at the time of release. I anticipate that the steps you take while serving a sentence will dictate an assessment. In all the circumstances I leave it to the Parole Board. I do not impose any minimum period of imprisonment.

[37] Upon each of these matters I will now impose sentence. On each of the obtaining by deception or causing loss by deception you will go to prison for three years. On the failing to attend there will be two months' imprisonment concurrent. There will be an order for reparation as regards each of the charges. It will be in the amount which has been sought.

P P Crayton
District Court Judge