

**IN THE DISTRICT COURT
AT WELLINGTON**

CRI-2011-083-001826

THE QUEEN

v

KEITH JOHN DAVIES

Hearing: 18 November 2011

Appearances: L Rowe for the Crown
G King for the Prisoner

Judgment: 18 November 2011

NOTES OF JUDGE B DAVIDSON ON SENTENCING

[1] Mr Davies, you appear for sentence on 3 charges of theft as a servant, 2 of false accounting, 1 of obtaining by deception, and 1 of obtaining by false pretences.

[2] All the charges are representative of a dishonest course of conduct on your part over a 12½ year period between March 1995 and October 2007. During most of that period you were the registrar of the National Army Museum in Waiouru.

[3] The charges essentially involved theft by you of 750 historic, valuable and sentimental medals valued at around \$235,000; theft of military books valued at around \$25,000; and of other associated memorabilia. Of the medals stolen 131 were sold by you for \$66,333. You also removed a large number of medals to Australia where you resettled 5 or 6 years ago. Over the period of your offending you went to quite elaborate means to conceal your dishonesty.

[4] You joined the army in the late 1970s, eventually leaving nearly 30 years later. In early 1995 you secured the prestigious job as Registrar of the National Army Museum at Waiohuru. This of course houses this country's collection of medals and other historical military memorabilia. Most of the items at the museum are entrusted to it by soldiers and their families in an effort to preserve New Zealand's heritage. Your job included maintaining the museum's database, staff training and supervision, and managing the movement of items from the museum's collection. You also developed a secondary role as an assistant curator with a more hands on approach in care of medals and artefacts. As well, as you developed your own small business which was involved in mounting and preserving medals.

[5] You were a trusted and highly respected employee. Unfortunately, there was a serious flaw in your character. You were dishonest.

[6] You began taking medals home without authorisation to work on them. Realising the ease with which you could do this you began stealing the medals; sometimes complete medal groups or on other occasions specific, significant and valuable medals. You went to considerable effort to conceal your dishonesty, replacing stolen medals with others to make it look like a set was complete, altering computer records and the like. As I have mentioned, you stole 750 medals with a value of \$236,515. Virtually all of those medals related to New Zealand military service. The medals included many of the higher profile awards available in this country for gallantry. You also stole valuable books on military history and other memorabilia.

[7] A significant feature of your sentencing, of course, is that the monetary value is no true gauge of the extent and the effect of your offending. The sentimental and historic value of the items you took is simply incalculable.

[8] Your thefts remained undiscovered until mid-2010 when 2 sets of medals were noticed as missing.

[9] About 2 years after you began stealing the medals you began to sell them and remove them from New Zealand to Australia to assist in their disposal. You sold 131

medals for \$66,333 over an 11 year period until 2008. About 2/3rds of those medals have now been recovered. When you left New Zealand permanently in 2005 to live in Australia you took 320 medals with you.

[10] In July of this year the New Zealand Police, in co-operation with the Australian authorities, searched your home in Queensland. The police recovered 287 medals with a value of \$85,380. You agreed to return to New Zealand voluntarily to face charges. You have provided a significant degree of co-operation and assistance to the authorities ever since. In your dealings with the police you accepted that your offending displayed a gross breach of trust.

[11] The total amount of reparation sought is \$153,716.

[12] It is impossible in the limited time available in sentencing you today to do any kind of justice to the considerable body of victim impact material which I have read. Even trying to capture the sense of outrage, disgust and despair expressed by families who have donated items, and by other members of the military staff in New Zealand, is virtually impossible. I do not think I can sum it up any better than reading to you what one person has written:

How Mr Davies can ever justify his reprehensible actions as guardians of our loved ones memories is beyond belief. Our family will never forgive him.
How do you replace the irreplaceable?

[13] Mr Davies, you know through the acknowledgement given by your counsel today that the effect on a large number of people has been highly significant. As well, you may have destroyed the trust that everyday New Zealanders have in passing on items to museums for storage.

[14] You are 57 and I treat you as a first offender. You are married with a very supportive wife. You and your wife have 5 children; in sad circumstances one died nearly a decade ago. You have 10 grandchildren, and in equally very distressing circumstances 2 have died.

[15] You are not able to offer any real explanation for your offending in your dealings with the probation officer. This is entirely consistent with the recurring

theme of a very large number of letters of reference and support from your friends and family, which I have read. You are regarded by all as a man of very high calibre, a man of exemplary character; all regard your offending as wholly out of character.

[16] When sentencing began today I was a little unclear about your financial position, but having received from you a sworn statement of means, coupled with some confirmation from the prosecutor, I accept that the \$50,000 offer of reparation that you have made is all that you realistically can. Beyond that any order would cause such hardship that the order in fact could not be made.

[17] Equally, I am entirely satisfied from all I have read and heard that you are deeply remorseful.

[18] Mr Davies, the aggravating features of your offending are self-evident. This was a gross, wholesale and ongoing abuse of trust. The items were of significant value in money terms, as I have mentioned, but their sentimental and historic value is incalculable. Your offending was premeditated, ongoing, organised. You went to considerable efforts to conceal your offending from others. More than that, by selling the items and removing them from New Zealand it means that a large number of these items are unlikely to ever be recovered. The offending, of course, has had a very deep and profound effect on all of the victims, those who have donated items, people you work with in the military, indeed most New Zealanders.

[19] By way of mitigation I take into account your very prompt pleas of guilty. I accept that you are remorseful. I accept that you have made every effort to maximise the amount of reparation available. You have been of considerable assistance to the authorities during their investigation of the matter.

[20] I agree with Mr Rowe that your good character, which would normally be a mitigating feature, is largely cancelled out by the ongoing nature of the offending.

[21] The Crown submit that the monetary value of the items is only 1 gauge available to me. Mr Rowe submits that even the monetary value would warrant a starting point of around 4 years' imprisonment. But once consideration is given to

the very significant breach of trust involved, the significance and sentimental value of the items concerned, the number of victims and the effect on them, and the period of the offending, that the starting point should be somewhere between 5 to 6 years' imprisonment. The Crown accept that the various mitigating features would warrant an overall reduction of around 50%.

[22] Your counsel, Mr Davies, has some quibble about the contended starting point, arguing that it can be somewhat less. He accepts, nevertheless, that the end sentence must be one of imprisonment, arguing it should be in the range of 2 to 2½ years. He emphasises your prompt pleas of guilty, your co-operation with the authorities, your remorse, your ability to pay reparation.

[23] Mr Davies, there really is no comparable case that I know of, or that has been brought to my attention. Here over 12 ½ years you stole 750 medals worth over a quarter of a million dollars, and other valuable military books and artefacts. The theft was associated with quite elaborate and ongoing deception. For some of that period you began to sell off the medals, eventually selling over 130 medals for a sum in excess of \$65,000. When you were apprehended you were co-operative with the investigators, returned to New Zealand voluntarily, and have assisted since. You have about 1/3rd of the reparation available for immediate payment.

[24] However, the values alone, as I have said, are simply no gauge. Here your breach of trust, the sense of betrayal and outrage place your case, in my view, in a category which goes far beyond its pure monetary value. The starting point that I adopt is imprisonment for 5½ years.

[25] From that starting point you are entitled firstly to a rounded up credit of 18 months. That represents your remorse, your ability to pay fairly substantial reparation, and your co-operation with the authorities. That would reduce the sentence to 4 years' imprisonment. I give you a further credit of ¼ for pleading guilty. The end sentence to be imposed upon you is imprisonment for 3 years.

[26] Mr Davies, on each of the charges you will be sentenced to imprisonment for 3 years.

[27] You will be ordered to pay reparation in the sum of \$50,000, payable in full within 7 days.

B Davidson
District Court Judge