

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

CR 235/11

POLICE

-v-

CEDRIC TAMATOAAARI TORU

Counsel: Senior Sergeant Tane for Informant
Mr N George for Offender

Date: 27 May 2011

SENTENCING NOTES OF HON HUGH WILLIAMS J

[1] Mr Toru, at the age of 22 you appear for sentence having pleaded guilty to one charge of theft as a servant, the charge for which the maximum penalty is five years imprisonment. The offence took place as long ago as 18 June 2009 when you were employed by the Westpac Bank from which you stole the sum of \$900, a sum which was recovered by bank officers the next day from under your bed. At that time, and for about 18 months previously, you had been employed by Westpac as a teller. Amongst your duties was servicing ATM machines and in particular going around Rarotonga to retrieve leftover cash canisters and putting new canisters inside the machines. On this particular occasion as part of your duties you went to the airport ATM, opened the cash machine there, and whilst employed in your normal duties you, as the summary of facts puts it, "grabbed a

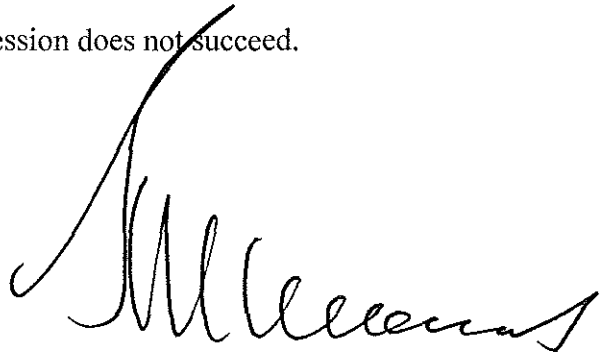
bunch of assorted cash from the ATM cash reject bin". You then took the money away and secreted it, as I mentioned, under your bed. The theft was discovered by Westpac which of course has procedures in place to guard against this sort of temptation, and the following day Westpac officers went to your house and found the money under the bed.

- [2] You were a first offender at the time and in the two years since have not offended again. There are a number of testimonials before the Court and it is clear that, apart from this lapse, you have lived a useful life in the community both here and in New Zealand where you now live and have been quite an outstanding sportsperson participating in both the World Youth Soccer Qualifiers and in the World Cup Under 19 Rugby Tournament.
- [3] The Probation Service says that this was an act of stupidity on your behalf, I am sure you agree and certainly I agree, and that you have been particularly remorseful over the years since committing this offence. The suggestion is that, being in receipt of a modest wage yourself but constantly having large sums of cash around you, you simply gave in to temptation on this occasion and took the money.
- [4] That notwithstanding, as Senior Sergeant Tane says, this is abusive offending within a senior position that your then employer Westpac placed you.
- [5] In terms of the recommendation from the Probation Service that you be discharged without conviction and the responsible police attitude, namely that you be ordered to come up for sentence if called upon in 12 months, the watershed decision as far as sentencing you is concerned is whether or not a conviction needs to be entered. The Probation Service recommendation, if adopted, would mean of course that you are not convicted. The police recommendation would see you convicted but not sentenced unless you were called upon in 12 months.
- [6] If this were not theft, if it was not theft as a servant, and if it was not necessary for public confidence in the banking system to know that the systems banks put

in place to prevent customers' money being stolen are waterproof, then a discharge without conviction would be appropriate. Put it this way; even though you are remorseful, even though you have not offended in the two years since this occurred, and even though you and your family here today have been very cooperative in ensuring that you acknowledged your responsibility, you are a thief even though you are a thief on only one occasion, and you are a thief from a bank which makes it substantially more serious.

[7] In my view the only appropriate course to follow is one to enter a conviction against you, but given that you have been in New Zealand for quite a long time since the offence occurred, and have cooperated in facing your responsibilities here, my view is that it would be futile to order you to come up for sentence in 12 months if called upon because you will probably still be in New Zealand. The appropriate course therefore is simply to enter a conviction against you but not impose any further sentence.

[8] It goes without saying that the plea for suppression does not succeed.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hon Hugh Williams J