IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA626/2023
[2024] NZCA 652

BETWEEN	JOSHUA HOHUA GRANT Appellant
AND	THE KING Respondent

Hearing: 3 October 2024

Court: Mallon, Gwyn and Moore JJ

Counsel: T D Clee for Appellant
I L M Archibald for Respondent

Judgment: 11 December 2024 at 12 pm

JUDGMENT OF THE COURT

A The application to adduce fresh evidence is declined.

B The appeal is dismissed.

REASONS OF THE COURT

(Given by Gwyn J)

Introduction

[1] The appellant, Mr Grant, was found guilty of five counts relating to obtaining by deception after a five-week Judge-alone trial before Judge Jelaš in the District Court.[1] On 18 October 2023 the Judge sentenced Mr Grant to two years and four months' imprisonment in respect of four counts of obtaining by deception, and a

1 *R v Martin* [2023] NZDC 8939 [conviction reasons]. The reasons for conviction were delivered on 12 May 2023, but the Judge delivered a verdict on 14 December 2022.

concurrent sentence of 18 months' imprisonment in respect of one count of being a party to attempting to obtain by deception.[2]

[2] Mr Grant appeals against his sentence on two grounds: first, that the Judge adopted an excessive starting point; and second, that the Judge gave inadequate personal discounts.[3]

Factual background

[3] Mr Grant was charged with three others — his wife, Sian Grant, Bryan Martin and Viki Cotter (at the time, Mr Martin's partner).

[4] Mr Martin initiated and led mortgage fraud among major trading banks. He persuaded Ms Cotter to become an accredited mortgage broker licensed to Mortgage Link, a mortgage aggregator which he effectively ran. Fraudulent loan applications were made utilising Mortgage Link, giving an appearance of authenticity.

[5] Mr Martin set up Momentum Transition Developments Ltd (Momentum) which he used to transfer false "salary" payments to Ms Cotter to support loan applications in her name. Similarly, between February 2015 and August 2017, Momentum "employed" Ms Grant utilising a circular money transfer scheme. Mr Grant arranged for money to be sent to Mr Martin (either from accounts he controlled, cash deposits he made, or payments he arranged for family members to make) who would transfer it to Ms Grant as her "salary".

[6] The co-defendants made loan applications containing those false representations about their financial positions which the banks relied on when determining (and, in many instances, granting) loan applications. The Grants obtained $2,292,100 in loans over 20 months, of which they drew down $1,102,100.

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2 *R v Martin* [2023] NZDC 23086 [sentencing notes]. See Crimes Act 1961, ss 240(1)(b) and 241; maximum penalty seven years' imprisonment.

3 Mr Grant initially filed an appeal against conviction and sentence but subsequently abandoned his appeal against conviction. There is jurisdiction to determine the sentence appeal because the sentence appeal was parasitic on the conviction appeal that has since been abandoned: see *Tule v R* [2023] NZCA 543 at [9]–[14].

[7] The appellant was convicted as principal offender in charge 1 where he applied for a $1,400,000 loan, falsely representing that he and his wife had a combined income of $242,000. Mr Grant represented that he earned $92,000 yearly from employment at Cartridge World. In fact, the Grants lacked a steady income.

[8] In respect of the remaining four charges, the appellant was convicted as a party because he was instrumental in arranging the salary payments that Ms Grant relied on as proof of her employment.

Application to adduce new evidence

[9] Mr Grant has applied to have two items of evidence admitted on appeal:

(a) a Hōkai Tapuwae report dated 6 March 2024, prepared by Kōhatu Mauri for Ara Poutama Aotearoa | the Department of Corrections, in the nature of a s 27 report; and

(b) a letter of remorse.

[10] Mr Clee, for the appellant, acknowledges the evidence tendered is not fresh, but says there is justification for proffering it only now. He says it is cogent and credible.[4]

[11] Mr Grant did not file a cultural report or similar material at sentencing. He had enquired with trial counsel about that possibility, but says his query was dismissed without adequate explanation. Mr Clee cites *Thompson v R*, where such material was admitted on appeal in what he says were similar circumstances.[5]

[12] The remorse letter is proffered now to meet a statement in the pre-sentence report that Mr Grant had no real acceptance of responsibility for the offending and no remorse was evident to the report writer, other than a reflection of the predicament that

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[4] *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120]; and *R v Bain* [2004] 1 NZLR 638 (CA) at [22].

[5] *Thompson v R* [2023] NZHC 718.

Mr Grant then found himself and his family in. Mr Grant says he was not made aware at the time that he could challenge the accuracy of the report.

[13] The Crown opposes introduction of the new evidence. Ms Archibald for the Crown says not only is the Hōkai Tapuwae report not fresh, it largely replicates what was already contained in the pre-sentence report and does not assist to explain why the appellant offended. The report discloses that Mr Grant had a humble childhood in a community divided by poverty and wealth. He was exposed to violence and alcoholism in the community, but his parents were hard-working and provided a supportive upbringing. Before having their own children, Mr Grant and his wife, as well as his parents and brothers, invested in a scheme later revealed to be a scam, losing a large amount of money.

[14] Counsel says the letter of remorse is not fresh, credible or cogent and would have no impact on the appellant's sentence. In the letter, Mr Grant says he accepts the charges against him and takes responsibility for his actions. He says that he knows the crime is not victimless and he apologises to all parties impacted by his actions.

[15] We conclude that neither the report nor the remorse letter should be admitted on appeal. The report is neither fresh nor cogent. It gives no insights into the reasons for Mr Grant's offending over and above those in the pre-sentence report and recorded in his sentencing notes.[6]

[16] Nor is the remorse letter cogent in the sense of expressing genuine remorse. The tenor of the letter is that the appellant was ignorant and duped, an explanation that was expressly rejected by the Judge.[7] The appellant was convicted on the basis that he knowingly made a false representation and that he knew his wife made materially false representations.

Appeal against sentence

[17] Mr Clee advanced two arguments before us — that the starting point set by the Judge was too high and the discounts for personal factors were inadequate.

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[6] Sentencing notes, above n 2, at [39]–[43].
[7] At [32].

Starting point

[18] The Judge adopted a three-year starting point.[8] The Judge found Mr Grant's culpability was slightly less than Ms Grant's, reflected in a six-month higher starting point for Ms Grant.

[19] Mr Clee submits that that starting point does not properly reflect the respective culpability of the four defendants. He says Mr Grant's culpability is closer to that of Ms Cotter than Ms Grant, rather than sitting between them, as the Judge found.

[20] Ms Grant pleaded guilty as principal offender to the charges Mr Grant was found guilty of and the Judge adopted a starting point of three years and six months' imprisonment for Ms Grant.[9]

[21] Ms Cotter was sentenced in relation to four charges and a starting point of two years and six months' imprisonment had been adopted.

[22] We are satisfied that Mr Grant's culpability was closer to Ms Grant's than to Ms Cotter's. Ms Cotter was convicted on fewer charges and her offending spanned a shorter period than the appellant's. Significantly, as the Judge found, Ms Cotter was used and manipulated by Mr Martin. Her offending occurred at Mr Martin's instigation, with little benefit to her personally. In contrast, while Ms Grant had greater culpability than Mr Grant, there is no suggestion of Mr Grant being manipulated or coerced by Ms Grant, and they collectively benefited from the offending.

[23] We are satisfied, based on the Judge's assessment of the roles of the other defendants, and their relative culpability, that the starting point adopted was within range and appropriate.

Adequacy of discounts for personal factors

[24] The Judge awarded an overall discount of approximately 22 per cent for Mr Grant's personal mitigating factors.[10] This discount was for Mr Grant's good

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8 At [55]–[56] and [62].
9 At [55].
10 At [68].

character, the impact of his imprisonment on his children and the delay in the determination of the charges caused by COVID-19 and other factors.[11]

[25] There was no discount for remorse — the Judge earlier noting that the pre-sentence report recorded that Mr Grant had no real acceptance of responsibility for the offending, and the suggestion that he was duped was rejected by the Judge, noting his history as police officer for a decade.[12] The Judge considered that any remorse was best characterised as a reflection of the predicament that he then found himself and his family in.[13]

[26] While the Judge did not say how much of the approximately 22 per cent discount she allowed for the good character component of this discount, the Judge did say that its level was "negated to some extent by [Mr Grant's] 10 years as a serving police officer" and that she considered "the wrongfulness of [his] actions would have been blatantly obvious to [him]".[14]

[27] It is this tempering of the level of discount that Mr Clee takes issue with, saying it was wrong in principle and law for the Judge to do so. He submits that a further discount of 10 per cent was available to the Court.

[28] The Crown on the other hand says the 22 per cent discount was generous.

[29] The purposes of a good character discount are to recognise that the offending represents an isolated fall from grace and that a greater potential for rehabilitation may be inferred from previous good character.[15] Mr Grant's time as a police officer does not, considering those purposes, preclude appropriate recognition of his previous good character.

[30] The Judge accepted that Mr Grant was entitled to some discount for his previous good character. At aged 54, this was Mr Grant's first appearance before the

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[11] At [62]–[64] and [68].
[12] At [30] and [32].
[13] At [30].
[14] At [62].
[15] *R v Findlay* [2007] NZCA 553 at [89]–[91]; *Taylor v R* [2017] NZCA 574 at [24]; and *Hore v R* [2024] NZCA 216 at [24].

courts. The Judge referred to a letter of support from a former police officer with whom Mr Grant had served. That letter referred to Mr Grant's dependable characteristics in dangerous and challenging situations. It also attested to his dedicated and loving parental role to his children and that Mr Grant would not reoffend. However, there was no evidence of any particular recent contribution to the community, and the extent of any discount for previous good character in Mr Grant's case is tempered because the offending was not a single incident or a momentary lapse of judgement.[16]

[31] As this Court has previously noted, a discount for good character will always be a matter of impression in the particular circumstances of the case.[17] We are satisfied that, overall, the global discount of 22 per cent, having some regard to previous good character, and taking into account the impact on Mr Grant's family and delayed resolution of the proceeding, was generous and clearly within range.[18] We would not disturb it.

Result

[32] The application to adduce evidence on appeal is declined.

[33] The appeal is dismissed.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent

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16 See, for example: *Britow v R* [2017] NZCA 229 at [10]–[11]; and *Manawaiti v R* [2013] NZCA 88 at [19].
17 *Britow v R*, above n 16, at [11].
18 See, for comparison: *Manawaiti v R*, above n 16; *Britow v R*, above n 16; *Quinlan v R* [2013] NZCA 634; and *Hore v R*, above n 15. See also *Philip v R* [2022] NZSC 149, [2022] 1 NZLR 571.