

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

**SUPPRESSION ORDERS EXIST IN RELATION TO ASPECTS OF THIS
JUDGMENT PURSUANT TO S 205 CRIMINAL PROCEDURE ACT 2011: SEE
PARAGRAPHS [39 & 40].**

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360354.html>

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CRI-2023-009-006107
[2024] NZDC 20032**

THE KING

v

VICTORIA LOISE DUFF

Hearing: 21 August 2024

Appearances: A Hollingworth for the Crown
D Brown for the Defendant

Judgment: 21 August 2024

NOTES OF JUDGE T J GILBERT ON SENTENCING

[1] Ms Duff, I will sentence you now. You are here, having pleaded guilty to three charges of theft in a special relationship and one charge of accessing a computer system for a dishonest purpose.

[2] The first victim was a plastering company and its owner, who operated here in the Christchurch area. There were four staff. In January 2023, [name deleted] (who owns that company) advertised an office administrator job on Trade Me. You immediately responded to that, and within a few days you were taken on as a contractor to work 15 hours per week at an agreed rate of \$30 per hour.

[3] You began working on 30 January 2023 and your duties included creating invoices, paying invoices, issuing quotes, dealing with inquiries and that sort of thing. You also had control over the payroll system. You were responsible for entering the employees' hours into that payroll system and, in that process, on five occasions you overstated the number of hours you personally had worked. You also paid yourself at an hourly rate of \$35 per hour, rather than the \$30 that had been agreed. In total, you overpaid yourself \$4,515 in wages in the seven and a half weeks that you were working.

[4] During that same period, you made multiple fraudulent transactions into your personal bank account from the business account. You did this by paying on suppliers' invoices, but directing those payments into your account, rather than to the supplier. You would retain the same references from the suppliers' accounts so that it appeared to [the owner of the first company], your boss, that the payments were legitimate.

[5] In total, \$88,208.60 was transferred from the business account into your account, over 45 transactions. Your fraud started within three days of beginning work at the company and continued on an almost daily basis.

[6] I have read the victim impact statement from [the owner of the first company] and it is awful. Your employment coincided with his father becoming ill and only having a short time to live. You assured him, in those circumstances, that you were taking care of matters, but it quickly became apparent that you were stealing large sums of money. This affected [the owner of the first company]'s mental health severely at what was already a traumatic time and, as a result, his ability to support his dad was significantly impacted. He had to get a large overdraft and let his employees go because he was unable to meet their wages, although he did continue using them as subcontractors. He became significantly depressed, which has affected his wife and four children (three of whom are school-aged). His home is on the market because he can no longer keep up with payments, and it remains possible, even today, that he will need to liquidate his business.

[7] The thing that hurt most for [the owner of the first company] is that his father has since passed away and, through your actions, you robbed him of the last months

with the man who was his best friend and who was much-loved by the wider family and he will never get that time back.

[8] So Ms Duff, it can be seen that the financial effects of what you did are really just the tip of the iceberg. You continued what you were doing in the full knowledge of [the owner of the first company]'s difficult personal circumstances and, indeed, took advantage of those. As the psychologist who spoke to you has said, your personality is such that you can callously disregard any concern for the victims of your offending.

[9] Your employment with the first company was terminated and an investigation undertaken. During the course of that, it became clear that you had on seven occasions returned about \$23,800 to the company. So in total, the amount outstanding from the fraud is about \$69,000.

[10] You were charged with the offending relating to [the first company] on 31 August last year, and your first appearance date was 5 October. You pleaded guilty on that date.

[11] Unfortunately, however, on 1 May last year (after the first company had terminated your employment) you were engaged by a second company, which had offices in Picton and Christchurch. Again, you were in an administration role, and quickly gained the trust of those involved. You became responsible for banking and the like over a six-month period ending on 8 November last year. You were stood down from that role as soon as the company was tipped off by some of your relatives about your dishonesty with the first company.

[12] After that, the second victim completed an internal audit of your work and quickly came to realise that you had been at it again. At the second company, there were 35 unauthorised transactions. You would, again, receive an invoice from an approved supplier and submit that invoice to your manager for payment. The manager would see the name and approve the payment, and then the funds would get transferred with the appropriate references, but you would change the bank account number so that those funds were being funnelled into your own accounts. Through this method,

it appeared from the bank statements that suppliers were being paid when, in fact, they were not. You obtained \$78,603.61 in this manner from the second victim.

[13] Your offending was occurring during the period you knew you were being investigated for the first fraud and, indeed, after the point you were charged and had pleaded guilty and were awaiting sentence.

[14] I have read the victim impact statement from [the owner of the second company], and it, too, is sad reading. He comments specifically on how good you were at gaining people's trust. You did things like bring baking to work and gave an outward appearance of confidence and competence, and it is that ability to deceive which allows you to commit this type of fraud.

[15] Your impact on this business and those involved in it has been far-reaching. There have been very substantial additional costs, on top of the money that you stole, associated with unravelling the mess that you left. The Picton office has had to temporarily close. [The owner of the second company]'s mental health has been impacted, with a knock-on effect to his wife and wider family. The media attention surrounding you has also been negative for his business.

[16] The total value of the thefts is \$171,000, with about \$24,000 of that being returned to the first victim, which leaves an end shortfall of about \$150,000. There have been substantial additional costs on top of that resulting from the investigation and remedying the mess. The financial costs say nothing of the immense emotional toll that you have inflicted on these people, who offered you jobs in the businesses that they had worked so hard to create.

[17] Those effects, though, Ms Duff, will not be surprising to you because you have done it before. Your first convictions arose in 1993, at which time you were sentenced on eight charges relating to cheque fraud. You were next sentenced in 2007 on seven fraud charges. These related to three separate companies, as I understand it, and the offending occurred in 2002, 2004, and again in 2006. In total, you were sent to prison for five years on that occasion, which gives me an indication that your frauds were significant and also had wide-ranging effects on those victims. I have been told that

at least one of those businesses was forced to close its doors as a result of what you did.

[18] I have received a pre-sentence report about you. You are aged 57. You are considered to be at a high risk of reoffending, and that is just a statement of the obvious. You say that you have a gambling addiction and were yourself going through difficult times, which caused you to make the bad choices that you did.

[19] You expressed some remorse when reflecting on your actions but, according to the report writer, have a tendency to portray yourself as somewhat of a victim. You are willing to undertake any programmes or counselling that is available to address your rehabilitative needs. You say that you are willing to pay reparation but, realistically, at the moment have no current ability to meet that, and will not, certainly, in the near future. Ultimately, the recommendation in the pre-sentence report is for home detention but, in my assessment, that would be a wholly inadequate response to your offending.

[20] I have received helpful submissions from the parties. The Crown highlights the obvious aggravating features. First, there is the immense harm that you have caused (both financial and emotional). Second, there is the fact that there were two companies against which you offended. Third, there is the high degree of trust that you breached. Fourth, the first victim was particularly vulnerable due to the personal circumstances he was facing at the time you were defrauding him. Fifth, there is the fact that your second lot of fraud continued whilst you were being actively investigated for the first lot (and, indeed, after you had pleaded guilty to it).

[21] The Crown submits that the start point for each individual set of offending in your case would be up to three years' imprisonment. However, they submit that in totality a global start point of four years' imprisonment is appropriate.

[22] The Crown says that an uplift is required to recognise your previous offending, and they acknowledge that your plea of guilty, which was very early in this case, is justifying of the usual credit.

[23] Mr Brown, on your behalf, acknowledges that the cases that the Crown have provided are helpful in setting a starting point. However, he says, globally, I should take a three and a half year start point. He asks for full credit for your early guilty pleas, and says that no uplift is required to recognise your previous convictions.

[24] Mr Brown has also provided me with a psychological report on you that has been completed in the last few days, and he notes that you have a gambling addiction that is partly responsible for this offending, and asks that I recognise that. Overall, Mr Brown (in his written submissions) has suggested that home detention might be appropriate, and notes the treatment of your gambling addiction can only occur in the community.

[25] In sentencing you, Ms Duff, I need to apply the purposes and principles in our law. I have considered them all, but I will mention just a few. I need to hold you accountable for the very substantial harm that you have caused the victims. I need to denounce your conduct and also deter you from further offending. I need to bear in mind the need to protect the community from you. I have considered the seriousness of this case in comparison to the other cases that the lawyers have provided, and I need to try and achieve some consistency with those cases. Balanced against that, I need to impose the least restrictive outcome and reserve terms of imprisonment for those cases where it is strictly necessary (under s 16 of our Sentencing Act 2002). This is one of those cases.

[26] I broadly agree with the aggravating features suggested by the Crown. First, there is the very substantial loss that you have caused, with little realistic prospect of you repaying that any time soon. Associated with that financial loss is the non-financial harm to the victims and those close to them. The offending involved a very considerable breach of trust (although I acknowledge that that is inherent in the charges that you face). The offending was highly premeditated, occurring on about 85 occasions, and within very short periods of starting at the victims' businesses. Finally, I consider that your previous convictions are relevant, and do aggravate your circumstances.

[27] There are some mitigating features. You did plead guilty very early and for that the law requires me to make a 25 per cent allowance. Second, I note the information in the psychological and pre-sentence report relating to your gambling addiction, and that needs to be factored in.

[28] I have considered the cases that the lawyers have provided, and I broadly agree with the Crown that the cases of *Synnex* and *Kerwin* are relevant and have some similarities. In those cases, starting points of two years and nine months and three years were adopted for frauds of around about \$90,000. In your case, I conclude the starting points of two years and nine months are justified in respect of each of the two sets of offending. Whilst some money was returned to the first victim's account, the impact of your offending on him in particular has been immense. That means a total starting point of five and a half years, if the two sets of offending are aggregated.

[29] However, the law requires me to consider the totality of the offending, to ensure in cases like this that the overall starting point is not disproportionate. When I consider that, I agree with the Crown that the global start point should be one of four years' imprisonment, or 48 months.

[30] In my view, a 10 per cent uplift is appropriate to reflect your previous convictions, which are directly relevant (albeit somewhat dated). Had they been more recent, I would have increased that uplift. I also consider that a five per cent uplift is appropriate to reflect the fact you were on bail for part of the second tranche of offending. That is a statutory aggravating feature that the Sentencing Act requires me to take into account.

[31] As I have said, I will make a 25 per cent allowance for your early guilty pleas.

[32] I turn, now, to the personal information in the reports, especially relating to your gambling addiction. I acknowledge that was a factor in your offending, but there are other aspects too, and I am going to quote what Mr Metoui, the psychologist, said about this in his conclusions:

Pathological gambling can, on its own, lead individuals to lead double lives and engage in offending behaviour to fund their addictions. I am not

convinced this on its own entirely accounts for Ms Duff's offending. She has prior convictions of dishonesty offending that predated her gambling. She clearly has a high degree of deviousness within her personality structure, and is capable of callously disregarding any concern for her victims when offending. She was undeterred in her index offending, even when in the past she was aware of the harm caused to victims bringing her victims' businesses to closure. Ms Duff is also very adept at concealing her gambling and offending from others and those who know her best. By her own admission, she has been masking her feelings from others since childhood, and she is well-practiced at this.

[33] So, Ms Duff, in regards to this, the most that can be said is that your gambling addiction only partially explains your offending. Having regard to that, I am prepared to make an eight per cent allowance for that factor.

[34] Finally, for the other matters that counsel has drawn my attention to, I will give you a further seven per cent credit.

[35] That equates to an overall reduction (when I tally the increases and decreases to account for your personal circumstances) of 25 per cent from the four-year sentence I previously indicated, which means the end sentence is one of three years' imprisonment. I impose that on each of the four charges.

[36] Because that is over two years, the New Zealand Parole Board will determine when you are released and the conditions on which you are released.

[37] I add, for completeness, that even if I had got to a point under two years, which would have allowed me to consider home detention, I would have considered that an inadequate response to your offending.

[38] The final thing I need to do is in relation to reparation. For the offending against [the first company]'s plastering business, reparation is \$68,921.61, and in relation to Silver Frames, the second victim, reparation is \$78,603.61. I appreciate that you will not be able to start on that until after you are released from prison.

[39] [Details deleted]

[40] I am going to grant permanent suppression of the victim's names and their companies, and also suppression of Ms Duff's partner's name. From all the information I have read, she was genuinely unaware of what was going on and, for various reasons, the publication is problematic for her, in part because of the role that she undertakes.

Judge TJ Gilbert

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 22/08/2024