

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2017-092-985  
[2018] NZHC 548**

**THE QUEEN**

v

**SAUL BRENDON ROBERTS**

Hearing: 27 March 2018

Appearances: D G Johnston and N R Grieve for the Crown  
C Hirschfeld for the Defendant

Sentencing: 27 March 2018

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**SENTENCE OF WOODHOUSE J**

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Counsel / Solicitors:

Mr D G Johnston, Meredith Connell, Office of the Crown Solicitor, Auckland  
Mr C Hirschfeld, Barrister, Auckland

[1] Mr Roberts, you may remain seated while I explain the sentence I am going to impose. It will take a few moments. I do want to say at the outset I am going to impose a sentence of home detention coupled with an order for reparation. One of the reasons it will take a bit of time to explain this is the sentence that I am imposing when assessed against the relative gravity of bad offending by you – and particularly the offending against Te Roopu, which is a serious breach of trust.

[2] You appear for sentence having pleaded guilty to five charges of accepting secret commissions in breach of the Secret Commissions Act 1910 (the Act). The maximum penalty in relation to each charge that applied at the time of your offending is 2 years imprisonment.<sup>1</sup>

### **Facts**

[3] The facts of each charge need to be outlined. As I go through this I recognise there may be some slight variations in figures, but the total is not seriously in issue.

[4] In 2008 you were a trustee and salaried employee of Te Kawerau Iwi Tribal Authority (Te Kawerau). You were the chair of the environment committee of Te Kawerau. Without any knowledge of other Te Kawerau trustees or officers you filed submissions in the name of the Authority in opposition to a proposed change to a District Plan relating to land owned by a company called Waterside Business Centre Ltd. In 2009 you made an agreement with that company that you would withdraw the submissions – or effectively withdraw the opposition – in return for payments. You received a total of \$40,000. That was a single offence against Te Kawerau.

[5] In April 2012 you were employed as the assets manager of Te Roopu Taurima O Manukau Trust (Te Roopu). Te Roopu is a registered charity. It provides residential care to people with high-need intellectual disabilities. Your responsibilities included the repair and maintenance of Te Roopu's properties and vehicles. There were four offences.

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<sup>1</sup> Secret Commissions Act 1910, s 4.

[6] In May 2012 you met with Peter Horvath, a part-time building contractor. You said you could provide him with maintenance and repair work provided he paid you 10 per cent of all invoices in cash. He agreed. Over 2 years, Te Roopu paid him approximately \$366,000. From this you were paid approximately \$36,500 in cash.

[7] In June 2012 you offered Kevin Lenaghan a job purchasing vehicles for Te Roopu. In return he was to provide you with cash payments. Mr Lenaghan purchased 14 cars for Te Roopu over a five month period at a cost to Te Roopu of about \$348,000. Mr Lenaghan estimates that in that time he paid you \$36,900 in cash.

[8] In January 2013 you met Atish Narayan, the owner of Pit Stop Otahuhu. You offered to send to Mr Narayan Te Roopu's fleet of vehicles for servicing. In exchange, you were to receive a percentage of each invoice in cash. Mr Narayan agreed. Over 15 months Te Roopu paid Pit Stop Otahuhu \$679,844. From these payments, Mr Narayan withdrew \$256,000 in cash, from which you received \$60,000.

[9] In May 2013, Mr Narayan opened a workshop in Hamilton. You made a similar dishonest arrangement with him. You obtained approximately \$30,000 from Mr Narayan between June 2013 and February 2014 for this arrangement relating to Te Roopu vehicles in the Hamilton area.

[10] The total of the payments to you while working for Te Roopu is \$163,400. Adding the secret commission while you were with Te Kawerau, the total is \$203,400.

[11] You and family members attended a restorative justice conference with representatives of Te Roopu. You agreed to repay Te Roopu a total of \$164,929. The small difference between that total and the earlier figure I mentioned arises from slightly different calculations, but nothing turns on this. And I say at this point, arising out of discussions with Mr Hirschfeld, that that is a solemn commitment you have made to Te Roopu, irrespective of the order I am going to make for reparation.

## **Victim impact statements**

[12] I have received a victim impact statement from Te Warena Taua on behalf of Te Kawerau. Mr Taua says you have brought shame and embarrassment to the iwi and marae and that it will take a large commitment and much time on behalf of the iwi to regain trust from local authorities. This is an iwi, I understand, you are connected with.

[13] I have also received a victim impact statement from Tania Thomas, the chief executive of Te Roopu. Some of the matters noted by Ms Thomas in her comprehensive statement are the following:

- Te Roopu is a not for profit organisation that supports people with multiple impairments through residential, respite, mental health, community living, and vocational support, and daily activity services. The majority of the people supported have intellectual impairments along with high and complex needs.
- The direct and indirect costs are estimated at \$400,000. I have referred to direct costs from the offending from what you received, mainly the large backhanders you received from inflated payments Te Roopu made to those you dealt with. There were major indirect costs through reduced funding, recruitment costs because of staff who left as a consequence of this, fees for legal advice and public relations, and other expenses. And there are all sorts of other losses which cannot be quantified in money terms and which are referred to fairly comprehensively in the restorative justice report.
- These matters in turn had an adverse effect on those Te Roopu has been seeking to support.
- The reputation of Te Roopu as a trustworthy and safe service has been severely compromised.

## Starting point

[14] I come to the starting point. The first step in assessing an end sentence is to fix a starting point – and you have heard the discussion I have had with Mr Johnston and, briefly, with Mr Hirschfeld. This is an assessment based on the seriousness of the offending before taking account of any personal factors which might justify an increase or decrease in the starting point.

[15] In assessing the seriousness of the offending, the Crown submits there are five aggravating factors:

- The extent of the harm to the victims of your offending. This is indicated by the facts and the victim impact statements I have already outlined.
- You abused positions of trust and authority.
- You received secret cash payments on approximately 90 occasions. This was not one-off offending, it was far from it.
- You offended against two separate victims, and with offending against Te Roopu being over a period of approximately 2 years.
- You personally received a total of approximately \$203,400.

[16] On your behalf Mr Hirschfeld has accepted that those are aggravating factors. I agree that all of them are.

[17] The Crown referred to seven cases involving sentences for offences under the Act. I will note the names of the cases in a footnote in the transcript of what I am now saying.<sup>2</sup> I do not intend to discuss these cases to any great extent.

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<sup>2</sup> *R v Watson* CA233/01, 19 December 2001; *R v Child* HC Auckland T000708, 21 June 2002; *R v Varjan* CA97/03, 26 June 2003; *R v Hood* HC Auckland CRI-2005-004-1316, 19 December 2006; *R v Swann* HC Dunedin CRI-2009-412-26, 11 February 2010; *R v Scutts* [2015] NZHC 1617; *R v Narayan* [2017] NZHC 2448.

[18] When considering other sentences it is necessary to focus on the starting point, which of course is what I am presently dealing with, rather than the end sentence for other offending. One general observation that may be made is that these cases do not, taken together, provide any clear bench marks for starting points, and I will come back to this.

[19] One of the seven cases I do need to refer to is the sentence of Mr Narayan, the owner of Pit Stop Otahuhu. He pleaded guilty to two charges relating to the payments made to you. The starting point for those two offences was 16 months imprisonment.

[20] Mr Johnston, for the Crown, submits that the starting point should be at least 3 years imprisonment. He submits that this is a case where there should be cumulative sentences because the offending against Te Kawerau was quite separate from the offending against Te Roopu. I accept that that may have been an appropriate approach were it not for the fact that I am sentencing you to home detention. In that regard, Mr Johnston submitted that the starting point for the Te Roopu offending might be 20 months imprisonment with at least a further 16 months imprisonment for the other offending. Had I approached it that way I would have imposed a higher starting point for Te Roopu.

[21] Mr Hirschfeld did not take issue with a starting point of 20 months for the lead offences, against Te Roopu. But he submitted that 16 months for the Te Kawerau offence was too high and that the overall starting point –that is, for all offences – should be 2 years and 9 months imprisonment.

[22] I am bound to make my own assessment. Although Mr Hirschfeld has submitted on your behalf that a starting point of 2 years 9 months is appropriate, I in fact consider that that is too high. In my judgment, taking account of the other sentences – and I have taken account of all of the cases the Crown has referred me to – and giving due weight to the aggravating features of your offences, I consider that the overall starting point – and that is, for the offence against Te Kawerau and the offences against Te Roopu – should be between 2 years and 2 ½ years imprisonment; and certainly not more than 2 ½ years imprisonment.

[23] In relation to that maximum starting point, I come back to the other cases. In none of the cases referred to by the Crown was the starting point more than 2 ½ years imprisonment. Some of those other cases were – on any analysis – far more serious than your offending. And in saying that Mr Roberts, I am not in any way seeking to diminish the gravity of the offences you have committed. I am talking about proportionality. For example, in *Swann*, the offender accepted secret payments over a period of 6 ½ years totalling approximately \$755,000. The starting point was 2 years. Mr Swann received secret commissions of that amount. The starting point for the person who paid him was 18 months imprisonment.

### **Personal circumstances**

[24] Personal circumstances – and I do need to spend some time on this. You have no previous convictions. That is a mitigating factor requiring reasonable weight because you were 41 years old when the first offence occurred in 2009. In saying that it warrants reasonable weight, these things are all relative. I acknowledge Mr Johnston's submission that an absence of previous convictions does need to be weighed with the fact that between 2009 and 2014 – although with a gap – you committed the offences I am now dealing with.

[25] Before this offending you had contributed substantially to community activities in the course of, and after, obtaining a Bachelor of Architecture degree. I have two comprehensive character references confirming this. One is from Dr Te Kawehau Hoskins. Dr Hoskins is head of Te Puna Wānanga – the school of Māori and Indigenous Education at Auckland University – and also Te Tumu (Māori dean) of the Faculty of Education and Social Work. The other is from Mr Hēmi Dale, a director of Māori Medium Education at Te Puna Wānanga. Dr Hoskins has known you for 25 years. Mr Dale for 40 years.

[26] In achieving the things, and making the contributions, that they refer to, you overcame personal problems you had as a child – not of your making – and clinical depression which has afflicted you throughout your life and for which you have been treated by psychologists over decades.

[27] The pre-sentence reports states that you attribute your offending to the breakdown of your marriage and an onset of depression. Mr Hirschfeld did not seek to place weight on this, and nor do I – but it has relevance. What does require real weight is that this period of offending – perhaps contributed to, to an extent, by what I have just mentioned – this period of offending stands in real contrast not only to what you had achieved and contributed before the offending up to the age of about 41, but also what you have done and demonstrated since the offending.

[28] What you have done and demonstrated since the offending is referred to in the two references and also in the restorative justice report.

[29] These establish the following:

- (a) You have taken substantial steps to get your life back on the constructive track that it had been on. You have done this not just for yourself, but also for your whānau and the community – your own people and more broadly.
- (b) You have shown genuine remorse and an understanding of your offending and the real harm it has caused – and not just to Te Roopu but also to Te Kawerau.
- (c) You have offered to repay to Te Roopu the total sum you effectively took from the Trust.
- (d) It is apparent that culturally significant outcomes resulted from the restorative justice conference. Important features and outcomes of this conference include the following – and these are important:
  - The whānau would determine a proposal as to how outcomes would be implemented, in accordance with tikanga Māori. That is relevant to sentencing under s 8 of the Sentencing Act, as are the provisions dealing with restorative justice.

- You openly and unreservedly apologised orally to Te Roopu and in writing to Te Roopu and to Te Kawerau.
- You are to attend specialist counselling in accordance with a whānau plan.
- You are to attend counselling for your personal development and to learn strategies to prevent reoffending in the future, although the pre-sentence report indicates that the risk of reoffending is low.
- The representatives of Te Roopu do not want you to go to prison. That is important. The decision is mine, but I must have regard to what the victims say. They want you to put – and I quote – your “obvious intelligence, entrepreneurial skills and experience to good use helping other people in either paid employment and/or in voluntary work”.
- You have agreed to reconnect with your whānau, rather than avoid hui, tangi and whānau gatherings, beginning with the involvement on the marae in the kitchen, and after a time you are – as it is put – to “move forward” to the wharenuī in accordance with the whānau plan.
- And, as I have said, you have also agreed and committed yourself to pay Te Roopu \$164,929.

[30] I will make an order for reparation. Mr Hirschfeld said that you can pay a lump sum of \$8,000 now and pay the balance at \$25,000 per annum.

[31] As you have heard, Mr Roberts, I had reservations about making an order that you pay \$25,000 per annum to pay off the balance after the \$8,000. It would not be responsible for me to make an order when you have no prospect of meeting the payments. And this, as I have already said, is quite separate from the solemn commitment you have nevertheless made to pay Te Roopu. This might be done in

money in part; it might be done by providing voluntary services. And you have many skills to provide such services I would have thought.

[32] Nevertheless, Mr Hirschfeld, after taking instructions from you, has confirmed that an order of \$25,000 per annum can be made. That is on the basis that if you find yourself unable to meet that payment from income or from other sources of cash, there is land – which I understand, and I am told you control or own – against which a loan could be secured or, if that cannot be achieved, the land can be sold. And in the light of that advice Mr Roberts, I will make an order as proposed.

[33] I am not making an order for repayment of reparation to Te Kawerau. This is not because Te Kawerau has not suffered loss, but because that loss cannot be quantified in money terms. The \$40,000 you received was not Te Kawerau's money, but money paid out of the pocket of the company against whom you lodged that opposition in the planning proposal.

[34] I am satisfied that the personal factors I have outlined, together with a reparation order, justify a reduction of the starting point by 30 per cent. Mr Hirschfeld, on your behalf, made submissions in respect of individual reductions for individual items. I consider it is more appropriate to approach this in a global way. And what is important in this context is that an order for reparation is a sentence. That must be weighed in assessing these matters overall. The 30 per cent reduction is made in part because of the reparation order, but you will of course be subject to the reparation order. In a sense, the reduction is less than 30 per cent.

[35] Taking a mid-range starting point of 2 years 3 months imprisonment, a 30 per cent reduction brings it down to 19 months.

[36] The Crown and Mr Hirschfeld are agreed that there should be a reduction of 15 per cent for the guilty pleas. That is an appropriate reduction. That further reduces the starting point to 16 months.

### **Home detention**

[37] Home detention may be imposed if an alternative prison sentence would be 2 years or less. So it can be imposed in this case.

[38] There is a positive home detention report. You would live with your mother, with whom you have a close connection and who is plainly supportive, and with two of your children with whom you are re-establishing a vital relationship. Those are further positive considerations and important ones.

[39] I am in no doubt that this is a case in which home detention is the appropriate sentence, coupled with the reparation order. Home detention can, and in this case will, meet the necessary punitive aspects of sentencing, and in particular holding you to account for serious offending, as well as rehabilitative aspects which are of real importance as well.

### **Formal sentence**

[40] You should now stand Mr Roberts.

[41] You are sentenced on all charges to home detention for 8 months.

[42] I anticipate that the probation officer assigned to your case will give leave under s 80C of the Sentencing Act for you to continue, or seek and then continue, in employment and in community support activities, and I strongly endorse that. That is a matter for the probation officer. There are no grounds for special conditions attached to the home detention sentence.

[43] There is an order that you pay reparation to Te Roopu Taurima O Manukau Trust in a total sum as recorded in the restorative justice report of \$164,929. In respect of that sum there are the following further orders:

- (a) \$8,000 is to be paid within 14 days, with payment to be made to a bank account specified by Te Roopu.

- (b) The balance is to be paid at a rate of \$25,000 per annum until repaid in full. In the event that you are unable to pay from income or other cash resources, this order recognises your commitment to borrow against the security of land you own and, if necessary, to sell that land to meet the order.

[44] You may stand down.

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Woodhouse J