IN THE DISTRICT COURT
AT WAITAKERE

CRI-2014-090-002517
[2015] NZDC 24712

THE QUEEN

v

GRANT NORMAN KING

Hearing: 11 December 2015

Appearances: S Symon for the Prosecution
Defendant appears in Person
T Simmonds as Amicus Curiae

Judgment: 11 December 2015

NOTES OF JUDGE K J GLUBB ON SENTENCING

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[1] Grant Norman King, you appear for sentencing today on a total of six charges. You were found guilty after a Judge alone trial; one of managing a business without approval, four of misleading the Official Assignee, and one of concealing property from the Official Assignee.

[2] The facts are that on 14 October 2010, you were adjudicated bankrupt. This was your third bankruptcy. On 4 November 2010, you submitted your statement of affairs outlining your assets and liabilities and acknowledged your duties and obligations. At that time you failed to disclose the existence of a Kiwibank account in your name.

[3] Subsequently you became involved with Chinese business interests and you were instrumental in the design and marketing of a new Anchor design which came

to underpin the formation of a Hong Kong company and finally Tern Marine (NZ) Ltd.

[4] You commenced working for Pangtong Investments in July 2012 which moved to Tern Marine (HK) Co Ltd and finally, from early 2013, for Tern Marine (NZ) Ltd. On the evidence I find that your role in the management of that business venture was extensive, essentially from the inception and as such I find that in essence you were a guiding hand in the creation of this business.

[5] In the course of your involvement with this business, the Official Assignee was in regular contact with you seeking further information and updates on your circumstances. I find that you mislead the Official Assignee on a number of fronts. Firstly, you never disclosed the existence of your Kiwibank account which was used for the receipt of income and the receipt and disbursement of business expenses. I find you intended to not disclose and in doing so you went on to use this account in that way for the business for almost a year.

[6] Secondly, by failing to advise the Official Assignee of your change in circumstances as required when you knew you had started working for Pangtong Investments in July 2012.

[7] Thirdly, by maintaining a charade of expecting employment at a future date in February 2013, when you had been in the employ of Pangtong Investments and thereafter Tern Marine (Hong Kong) Co Ltd for some time and in receipt of income as a consequence.

[8] Fourthly, by maintaining you had no signing rights over the company bank account. In reality, the de facto company bank account up until June 2013 was your Kiwibank account. The actual company bank account did not commence operation until that time. Until then, all money for the company transacted through that Kiwibank account and you were the sole signatory on that account. To that end, this was never disclosed to the Official Assignee and you maintained that fiction throughout. Additionally, you were given a general signing authority for the

company in February 2013. You failed to disclose the true position and your role in the financial administration and transactions of the company.

[9] Finally, I find that you concealed income received in the course of your employment from July 2012 until May 2013 but also never disclosed the fact of the receipt of commission advances. The amount in question concealed was $58,650.

[10] I look then to what are the aggravating features of this offending. There was first and foremost the deliberate nature of the breaches. This was brazen, prolonged and highly deliberate conduct by you in the full knowledge of your duties and obligations. You effectively masked your involvement and flouted the controls properly in place to protect the wider business community.

[11] I look to the extent of the loss. This is difficult to quantify. The business is still running, albeit the Anchor is of lesser moment. The prosecution estimates the potential loss to the main investor, Mr Li, of up to $300,000. Whether that can or will ultimately be attributed to you is moot, as it has not in fact been realised to date, and as the business is still running, albeit in the form of the second company, Trident Cycles. However, I recognise it is a potential and what it does, even if we cannot attribute loss or quantify it at this stage, it represents the scale of the potential loss.

[12] I then turn to the duration of the offending. In terms of the charges proven from July 2012 through to June 2013, however as the prosecution notes your involvement with the company continued, but that aside it was a significant period during which you steadfastly ignored and deceived the Official Assignee in your communications.

[13] I look then to the impact on the victim. It is the wider community as a whole that it is the victim in this case but it is also Mr Li potentially, the main investor. He was not aware of your bankruptcy until October 2013 and it was not until the Official Assignee stopped your travel overseas for Tern Marine (NZ) Ltd that he became aware and even then he was not sure what bankruptcy actually entailed.

[14] Your actions had the potential to cause significant loss but, equally, expose Mr Li unwittingly. He supported you and I note from the letter that I have received as part of your submissions, he continues to. He sees you as a hard worker, a worthwhile man, and someone in whom he places trust, but the bottom line is, you were not frank and honest with him at the outset.

[15] In conclusion I find that you knew full well the restrictions on you and you chose to game the system. You systematically misrepresented your position, maintaining a charade of co-operation whilst actively concealing both funds and the true position. Your offending was both premeditated and protracted during the currency of your bankruptcy.

[16] I see there are no mitigating features of this offending.

[17] I turn then to what are the aggravating factors personal to you. First and foremost there are your previous convictions. What they demonstrate to this Court is a pattern of financial mismanagement and crime. Some are historic, some are more recent but the catalogue speaks volumes. You have five convictions for failing to file a return, four convictions for theft by misappropriation, four convictions for receiving, six convictions for using a document for pecuniary advantage, one conviction for breaching the Companies Act 1993 and then, finally, two very recent convictions for operating a business without approval.

[18] I observe that those two most recent convictions relate to offending during the currency of your bankruptcy that is under consideration by this Court, and for which you were sentenced by Judge Ryan in the Waitakere District Court to 262 hours of community work on 30 July 2012. Coincidentally, that is the very day you received your first payment from Pangtong Investments.

[19] The second aggravating factor personal to you is that this was offending when you were subject to a sentence. You were given 262 hours' community work at that time and you brazenly re-engaged in the management of another business and further offended in the same way, albeit it escalated. That is a significant aggravating factor. It is one that the prosecution places particular significance on in

terms of the starting point they ask me to adopt but, more importantly, the ultimate determination of this matter moving forward.

[20] Mr Symon says that nothing short of imprisonment will answer the need for personal and general deterrence given your flagrant approach to the rules that are put in place for the safety of the business community.

[21] I turn then to consider the pre-sentence report that has been prepared. You are 60 years of age. They note you have some 40 prior offences and I have summarised a number of those. I also note that you have outstanding fines totalling some $20,000, of which $19,000 represents reparations. These are in default. Although I note from 1 December 2014 you made arrangements to begin payments, but since 10 December 2014, nothing has been paid.

[22] They assess you as being a medium risk of re-offending and your risk of harm is assessed as low. The recommendation of the report writer is an electronically monitored sentence; home detention and community work.

[23] In the body of the report, they note that "Mr King's recidivist financial offending suggests he has an entitled attitude in regard to company rules and regulations and his need to comply with them"; an apt summation.

[24] The prosecution has filed detailed submissions as have you and as has Amicus assisting the Court, Mr Simmonds. The prosecution in their submissions asks this Court, after reviewing all the authorities, to adopt a starting point of 16 months on the basis of totality. They get there by adopting 12 months for the lead offence and then an uplift for totality to 16 months and thereafter four months' uplift for your previous convictions, getting to 20 months.

[25] In your initial submissions a community-based sentence, electronically monitored was advanced. In your most recent submission you resile from that position and you suggest that community work as opposed to an electronically monitored sentence would be appropriate.

[26] Mr Simmonds suggests a starting point for the lead offence of eight months, a totality uplift of four to 12 months and then an uplift of four months for previous convictions to 16 months. In oral submissions, he said there is little between the prosecution and his submissions, and that is clearly the case.

[27] In terms of mitigating factors relevant, I observe that you have the continued support, as I have already mentioned, of Mr Li and the board of the company. His reference is significant and I take that into account. I also note that you have ongoing employment and that remains available to you. Especially here you are the caregiver to two dependants and you are the sole caregiver for them; one is your 19 year old daughter who has significant health issues. I do not propose to go into those but they have been advanced on me in some detail in written form.

[28] Additionally, you are the legal guardian to a young woman, a 27 year old young woman who also has significant challenges and you are assisting her. That too has been detailed to me. Both individuals appear highly dependent and I have read the letters and the medical notes that have been filed by Drs Hillebrand and Miller respectively and I note their clinical opinions.[1]

[29] I have reviewed all the authorities that have been placed before me, specifically *R v Holt*, *R v Burchell*, *R v Whitelaw* and *R v Raymond*. In all of those, a term of imprisonment was imposed. Mr Symon emphasised in oral submissions what the Court of Appeal said in *R v Holt* and I reference it. It says that:

> The sentence must operate as a general deterrent to those who are adjudicated bankrupt from considering that they would be able to ignore the restrictions placed on them by their bankruptcy and then plead personal circumstances to justify a relatively light penalty.
>
> The sentence must operate in a way that does its best to encourage those people who are adjudicated bankrupt to comply with the restrictions placed upon them. It must be understood that it is not worth the risk to breach those restrictions.

[1] As the sentencing was in open court, at the outset of the hearing it was indicated that all material relevant to this issue had been considered, but in the interests of the privacy of the dependants and with the agreement of the party's, the detail would not be traversed in the course of the sentencing.

[30] In emphasising that point to me today, Mr Symon spent some time exploring what he saw as the aggravating circumstances. He highlighted the fact that this offending amounted to an escalation of earlier offending which had only just been sentenced in the Court as part of the current period of your bankruptcy as I have already mentioned. He made the point that you were fully cognisant of the obligations upon you, given this was your third bankruptcy, and you seemed to think that these rules did not apply to you.

[31] For your part, your submission in reply was that you believed that what you were doing was allowable and that you thought that you were able to do as you were. The simple message is; you were not.

[32] Mr Simmonds for you in addressing the Court accepted that the authorities do have a tendency to point to a term of imprisonment, but asks this Court to draw back from imposing a sentence of imprisonment citing what he said were the "unusual personal circumstances" which befall you as I have already detailed in terms of those that you have to care for.

[33] Mr Symon in his submissions said that was nothing new. You were fully aware of your commitments at the time of this offending, as you were previously, yet that did not stop you continuing to offend in the way that you did.

[34] Mr Simmonds submitted that this Court does not need to impose imprisonment, he said "perhaps by a fine margin" and even if it could be said "that a sentence of imprisonment was richly deserved" and this was similar offending, this Court need not do so in the end.

[35] He pointed to what he said were the genuine and real personal issues that you had to contend with. Of course that is a factor which often troubles the Courts in terms of the nature of the sentence to impose. The reality is when the courts encounter recidivist offending such as this, those personal circumstances pale somewhat in significance.

[36] Mr Simmonds said that a significant period of home detention would reflect the gravity of this offending and it is not a light option and this Court "could show a degree of leniency" in that regard and that would not be creating a precedent in terms of the Official Assignee's work moving forward.

[37] What I observe is, and as I have already mentioned, a review of the authorities that have been placed before me, and recognising of course that there is no tariff, the clear theme is that for offending of this scale, imprisonment is the norm. As the Higher Courts have variously observed the Courts must move to protect the public from those who deliberately choose to flout the rules whilst bankrupt. This is serious offending of its type.

[38] Looking to the matters that I have traversed, I propose to deal with the sentence effectively in a global way by addressing totality. The starting point I adopt is one of 14 months' imprisonment. I arrive at that starting point by adopting 10 months on the management charge and I uplift by four months for the balance of the offending. Individually they may well have attracted a higher starting point, but in combination, factoring in totality and keeping it to the minimum necessary, I adopt that figure.

[39] I then look to your previous conviction history and your offending whilst subject to a sentence. Your previous conviction history is relevant and it is very recent. I apply a four month uplift for that as well.

[40] Where that gets me to then is an end sentence of 18 months' imprisonment. There is no mitigation to reduce that figure, this was a defended hearing, there is nothing exceptional in terms of the matters of mitigation that have been advanced on me today and I will not discount that figure.

[41] That is what is referred to as a short term of imprisonment. It is one that I have discretion in appropriate circumstances to convert to a community-based sentence. As I have already indicated, the clear indication from the authorities is that imprisonment is the ordinary and expected response to serious offending of this nature and certainly for repeatedly doing so.

[42] I have given careful consideration to all the matters that have been raised before me, I have given careful consideration to the personal circumstances that have been fully advanced on me and the fact that you have dependents who rely on you. Regrettably those cannot sway this Court today.

[43] I am satisfied on the basis of the applicable authorities and the statutory factors that in the circumstances a sentence of imprisonment is required and that the purposes for which the sentence is being imposed cannot be achieved by a less restrictive sentence or combination of other sentences.

[44] In particular, I observe that there is a very real need for denunciation and deterrence. Deterrence both general and specific, which factors in that you were very quickly re-offending, in fact, on the very day that you were sentenced on the last occasion you were in receipt of undisclosed income from Pangtong Investments.

[45] In the Court's view, there is only one outcome today and I am not satisfied that a sentence of home detention would meet the interests of justice and the need for denunciation, deterrence or the protection of the community in the circumstances.

[46] I treat as the lead charge the fact that you took part in the management of business without consent; on that charge you are convicted and sentenced to imprisonment for a term of 18 months. I make standard release conditions for a period of six months and special release conditions for a period of six months. Those special release conditions are as detailed in the pre-sentence report. I will not go through those now, but they are within the report.

[47] On the charge of concealing property, you are convicted and sentenced to imprisonment for eight months. On the balance of the charges, the four charges of misleading the Official Assignee, you are convicted and sentenced to imprisonment for a term of six months on each. All those sentences are to be served concurrently. As I say it is on the basis of totality, I have applied the total effectively to the lead charge and the balance will be served along with that.

[48] Mr King, it is a sad day that you have come to this juncture. The fact is you have flouted the rules around bankruptcy and you have done it repeatedly. You cannot do this again. If you do, there is only one way the sentences go, and that is up.

K J Glubb
District Court Judge