

**IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY**

CRI 2007-012-004181

THE QUEEN

v

**MICHAEL ANDREW SWANN
KERRY GRAY HARFORD**

Hearing: 11 March 2009

Appearances: R Bates and A Killeen for the Crown
J Haigh QC and B Boyd for prisoner Swann
G King for prisoner Harford

Judgment: 11 March 2009

SENTENCING NOTES OF STEVENS J

Solicitors/Counsel:

Crown Solicitor, PO Box 803, Dunedin 9054

J Haigh QC, PO Box 1614, Shortland Street, Auckland 1140

G King, PO Box 24086, Manners Street, Wellington 6142

A Killeen, Serious Fraud Office, PO Box 7124, Wellesley Street, Auckland 1141

B Boyd, PO Box 37139, Parnell, Auckland 1151

[1] Mr Swann and Mr Harford, you have each been found guilty by jury of three representative charges of fraud under the Crimes Act 1961. I am not going to outline the details of the charges now. But details of the charges involving 198 individual invoices will be included in a schedule to my remarks.

[2] For the purposes of your sentencing today, I have been assisted by the following materials: written and oral submissions from Mr Bates for the Crown; written and oral submissions from both Mr Haigh QC and Mr King; pre-sentence and reparation reports in respect of each of you; a personal letter from Mr Harford; eight references or testimonials in support of you, Mr Harford; fifteen references or letters of support for you, Mr Swann. In addition I received a statement from your partner and four letters which were submitted by counsel today, all of which I have carefully read.

Factual background

[3] Mr Swann, you were in charge of the IT department for Healthcare Otago and its replacement Otago District Health Board (ODHB). Together with Mr Harford you arranged for a company, Sonnford Solutions, to be incorporated. You then drafted the text of invoices for services, products and support, before forwarding these drafts to Mr Harford. Mr Harford, you prepared the actual invoices on behalf of Sonnford Solutions Ltd (Sonnford) and directed them back to Mr Swann at ODHB. Payment was then made to Sonnford through the accounts department. These invoices charged the ODHB for unnecessary software licences, firmware and other items and services, most of which were available free of charge on the internet. Many of the charges were for goods and services that were not actually provided. This arrangement continued from around August 2000 until August 2006. Over that period a total of 198 fraudulent invoices were submitted and paid, totalling in excess of \$16.9 million.

[4] Mr Harford, you retained ten percent of this amount and forwarded the balance to Mr Swann via companies or trusts that he controlled, primarily Computer South Ltd. You obtained a financial benefit of around \$1.7 million. After paying

GST and tax, the remainder of this amount was available to you for lifestyle and personal expenditure.

[5] Mr Swann, you received 90 percent of the total funds obtained. You did not pay tax on this income. You used the funds to purchase boats, cars and properties and to support other lavish lifestyle expenditure.

[6] As the Chief Information Officer at the ODHB, you were able to manipulate hospital systems and personnel working in the finance department to deflect any inquiries that arose in relation to these arrangements. In particular, when the possibility of discovery came close, you took steps to ensure that any inquiries were rapidly closed down. When you were advised that no invoices or costs associated with the holding of licenses or the provision of firmware or other products could be found, you indicated that the invoices related to a “risk mitigation arrangement” rather than to the provision of goods or services. This was despite the fact that both the invoices and the purported contracts between Sonnford and the ODHB referred to licensing arrangements. This was a patently false explanation that you put forward at your trial and which the jury rightly rejected.

[7] The case against you, Mr Harford, was based first on the fact that you completed and dispatched each of the invoices concerned and were therefore fully aware that they were false. Secondly, you assisted by forming Sonnford specifically to act as a buffer between the ODHB and the structures controlled by Mr Swann. Without your involvement this fraud would not have made it off the ground.

[8] The case against you, Mr Swann, was based on the fact that you knew the invoices were false. You created them. Because you were the person on site inside the hospital, you knew that the work you were charging for was not being done and the services were not being provided. Further, you did not disclose the conflict of interest that so clearly arose due to your involvement in this scheme over the course of your employment with the ODHB. I note that IBM could have provided the services which Sonnford purported to charge for approximately one quarter of the price.

[9] This was fraud on a grand scale. It affected not only the ODHB as your employer Mr Swann, but also indirectly the patients of the Board and the wider Otago community. In your case it is hard to think of a more serious and cynical breach of trust of your employer. It is likely that this is one of the largest frauds, if not the largest, in New Zealand history, and it arises in an area of public health where financial resources are particularly scarce.

Personal circumstances and pre-sentence reports

Michael Swann

[10] Mr Swann, you are aged 47 years. Prior to your remand, you resided with your wife and four children in Dunedin. Your family remains supportive of you. Your parents, father-in-law and a group of friends and associates also remain supportive of you. This is demonstrated by the contents of the various references and testimonials which have been offered in support. Many of these speak of your high intelligence, your extensive knowledge in IT and engineering matters and the generous support that you have provided to others over a long period of time.

[11] Your previous employment was in the computer industry and in marine engineering and electronics. You secured the position of Chief Information Officer with the ODHB in 1998. Prior to this, you were self-employed, undertaking contract work within the marine industry in relation to computer design and systems support. You plan further involvement in that industry following your release from an inevitable period of imprisonment.

[12] You advised that money from your self-employment was to pay household expenditure of around \$400 per month. You say that you and your wife have credit card debts amounting to \$8,000 and you report as having no specific personal assets. All family property is in your wife's name. You have no outstanding fines or reparation. You are healthy and record that your fitness has improved in recent times. Assessment tools indicate no harmful pattern of alcohol or drug use or involvement in gambling.

[13] The probation officer records that you have limited insight into your offending. You provided reasons to the probation officer for your not guilty pleas and denied any intent to commit fraud. However, in more recent times, after the preparation of that report and through your counsel you have expressed a degree of remorse. I will take that into account in determining your sentence.

[14] There was an indication in the probation report that your father-in-law and a former colleague said that you faced trial by media and that you were a victim of civil harassment. Mr Swann, nothing could be further from the truth. The cause of your predicament is undoubtedly your sustained and blatant dishonest behaviour and your astonishing greed.

[15] Finally, in an affidavit in support of an application to adjourn your sentencing today, you acknowledged that what you had done was wrong. You said that you were now seeking to “put right the damage done by your offending” and to take full responsibility for your actions. Your counsel repeated that stance in Court today.

[16] You accept that reparation is being sought, but reiterated that you have no personal property, monies or assets. You claim that all property tainted by these frauds has been seized and will be returned to the ODHB in some form through the civil proceedings. I note that you have offered no further means of making amends other than the offer of amends which has been described by your counsel, and which I will take into account.

[17] The probation officer recommends a sentence of imprisonment and does not identify any particular rehabilitative needs.

Kerry Harford

[18] Mr Harford, you are 48 years of age, of Ngati Porou descent. Prior to your remand, you lived in Queenstown with your wife and two children. You are a committed father and you were a self-employed partner with a surveying company before you sold your share in the business.

[19] You have expressed a desire to complete your Masters degree in surveying and plan to study further whilst in prison. Your wife and family are dismayed about your predicament and your wife has commented that you are a caring person and an excellent father. You are in good physical and mental shape and continue to be active.

[20] Again, the probation officer records that you have shown little insight into your offending. At the time the probation report was being prepared, you claimed that you were ignorant of the fact that these business dealings were fraudulent. Now, I appreciate since that time you have come to appreciate what you did was wrong, was dishonest, and you have in various ways expressed remorse. You have also agreed, and this was done some time ago, to extensive reparation to the best of your financial ability. I am able to take that into account in sentencing.

[21] In your personal letter to the Court you recorded:

With the benefit of hindsight I can see that it was not just the ODHB that were victims, but also the wider Otago community and the New Zealand public in general.

...

If I had asked more questions, as any prudent business person would have been expected to ask, then the offending would not have occurred. Not asking questions will live with me for the rest of my life.

Victim impact report

[22] Mr Rousseau, the Chief Executive Officer of the ODHB, has provided a detailed reparation and victim impact statement. This outlines the emotional, reputational and financial harm that resulted from this offending. It impacted on both the institution and numerous individuals within it. I am satisfied that these are relevant considerations for the Court to consider during sentence.

[23] The victim impact statement refers to significant emotional harm inflicted on many individuals who have been involved in the governance, management and employment at the ODHB. The offending has created significant ongoing problems for those concerned.

[24] The report refers to the profound breach of trust by Mr Swann, which I have already referred to. The report noted that you, Mr Swann, were a member of the Executive Management Team at the ODHB and as such had significant power, control and influence, as well as responsibility in your role.

[25] The report refers to damage to the reputation of many administrators at the hospital. It also refers to the financial damage and overall cost to ODHB, which is estimated at well in excess of the \$16.9 million figure that I have already referred to. The report details various ways in which the executives and staff at ODHB have been diverted trying to cope with the aftermath of these frauds.

[26] Mr Rousseau also referred to other impacts of the offending. He said that it would continue to be felt by ODHB and the people of Otago long after your prison sentence commences. That was the passage that was referred to by Mr Bates in his submissions which I will not repeat.

[27] Having carefully considered the various effects of the offending, as described in the victim impact statement, some of which I accept are devastating, I consider that it would be wrong to underestimate the erosion in confidence in the health system which your frauds have caused. This is by no means a victimless crime and you will recall Mr Swann that Mr Haigh, on your behalf, accepted that.

Reparation report

[28] In terms of the reparation report, which I have specifically called for in each case, it really summarises the position to which I have already referred and will need to be commented on later.

[29] In your case, Mr Harford, the reparation report refers to the settlement which has been made and which was referred to by your counsel. It also mentions your commitment to provide co-operation and support in relation to the ongoing civil proceedings.

Prior convictions

[30] In terms of prior convictions, Mr Swann, you have appeared in the District Court on four occasions in relation to six previous convictions, one involving dishonesty by inaccurate recording of a hub odometer. But, for the purposes of your sentencing, I regard you as having a reasonably clear record.

[31] Mr Harford you have no prior convictions whatsoever.

Submissions

Mr Swann

[32] In terms of the submissions of counsel, I do not propose to repeat in any detail the submissions for the Crown. Various aggravating features were referred to and in particular the fact that many of the funds obtained were used for lifestyle enhancement. In the case of you, Mr Swann, counsel for the Crown sought a minimum period of imprisonment, which I will deal with later.

[33] In terms of an appropriate sentence, Crown counsel referred to the fact that there are three charges of a representative nature carrying a maximum term of seven years' imprisonment. Mr Bates noted that the potential maximum sentence was 21 years' imprisonment, but he accepted that any length of sentence that I impose today must be based on the totality principle. That is the matter that I discussed with your counsel.

[34] In your case, Mr Swann, the Crown submitted that an appropriate end sentence would be ten years' imprisonment. Your counsel, Mr Haigh, acknowledged that a term of imprisonment was inevitable. He urged the Court not to double count aggravating factors, which I can assure you I will not do. Your counsel commented upon certain aggravating features, but noted that in reality they were really features of the dishonesty that occurred in this case.

[35] Mr Haigh referred to the references and testimonials. He dealt fully with the question of reparation and emphasised the fact that an offer of amends had been made. Your counsel rejected any intimidation allegation, but I must say that having heard the evidence there were examples of what could fairly be interpreted as arrogant and aggressive conduct towards your fellow staff at the ODHB at the time when they were coming close to discovering your dishonesty.

[36] Counsel emphasised the deep regret and remorse that you have finally brought to bear in this case. He acknowledged the impact of your offending as outlined in Mr Rousseau's report and in Court today he apologised on your behalf to the community at large for your actions.

[37] Mr Haigh did not shrink from the fact that this was very serious offending. Indeed, there is no established benchmark for this type of offending. I have to assess an appropriate penalty based on all the relevant circumstances. Mr Haigh helpfully referred to some cases and I have taken these into account. He submitted that, when dealing with the issue of a minimum period of imprisonment under s 86 of the Sentencing Act, I must have specific regard to the statutory features which are to be taken into account. Again, Mr Haigh urged me to be cautious about double counting.

[38] I emphasise that is but a summary of extensive and careful submissions that have been made both in the written materials and in Court today by your counsel.

Mr Harford

[39] Mr Harford, in your case the Crown seeks an end sentence of five years' imprisonment. A reparation order is not sought on various grounds, which have been discussed. When I deal with that I will give my reasons as to why I do not propose to make a reparation order in your case.

[40] Your counsel, Mr King, referred to the reparation that you have made as set out in the Deed of Settlement. He emphasised that this was not a last minute gesture,

but it was a genuine and significant one indicating your approach to reparation and remorse.

[41] Counsel referred to the fact that you believed that this was a legitimate business arrangement and that you were in a sense encouraged by your friend Mr Swann to embark on this dishonest course of conduct. Mr King submitted that there was a proper basis to justify a marked disparity between the sentence imposed on you and that imposed on Mr Swann. A number of distinctions were drawn, for example, that you were not an employee of ODHB and therefore there was no immediate breach of trust or abuse of position. Mr King emphasised that you did not design or initiate the scheme and it was not your knowledge of computer systems and ODHB requirements that enabled this fraud to flourish.

[42] Mr King emphasised that there were a number of other significant differentiations including that you received ten percent of the proceeds, as opposed to Mr Swann's 90 percent. He also emphasised that you had paid GST and income tax, both corporate and personal, in excess of \$700,000 so that the loss in respect of the funds obtained by the fraud was around \$1 million. In relation to that amount you have, through the settlement of the civil proceedings, paid back approximately one-quarter.

[43] Finally, Mr King emphasised your past good character, your lack of previous convictions and the testimonials and references that have been submitted on your behalf. He also submitted that no minimum period of imprisonment needed to be imposed in your case, given the differentiation between your situation and that of Mr Swann.

Purposes and principles of sentencing

[44] The Sentencing Act requires that I keep in mind a number of purposes and principles when deciding on an appropriate sentence. I must have regard, in terms of the purposes, to the need to hold you accountable for the harm done to the victims of the offending, the need to promote a sense of responsibility for, and acknowledgement of, that harm. There is the need to provide for the interests of the

victims of the offending, to denounce your conduct and to deter you and others like you from committing the same or similar offences. I am also to take into account the need to assist in your respective rehabilitation and reintegration into society.

[45] In terms of principles, I must take into account the gravity of the offending including the degree of culpability. I must have regard for the seriousness of the type of offence in comparison with other types of offending, as indicated by the maximum penalty prescribed. There is the need to consider the general desirability of consistency with appropriate sentencing levels. I must consider the victim impact statement provided to the Court and then I need to impose the least restrictive outcome that is appropriate to the circumstances of each of you. I am also required to take into account your personal circumstances.

Features of the offending

[46] In terms of the aggravating features of the offending, first of all the total amount of funds obtained was in excess of \$16.9 million. There was a significant degree of planning and premeditation involved in this offending. I accept in your case, Mr Swann that there were significant breaches of trust and abuse of position. This offending extended over a period of six years.

[47] I also have regard for the repeated nature of the offending. These invoices covered a wide range of IT goods, programmes and services and became more and more creative as time went on. I take into account the efforts taken to avoid detection and the way in which you, Mr Swann, interacted aggressively with your fellow ODHB staff. I note that the funds obtained were used for supporting an extravagant lifestyle including the purchase of motor vehicles, boats and other luxury items. Finally, this is a case where public health funds were involved.

[48] In terms of mitigating factors concerning the offending, Mr Swann in your case there are none.

[49] Mr Harford, in terms of aggravating features I do not repeat what I have just outlined. However, I accept that there were differences in the roles played by each

of you that will be reflected in the ultimate sentence imposed. In a sense you were at one remove being involved in Sonnford, but it was an active and significant involvement which must be taken into account. So, many of the other features of the offending to which I have referred apply in your case as well.

[50] In terms of mitigating features in your case, I have noted that you did pay tax and GST. This may be taken into account as a mitigating factor. I have also noted the significant difference in that you received ten percent of the proceeds of the overall fraud. I treat that rather as the absence of an aggravating feature.

Features of the offender

Mr Swann

[51] Now I must consider the features of each of you as offenders. Mr Swann, no aggravating features relating to you apply.

[52] In terms of mitigating features, there is your relatively clear past record. Any previous convictions I put in the minor category. I do accept that you have taken some steps to advance reparation. You have made an offer which I will take into account. I also take into account the fact that recovery of approximately \$5 million is possible, although by no means assured. But the difficulty for me in relation to this point is that it will be dealt with in the civil proceedings, which are only part way through.

[53] In terms of the efforts that you have made with regard to reparation, your counsel Mr Boyd has taken certain steps on your behalf. But I note that in my decision relating to an earlier application I was concerned at the lack of progress which you personally appeared to have made after you were encouraged to deal with this matter at the end of the trial.

[54] I acknowledge your personal circumstances and the references that have been offered on your behalf. Those are the mitigating factors that I am able to take into

account, together with your belated expression of remorse. It is a pity that it has been so late coming.

Mr Harford

[55] Mr Harford, there are no aggravating features relating to you personally. The mitigating factors have been summarised by your counsel and I do not repeat them now. But I acknowledge that they will be taken into account when fixing an appropriate sentence and in terms of the differences between your offending and that of Mr Swann.

Sentencing approach and relevant case law

[56] There is no tariff case in this type of offending. I have considered a number of cases dealing with fraud and misappropriation and I will refer briefly to some of them: *R v Rose* [1990] 2 NZLR 552; *R v McKelvey* [1990] 2 NZLR 558; *R v Hancox* S 56/92 HC WN 14 August 1992, Eichebaum CJ; *R v Attfield* S 6/96 HC INV 26 April 1996, Tipping J; *R v Wallnutt* CA182/93 8 August 1993; and *R v Renshaw* (1992) 8 CRNZ 596.

[57] Cases referred to by your counsel include: *R v Faisandier* CA105/00 12 October 2000; *R v Haines* CA132/01 5 December 2001; *R v Gallagher* CA342/02 8 May 2002 and *R v Orchard* CA123/03 24 October 2003. Finally, two cases that I referred to counsel and which have been mentioned in submissions are *R v McKelvy* [2007] NZCA 340 and *R v Patterson* [2008] NZCA 75. None of those cases are in any way on all fours with this offending.

[58] In cases of this kind, I am required to determine the appropriate sentence on a totality basis. In *R v Xie* [2007] 2 NZLR 240 the Court of Appeal indicated that the guidelines relating to concurrent and cumulative sentences do not trump the principle that in cases of multiple offending the total sentence must reflect the totality and overall criminality of the offending and the offender. I have already noted that I have available a total term of imprisonment of 21 years. But that must be adjusted to reflect the totality of the culpability as I have discussed.

Analysis

[59] The Court of Appeal in *R v Taueki* [2005] 3 NZLR 372 set out the orthodox approach to sentencing. I will first set the starting point based on the features of the offending, and then adjust that starting point according to any mitigating and aggravating features relating to you as the offenders.

Mr Swann

[60] Mr Swann, as I have indicated, your offending is more serious than any of the cases referred to by counsel or the Crown or in my research. Your offending involved the aggravating features already referred to. In a case of sentencing for fraud, the Court is required to undertake a culpability assessment and factors relevant to such an assessment have been described by the Court of Appeal in *R v Varjan* CA97/03 26 June 2003 at [22]:

Culpability is to be assessed by reference to the circumstances and such factors as the nature of the offending, its magnitude and sophistication; the type, circumstances and number of the victims; the motivation for the offending; the amounts involved; the losses; the period over which the offending occurred; the seriousness of breaches of trust involved; and the impact on victims.

[61] Assessed against these factors Mr Swann, your offending is at the highest level on each measure.

[62] The three counts on which you are convicted are similar in kind and might normally have qualified for concurrent sentences. However, I consider that a final sentence within the maximum statutory penalty of seven years' imprisonment is not adequate to reflect the totality of your offending. I am satisfied that the totality principle requires that I adopt a cumulative approach in order to reflect the seriousness of your offending in its entirety. I adopt the approach in *Xie* and from the maximum penalty available to the Court, considered on a cumulative basis, I take a starting point of ten years and six months' imprisonment. This is consistent with such of the cases as are applicable to this type of offending and taking into account the various features of the offending assessed in totality.

[63] I take into account your relatively clear record, your remorse and attempts at reaching an agreement regarding reparation. For those I make an allowance of twelve months, so the final sentence will be a total, in your case Mr Swann, of nine years and six months imprisonment. I choose count 3 as the lead charge and I impose a sentence of seven years' imprisonment, which is the maximum. On the two remaining counts 1 and 2, I impose sentences of two years and six months' imprisonment. These sentences are to be served cumulatively with the lead charge, but concurrently with each other.

[64] I will discuss the question of a minimum term of imprisonment shortly, but the final sentence to reflect the totality of your offending is nine years and six months' imprisonment.

Mr Harford

[65] Mr Harford, the features of your offending have already been described above. Again, the three counts for which you were convicted are similar in kind and in your case I am satisfied that the imposition of concurrent sentences will be adequate to reflect the totality of your offending.

[66] I consider that a starting point of five years' imprisonment would be appropriate on the lead charge, count 3. This is consistent with comparisons to the various cases that I have already referred to and takes account of the features of your offending in its totality and the differences between your role and that of Mr Swann.

[67] I make an allowance for your remorse, for your clear record, for the reparation that you have in fact made and for co-operation with the investigation and civil proceedings, which you have offered. I note that you have made a significant reparation settlement. I make an allowance in your case of nine months' imprisonment.

[68] On the lead count, count 3, I impose a sentence of four years and three months' imprisonment. On counts 1 and 2, I impose a sentence of two years' imprisonment, but they will each be concurrent on the sentence for count 3. I do not

consider it necessary in your case to impose a minimum period of imprisonment. So the final sentence in your case will be a total of four years and three months' imprisonment.

Minimum period of imprisonment

[69] This applies to you Mr Swann. I am required by s 86 of the Sentencing Act to consider the imposition of a minimum period of imprisonment. I have had regard to the leading authorities in *R v Brown, Hayden* [2002] 3 NZLR 670 and note that a three step process is required. That case recommends the following approach to s 86 (at pp 678-9):

To sum up, when a minimum non-parole period is in issue the sentencing Judge is involved in a two-stage process. First, the nominal or maximum length of the sentence is fixed. That is done, as hitherto, by reference to all relevant sentencing considerations, largely now incorporated in the sentencing principles set out in ss 7, 8 and 9 of the Sentencing Act. Secondly as a separate exercise, the Judge must consider whether the offending itself is sufficiently serious so that for the offender to serve only the ordinary minimum period of one-third of the length of the sentence would not be enough to punish, deter and denounce the offending. If that is so the Judge may fix a minimum non-parole period at a level (not more than two-thirds of the nominal length of the sentence or ten years) which does sufficiently punish, deter and denounce the offending.

[70] Since the decision in *Brown*, the Court of Appeal has clarified that, although the section involves a two-stage process, the second stage requires the Court to address two separate issues: *R v Taueki* [2005] 3 NZLR 372. Thus, essentially, three questions must be addressed.

[71] The first is the finite sentence, which I have dealt with. The second step requires that I consider whether a one-third minimum period, as set out in s 84(1) of the Parole Act 2002, will satisfy the criteria listed in s 86(2)(a) to (d) of the Sentencing Act. The final step is to consider the length of the minimum term of imprisonment. That requires the Court to have regard to all relevant sentencing considerations as set out in ss 7, 8, and 9 of the Sentencing Act.

[72] Having determined the final sentence to be imposed on you Mr Swann, nine years and six months' imprisonment, the next step is to consider whether to impose a

minimum period of imprisonment and whether that is appropriate in all the circumstances.

[73] Given all the features of your offending and the various aggravating factors that apply to you, I do not consider that a period of imprisonment of one-third of the final sentence would be adequate to address the legislative purposes set out in s 86(2) of the Sentencing Act. There is a need to hold you accountable. In this case, bearing in mind the victims concerned, being the ODHB and the community at large, you have been responsible for the misappropriation of millions of dollars in public health funds. It is clear that the outcome of any attempts at reparation and the civil proceedings will still result in significant losses of public money. This requires a high degree of public accountability. I must also take into account the statutory purposes of denunciation and deterrence and determine whether they justify a minimum term of imprisonment.

[74] I am satisfied that a minimum period of one-third of the finite sentence of seven years cannot be considered sufficient to provide the appropriate level of accountability, denunciation and deterrence. In your case, given the nature of the maximum available penalty for count 3, that is seven years, when I am determining the minimum period of imprisonment I must have regard to the various factors in ss 7, 8 and 9 of the Sentencing Act. In particular, I have to take into account that any sentence needs to be the least restrictive possible. As your counsel said, I should take care that it is not crushing. I note that there is no jurisdiction to impose a minimum period of imprisonment in relation to a cumulative sentence in its totality: see *R v Clayton* [2008] NZCA 348.

[75] I am satisfied that the ends of justice would be met in this case by imposing a minimum period of imprisonment of four years and six months. I make the obvious point that this is just less than 50 percent of the final cumulative sentence which I have imposed.

Reparation

[76] In your case Mr Harford, no application was made for reparation. I make no such order. I am satisfied that you have done the best you can in that regard having settled the civil proceedings and I treat the settlement as being a special circumstance for the purposes of s 12 of the Sentencing Act. So with those reasons, I accept that it is appropriate not to impose a sentence of reparation on you.

[77] In your case, Mr Swann, slightly different considerations apply. I have taken into account the requirements of s 32 of the Sentencing Act. I also have regard to the fact that the civil proceedings are ongoing and have yet to be determined. Hopefully that will result in substantial reparation to ODHB, but I cannot predict the outcome of that at the moment. Therefore, I am left in a situation where I cannot at this stage make a reparation order. The law requires that if I make one, it must be made now. On the information available, and bearing in mind the matters referred to in my judgment on the adjournment at [14], [38] and [39], I simply cannot make an order for reparation. For those reasons, I accept that there are special circumstances and do not make an order for reparation.

[78] That concludes my sentencing. There will be no orders for reparation but the terms of imprisonment as outlined earlier in my notes will apply.

[79] You may stand down.

Stevens J

Schedule

Offences

Michael Andrew Swann

Charge	Counts	Section	Maximum penalty
<p>With intent to defraud used documents capable of being used to obtain a privilege, benefit, pecuniary advantage or valuable consideration, for the purpose of obtaining for himself or another a privilege, benefit , pecuniary advantage or valuable consideration:</p> <p>(1) Used 4 Harford Sonntag and Associates invoices addressed to Healthcare Otago in the sum of \$237,885.17</p> <p>(2) Used 75 Sonnford Solutions Limited invoices addressed to the ODHB or Healthcare Otago in the sum of \$5,056,931.94</p>	2	229A(b) Crimes Act 1961	Seven years' imprisonment
<p>With intent to obtain a pecuniary advantage or valuable consideration, dishonestly and without claim of right, used any document: namely 119 Sonnford Solutions Limited invoices addressed to Otago District Health Board in the sum of \$11,607,328.16.</p>	1	228(b) Crimes Act 1961	Seven years' imprisonment

Kerry Gray Harford

Charge	Counts	Section	Maximum penalty
<p>With intent to defraud used documents capable of being used to obtain a privilege, benefit, pecuniary advantage or valuable consideration, for the purpose of obtaining for himself or another a privilege, benefit , pecuniary advantage or valuable consideration:</p> <p>(1) Used 4 Harford Sonntag and Associates invoices addressed to Healthcare Otago in the sum of \$237,885.17</p> <p>(2) Used 75 Sonnford Solutions Limited invoices addressed to the ODHB or Healthcare Otago in the sum of \$5,056,931.94</p>	2	229A(b) Crimes Act 1961	Seven years' imprisonment
<p>With intent to obtain a pecuniary advantage or valuable consideration, dishonestly and without claim of right, used any document: namely 119 Sonnford Solutions Limited invoices addressed to Otago District Health Board in the sum of \$11,607,328.16.</p>	1	228(b) Crimes Act 1961	Seven years' imprisonment