

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CRI-2018-004-005234
[2018] NZDC 20650**

NEW ZEALAND POLICE
Prosecutor

v

JOSHUA PUTAONE WILLIAMS
Defendant

Date of Ruling: 26 September 2018
Appearances: Sergeant M Stonyer for the Prosecutor
A Jeffares for the Defendant
Judgment: 26 September 2018

JUDGMENT OF JUDGE W K HASTINGS

[1] Joshua Williams, you appear for sentence having pleaded guilty to one charge of improperly interfering with the dead human body of an unknown person. The maximum penalty for that offence is two years' imprisonment. You have also pleaded guilty to one charge of theft of two deceased human toes said to be valued at \$5500, the property of XPO Exhibitions. The maximum penalty for that offence is seven years' imprisonment.

[2] You are 28 years old, and have four previous convictions, none of which are for offending of this nature. You have had no convictions of any sort for over seven years now.

[3] The pre-sentence report records your willingness to make reparation and your remorse.

[4] You have also written a letter of apology which has been handed up to me.

[5] You have suffered from agoraphobia, anxiety, and severe depression, although it now seems that you are on the mend.

[6] I turn now to the incident. At 4.30 pm on Thursday 10 May 2018 you attended the Body Worlds exhibition in the Hilton Hotel in Auckland. This exhibition consists of what were once human corpses. Their skin has been removed and what is left has gone through a process of plastination in which body fluids have been replaced by curable polymers, effectively turning them into plastic. They are then put into various poses, and subjected to gas, heat, or ultraviolet light to harden them in these poses.

[7] You went up to the “Acrobatic couple with lifted woman” exhibit, which was not shielded by any sort of glass or plastic barrier. You say the toes looked like they had already been tampered with. You reached across and touched the toes of the female body. You say the toes flicked back and you took the index toe and the middle toe. You put the toes in your pocket and left the exhibition. You later posted a picture to Instagram of you holding the toe with the caption, “Chur to the Body Worlds Festival. I stole a toe from an uncovered display LOL”. You gave the toes back to the police and they were refastened to the female acrobat’s body.

[8] This exhibition polarises people. Its stated purpose is to inform the visitor about anatomy, physiology, and health through viewing real human bodies. How it is received will vary from culture to culture and from person to person. Some cultures would consider this exhibition’s treatment of human bodies to be deeply offensive. People who felt that way would be unlikely to attend. Others might feel a sort of ghoulish or macabre attraction to it. Yet others may find it a valuable learning experience.

[9] I do not know why you attended, but I suspect you were in the latter category. You say, however, that you did not visit the exhibition with the intention of stealing

two toes. I believe you, and consider this to be impulsive behaviour. You could not resist the temptation to touch what presented to you as a dead body.

[10] This leads me to a concern I have about how you were charged. You were charged with improperly interfering with a dead human body and with stealing two deceased toes. In my view, there is no property in a corpse. The Supreme Court in *Takamore v Clarke*¹ has declared that for the purpose of New Zealand law there is no property in a dead body. In *Re Long*² Heath J said that as a result of the Supreme Court's decision in *Takamore*, "It is difficult to see how there might be property in any component part of a dead body." The two charges, to my mind, cannot co-exist. Excuse the pun, but you have been toe-tally overcharged.

[11] If the toes are human, then there is no property right in them, and there is therefore nothing to steal. If the toes and the body from which they were taken are not human, because of the plastination process has left little, if anything, human about these things that are displayed, then you really have not improperly interfered with a dead body. Indeed, it could certainly be argued that the improper interference with a dead body took place well before these bodies arrived in New Zealand when they were turned into plastic objects, and that the interference continued after they arrived here when they were shifted about and put on display for a paying audience. What you did pales in comparison.

[12] The way the police have charged you forces us to confront an uncomfortable dilemma. Have human remains been displayed, or are these nothing more than plastic objects without human qualities? If they are human, you cannot be charged with theft. If they are not human, you cannot be charged with improperly interfering with a dead human body.

[13] Now, I will pause here and ask the Prosecution which it is. You cannot have it both ways. [The Prosecution elects to continue with the charge of improperly interfering with a dead human body under s 150(b) of the Crimes Act 1961].

¹ *Takamore v Clarke* [2013] 2 NZLR 733.

² *Re Long* [2017] NZHC 3263 at [83].

[14] Mr Williams, this is what I will do. I am noting that you have withdrawn your guilty plea to the theft charge, because you pleaded guilty to something that is not an offence. As the Police have decided to continue with the charge of interfering with a dead human body, the toes cannot be property because they are human, and there is therefore nothing to steal. So your guilty plea is withdrawn, and the theft charge is dismissed, which leaves the charge of improperly interfering with a dead human body.

[15] I am concerned with how a conviction for improperly interfering with a dead human body will look on your record. It conjures up an image of a cloth-hatted grave robber with a shovel, digging up graves in a cemetery at night. What you actually did was to pluck two toes from a plastinated body that, unlike a buried body, was already posed and intended to be the object of visitors' attention. The stigma that would attach to a conviction of this nature would, to my mind, be out of all proportion to the gravity of what you actually did, and for that reason, on the charge of improperly interfering with a dead human body, you are discharged without conviction, and that is where things fall.

[16] You will have no convictions. You are free to go. [Thank you]. You are welcome.

W K Hastings
District Court Judge