

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2018-090-004688
[2020] NZDC 14129**

THE QUEEN

v

XUE CHEN (AKA FRANK)

Hearing: 21 July 2020
Appearances: J Barry for the Crown
A Pilditch for the Defendant
Judgment: 21 July 2020

NOTES OF JUDGE C J FIELD ON SENTENCING

[1] Mr Chen, you appear for sentence today having pleaded guilty to a representative charge of obtaining by deception. Initially there were four such charges, but these have been amalgamated into one but, of course, it does not reduce the gravity of the matter in any way other than in a cosmetic way, as counsel has pointed out.

[2] The summary of facts is a lengthy one and I am not going to read it out now. The media will have access to it. But, essentially, between 3 September 2015 and 20 October 2017, you were party to your company, Gold Chick, obtaining a pecuniary advantage by falsely packaging caged eggs into free range example packaging and supplying those falsely packaged eggs to retailers and distributors. You were responsible for packaging approximately 3,113,000 cages eggs into free range egg packaging resulting in a pecuniary advantage of approximately \$323,000.

[3] Now, it is a matter of conjecture perhaps as to whether the figure is plus or minus but that is the figure which I adopt for the purposes of sentencing today. It is a substantial figure and obviously the Court's starting point must be a consideration of imprisonment. The only issue is the length of that sentence, the ultimate length of the sentence having regard to aggravating and mitigating features of the offending, and these aggravating features have been emphasised by the Crown in its sentencing submissions.

[4] Deterrence obviously is a principal consideration in a case such as this, deterrence of not only you but others who might be minded to undertake a similar procedure. It is after all an easy matter to package eggs in a misleading way and there needs to be corresponding deterrence of that and, as the Crown points out, it can create the potential to discredit an entire industry and the minds of consumers when they cannot be sure that what they believe they are buying is in fact the product.

[5] The fraud was significant, as I have said. It involved a considerable number of eggs over a period of about 25 months. The deception required a supply agreement with a caged egg supplier and the fraud having extended over a significant period of time. No doubt significant steps were taken to avoid detection. So, whilst the mechanism was unsophisticated, the steps to conceal it were reasonably sophisticated and premeditated.

[6] Crown points out that the victims in this case fall into three categories. The direct victims of the offending, that is the wholesalers and retailers who purchased the caged eggs. The second category of victims are the members of the public who purchased the eggs as being free range eggs and there can be many reasons for that. There may be dietary issues, there may be philosophical or moral issues for people concerned and it is of no comfort to them to know that what they were buying was not in fact what was advertised. And, of course, there is the complexity of the employees who were involved in this as well.

[7] The motivation seems to have been purely financial and it is said the Crown is not aware of any mitigating features of the offending and certainly there are none in my view. Now, the Court has to have regard to the need for some consistency in

sentencing. There are a number of cases which have been submitted to me. One, I think, adopted a very similar case, adopted a starting point I think of four years' imprisonment. Others, who are broadly similar, have adopted lower starting points.

[8] In the course of my sentence indication I adopted a starting point having regard to all of the authorities submitted to me of some three years' imprisonment, and that indeed is the starting point that I adopt today. The issue now is whether on a principled basis and bearing in mind to impose the least restrictive outcome the Court can properly arrive at a sentence of imprisonment of two years or less. That would of course then leave the Court with the option of imposing, for example, home detention.

[9] I record that notwithstanding that the Crown still maintains that a sentence of imprisonment is the appropriate end result. Mr Chen does have a good record. He has not previously appeared on any major matter. I think a driving charge is the matter that is part of his record. So, whilst credit would normally be given for a previous good record and good character, that must be significantly tampered by the length of time over which this offending occurred. And whilst I think it deserves acknowledgement, it does not in my view merit a decrease in sentencing on that account.

[10] Matters that do weigh with me, however, in your favour are the fact that if sentenced to imprisonment, that would effectively mean the end of the business with resulting loss of employment to people who in the current climate can ill afford that. There is the hardship to your wife and young children who would be left with an insurmountable problem in their day-to-day lives, the business would need to be disposed of and they are not in themselves able to carry it on.

[11] Mr Pilditch has drawn to my attention the fact that you are no longer in the egg supply business. That is now gone by the board and your focus on the business is now supply of chicken meat to restaurants and wholesalers, so there can be no issue of you getting back into that form of business.

[12] I have come to the view that the Court can reach a sentence of two years on the following basis, starting point of 36 months, three years, deduction of 25 percent for

your plea coupled with an offer, and I understand this is in train, to pay \$50,000 to the SPCA. That in itself would justify a further reduction of eight or nine or 10 percent perhaps over and above the 25 percent, so that a global reduction would be approximately one third.

[13] It is not possible, as Mr Pilditch pointed out, to identify a victim to whom this money, and I call it reparation, that there is no real statutory basis for it. But, nonetheless, I am sure that the SPCA would welcome a donation of \$50,000 and I think it is that, that persuades me that even though imprisonment could still be imposed it should not be imposed. I do not see you as being a continuing threat to the community because of course a sentence of home detention does not automatically follow a potential prison sentence of two years or less.

[14] I am satisfied here though that you are a man who I think the Court can be satisfied does not present a continuing threat to the community. You are able to respond to the conditions of home detention, which I am about to impose, and you would respond to leniency in that way. I conclude that the least restrictive outcome here is a sentence of home detention. You have reached the two year threshold which the Court requires for considering a sentence of this kind.

[15] Counsel has submitted that the Court might consider a sentence of community detention and community work. I believe that this offending is too serious to justify such a sentence and the least restrictive outcome appropriate in the circumstances is one of 12 months' home detention. That will involve:

- (a) You travelling directly to the [REDACTED] address after sentencing and await the arrival of the probation officer and a representative from the monitoring company.
- (b) You will reside at that address for the duration of the home detention sentence and not leave that address without the prior written approval of a probation officer.

- (c) Further, you will comply with the requirements of electronic monitoring as directed by your probation officer and you will notify your probation officer prior to starting, terminating or changing your position or place of employment and you will undertake employment only that has been approved by the probation officer.
- (d) You will attend an assessment for any counselling, course or programme if or as directed and if found suitable, to attend, participate in and adhere to the rules of the programme as directed by the probation officer and programme facilitator.

[16] I impose an additional sentence of six months' post detention conditions and they will simply be that you are to attend and complete any counselling, course or programme as directed by the probation officer.

[17] For completeness, I record that a donation of \$50,000 has been made to the SPCA.



C J Field
District Court Judge