

**IN THE DISTRICT COURT
AT WHANGANUI**

**I TE KŌTI-Ā-ROHE
KI WHANGANUI**

**CRI-2024-004-005204
[2025] NZDC 23536**

THE KING

v

MURRAY ROBERT FREDERICK MCCLUNE

Hearing: 3 October 2025

Appearances: S McMullan and A Gormack for the Crown
D Reed for the Defendant

Judgment: 3 October 2025

NOTES OF JUDGE J P GEOGHEGAN ON SENTENCING

[1] Mr McClune, you appear for sentencing on two charges of theft by a person in a special relationship.

[2] The summary of facts tells me that you had worked in the insurance industry since the late 1960s, and you were registered at the time of your offending on the Financial Service Providers register as an insurance broker. You were registered also as a financial advisor.

[3] You offered your services primarily through a business you operated known as Insurance Plus. You were a very experienced insurance broker and financial advisor with some 50 plus years in the insurance industry, and over that time, not surprisingly, you established a book of insurance clients, some of whom considered you to be a

friend and who had been directing their business to you for decades. In addition to providing advice on insurance you offered some of your clients' investment opportunities.

[4] Between May 2016 and June 2018, you received a total sum of \$1,446,229.72 from one of the victims of your offending, Mr and Mrs Bamford, and the sum of \$271,881.85 from the second victims, Mr and Mrs Hackett. The total sum received by both sets of victims amounted to \$1,718,111.57.

[5] You spent those funds on various personal and business expenses. You issued statements to the Bamfords and the Hacketts which were designed to give the impression that their funds remained invested and to conceal your unauthorised dealings.

[6] Before Mr and Mrs Bamford initiated recovery action against you, they were owed \$727,368.99 and they were able, through their own efforts, to recover that sum. They are, however, still owed \$123,699.61 which is interest that would otherwise have been paid on the principal that they invested. So, that involved a considerable loss to them.

[7] The summary of facts tells me more about the particulars of the Bamford's investments with you. For example, in May 2016 they had sold their Auckland home and they wanted to purchase a new home in Papamoa. They transferred approximately \$1.3 million to you.

[8] The summary of facts sets out the misappropriation of their funds which involved you purchasing a home in the name of you and your wife four days after their first investment, and payment of various of sums to other individuals, for example builders, cash withdrawals and bank cheques of \$74,500, food and entertainment totalling \$11,612.85, and payment for travel and overseas expenses of \$7,165.18.

[9] What is clear, is that none of the payments of that kind were invested for the Bamford's benefit and accordingly, they were not made in accordance with the requirements that you owed and were your obligations.

[10] The summary of facts also outlines further steps taken by the Bamfords in terms of recovery of those sums. In February 2017, they asked you for \$10,000 to be repaid but that was never paid to them. Instead, you became evasive, and you made up a range of excuses as to why you could not pay the funds.

[11] Following correspondence from their lawyer in August 2017, you provided a statement of account document which purported to show the status of their investment. That was false.

[12] Eventually, Mr and Mrs Bamford were required to engage the assistance of a private investigator to recover their money. He interviewed you in March 2018, and following those discussions you signed a loan agreement acknowledging that Mr and Mrs Bamford were owed the principal sum of just over \$700,000. A sum of \$80,000 was paid.

[13] Mr and Mrs Bamford ultimately recovered what was owing after a lengthy debt recovery process at their expense, and that resulted in the bankruptcy of you and your wife.

[14] What cannot easily be put into words however, Mr McClune, is the stress and the distress suffered by Mr and Mrs Bamford in having to pursue you for what was rightly theirs all along.

[15] Mr and Mrs Hackett knew you for around 40 years. Mr Hackett was part of the Landscape Guild, and you were the insurance broker for the Landscape Guild. Mr and Mrs Hackett sold their house in June 2017 and decided to build a new property from the proceeds of sale. They purchased a section in Tauranga and the new build was underway by October 2017.

[16] They asked you how best to invest their remaining funds, aware that you were a financial advisor and accordingly in reliance on arrangements made with you, Mr and Mrs Hackett invested a total of \$271,881.55 with you. You made repayments to them from time to time and between January 2018 and December 2021 you repaid \$135,101.94.

[17] The summary of facts outlines how you misappropriated their funds and payments were made to various individuals including a payment of over \$50,000 to lawyers, who I assume were acting for you.

[18] The summary tells me that from 2019, issues began to arise and you then began to engage in a variety of excuses as to why you could not make payments. Around May 2018, you provided a statement of account document which purported to set out the status of the Hackett's investment. Needless to say, that was false.

[19] The Hacketts are still owed \$123,699.61 of the principal that they advanced.

[20] Of relevance also is the fact that you have recently completed, I understand, a sentence of two years and two months' imprisonment imposed on 17 April 2023, for misappropriating investor funds between 2009 and 2010, and you will have heard me discussing that with counsel this morning.

[21] The investor was a widow who was a good family friend of yours who you had known for over 40 years. The total amount you took from her was \$203,500 and you used those funds for your own personal use, your wife's use, and you gave parts of it to business associates. I understand that while reparation was ordered, that is still outstanding.

[22] I mention that because that is something which needs to be taken into account in terms of your overall sentence today.

[23] Present at this sentencing by way of audio-visual link is Mr Hackett and his daughter, Anna, and I want to acknowledge their presence. Mrs Hackett died earlier this year, and I want to acknowledge that to both of them.

[24] The victim impact statements are brief but telling. Mr Hackett's victim impact statement records that after years of struggle and health problems, for the first time in their lives he and his wife had money to spare, and they entrusted that money to you, who they regarded as a close friend and financial advisor of over 40 years.

[25] Mr Hackett expresses the understandable view that his wife's recent death was partly caused by the stress that was created by your offending. He has also said that you denied the chance for her and Mr Hackett to visit their son and grandchildren overseas and to enjoy a happy retirement, and that one of the enduring effects of your offending is that Mr Hackett is now unable to trust anyone in the financial advisory field.

[26] Ms Walkley, who is Mr Hackett's daughter, has also commented on the effects of your offending and referred to the fact that her parents had been living with her and her family since you robbed them of their retirement funds. She refers to the fact that Mr and Mrs Hackett have been through so much in life and worked so hard, and that it has been heartbreaking for her to watch them suffer again, and that distress is evident today.

[27] She referred to the fact that she and her husband had to pay their parent's bills so that they did not have to reverse mortgage their house. She describes you taking away their future and that her heart has been broken watching them suffer.

[28] I do not think I can put the effect of the offending down, or record it, or refer to it, more plainly than that. Mr McClune, the victim impact statements speak very powerfully to the devastating effect of offending of this nature, particularly upon victims who's only error was to trust someone who callously betrayed that trust.

[29] It has resulted, in the case of Mr and Mrs Hackett of being unable to enjoy the fruits of their life's labour, and instead become dependent on others. So, to that extent, they are not the only victims of your offending.

[30] I have referred to the fact that you have one previous conviction for obtaining by deception and I have referred to the nature of that.

[31] I have received as part of the documents in preparation for sentencing a pre-sentence report which tells me that you report as to having few family or social supports outside prison, saying that the Financial Markets Authority had done a good

job on destroying your career, your friendship, and your contacts, and as a result you see no point in returning to Auckland upon your release.

[32] Your marriage of 50 years ended as a result of your sentencing, but you remain on good terms with your former wife. You have described your children as being a bit distant from you, saying that while your son had always been that way, your daughter had distanced herself from you since your offending. In many respects, that is unsurprising.

[33] You were declared bankrupt in 2023, and you have no assets or income. You referred to the fact that the complainants took everything when you spoke to the pre-sentence report writer.

[34] The report refers to the fact that your targets appear to be those with significant financial assets and relationships are cultivated over a number of years before approaching them to invest with you. You described your offending as doing personal favours as a friend.

[35] In terms of attitudes, the report refers to you displaying significant cognitive distortions around your offending. In particular, you were adamant that you would be able to repay all your victims when you obtained funds owed to you by a business partner. What is clear is that there is no prospect of repayment of these funds.

[36] You expressed a degree of animus towards the Financial Markets Authority, saying their interviews with clients and interrogation of your then wife led them to form a poor opinion of you. They were simply, Mr McClune, doing their job.

[37] The report writer referred to the fact that it was of particular concern that you expressed an interest in potentially borrowing money from friends to repay the money that you owed, and I know that you dispute that that is actually what you said to the pre-sentence report writer and I take that into account.

[38] Of concern also, is the fact that although you stated early in your pre-sentence in that you were determined to repair the damage you had done, you did not otherwise

demonstrate any meaningful signs of remorse, being more focused on your own sense of grievance against the Financial Markets Authority and a former business partner who you said owed money to you. So, it is not, Mr McClune, a complimentary report by any means.

[39] In terms of the purposes and principles of sentencing there is a need to hold you accountable for the harm to your victims. There is a need to denounce your conduct and deter you and others from offending in this way, and I take into account the other relevant principles and purposes of the Sentencing Act 2002.

[40] The Crown propose a starting point of between five- and six-years' imprisonment. Ms Reed submits that a starting point of four years should be applied. As identified by the Crown, fixing a starting point must be done by reference to the circumstances and such factors as the nature of the offending, it's magnitude and sophistication, the type, circumstances, and number of victims, the motivation for the offending, the amounts involved, the period over which the offending occurred, the seriousness of the breach of trust, and the impact on the victims.

[41] Here, the Crown point to a number of aggravating factors. Those are as follows:

- (a) The magnitude and duration of your offending. Here your offending is involved dealing with a total of approximately \$1.7 million over two years, being the money that was invested by the victims. The amounts that I have referred to are still outstanding. So, the magnitude of the offending is significant, as is the duration when one also takes into account your previous conviction which involved the same type of offending.
- (b) This offending was motivated by a personal gain. You spent the funds on various personal and business expenses. You engaged in expenditure which funded experiences which are now not able to be enjoyed by your victims. Greed is at the centre of your offending.

- (c) The seriousness of the breaches of trust. That goes without saying. You were an established and trusted financial advisor who took advantage of people's trust in you. The breach of trust in this case is extremely serious.
- (d) The impact on the victims. I have already referred to that and no more needs to be said about that other than the impact of your offending has been devastating on Mr and Mrs Hackett, and I can assume I think safely on Mr and Mrs Bamford.

[42] No dispute can be taken with those factors, and I do not understand Ms Reed on your behalf, to do so.

[43] In Ms Reed's submission she submitted that a distinction should be drawn between the fact that the victims were approached because they were known to you as opposed to the fact that they were targeted because they were elderly. I think frankly that that distinction is too fine a distinction to draw. You capitalised on both friendship and age in respect of the victims.

[44] As to the breach of trust, Ms Reed submits that all parties were aware that the contractual relationship was formed in a personal capacity. That does not, in my assessment, reduce the seriousness of the breach of trust. The same duties were owed to the victims as any other person who sought your advice. As I have said, the breach of trust was undoubtedly in this case very serious.

[45] Counsel for the Crown have referred to the sentencing judgments in *Mount v R*, *Esau v R*, and *McGregor v R* as comparator cases¹.

[46] *McGregor v R* involved the theft of \$472,000 from 12 victims in Ms McGregor's capacity as the manager of estates trust and personal affairs of clients with perpetual trust. The offending spanned five and a half years, and the victims were fully indemnified by the defendant's employer, but a starting point of five years was adopted in that case and upheld on appeal.

¹ *Mount v R* [2015] NZCA 489; *Esau v R* [2014] NZHC 887; *McGregor v R* [2015] NZCA 565.

[47] Mr Mount was a financial investor. He stole \$510,000 from clients. A starting point of six years was upheld on appeal. The offending in that case took place over 10 years.

[48] Ms Reed has referred to the Court of Appeal decision in *Zhang v R* which involved charges of theft by a person in a special relationship in circumstances where the victims were induced to contribute \$6 million to a fraudulent scheme². The circumstances of that case, however, were extremely unusual and because of the nature of the fraudulent activity the financial position of the victims was even improved at the end of it, so they suffered no loss. In any event, a starting point of six years was considered by the Court of Appeal as to be easily within range.

[49] Ms Reed also referred to *R v Scott* which involved a starting point of seven years adopted for theft in a special relationship involving approximately five and a half million dollars and a loss to the victims of just over \$2 million³. A similar starting point was adopted in *Arnott v R*⁴.

[50] Now, reference has also been made by Ms Reed understandably to your earlier conviction, and I will come to that shortly.

[51] Your current offending took place in roughly the same time period. The offending involves a significant sum and there is still a significant sum outstanding as I have earlier outlined. I regard this offending as significantly more serious than the earlier offending in respect of which you were imprisoned.

[52] Ms Reed has referred to the need to observe the principle of totality, and what that means, Mr McClune, is that it is important that the Court does not impose a sentence which is out of all proportion to the gravity of the offending. It must be proportionate. In that sense I think the Crown acknowledges, responsibly, that I have to take account of the fact that you have already been sentenced in respect of earlier offending which is broadly related to this.

² *Zhang v R* [2022] NZCA 267

³ *R v Scott* [2018] NZCA 522

⁴ *Arnott v R* [2015] NZCA 236

[53] While I acknowledge that, taking into account the authorities and the submissions of counsel, I adopt a starting point of five years' imprisonment but reduce that by six months to reflect totality given your previous conviction. I accept Ms Reed's submissions that adopting that starting point more accurately reflects your overall offending, although of course it is a higher starting point than she had submitted was appropriate.

[54] So, the starting point is four years and six months' imprisonment. As to your guilty plea, I agree that an allowance of 15 per cent is appropriate. As you will have heard me remark to counsel, I am not prepared to make any allowance for remorse as I do not believe you are remorseful. Feeling sorry for yourself is not the same as genuine remorse.

[55] I am prepared to provide a small allowance for your age. You are 76 years old, but I note that you already received an allowance of 10 per cent at your previous sentencing and I factor that into account. The allowance I am prepared to give is one of five per cent.

[56] I am not prepared to make any allowance for your willingness to participate in restorative justice. If I was satisfied that you displayed genuine remorse that would be different.

[57] That results in an end sentence of three years seven months and one week, the total allowances coming to 10 months and three weeks, which I round down to three years and seven months.

[58] Before I formally impose that sentence, I turn to the issues of reparation and a banning order sought by the Crown.

[59] I am not prepared to make an order for reparation, and in making that remark I record that I have had the ability to speak to Mr Hackett, who acknowledges that reparation is not feasibly possible and acknowledges the reasons as to why I would not make an order. In this case there is no realistic prospect of an order being met.

The victims of your offending, Mr McClune, have been provided with false hope previously and I do not wish to add to that.

[60] As to the banning order, a permanent order is sought pursuant to s 518 of the Financial Markets Conduct Act 2013. That is not opposed by you, which is unsurprising given your age.

[61] As indicated to counsel, having considered the submissions of the Crown and particularly the seriousness of the offending, your previous conviction, your limited insight into your offending, and the lack of remorse, I consider that a permanent order is necessary. Accordingly, I make the following order:

[62] You are banned from being a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of an entity other than an overseas company or other entity that does not carry on business in New Zealand, and providing financial advice, services, or client money or property services, or contributing as employee or agent to the provision of those services. That ban is a permanent ban and is pursuant to s 518 of the Financial Markets Conduct Act 2013.

[63] Mr McClune, if you could stand. On each charge of theft by a person in a special relationship you are sentenced to three years and seven months' imprisonment.

Judge JP Geoghegan
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 17/11/2025