PERMANENT NAME SUPPRESION FOR THE VICTIMS CONTINUES, AS PER PREVIOUS ORDER OF THIS COURT

IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

I TE KŌTI MATUA O AOTEAROA
AHURIRI ROHE

CRI-2018-020-003953
[2020] NZHC 1829

THE QUEEN

v

JOSEPH AUGA MATAMATA

Date: 27 July 2020

Counsel: C R Walker for Crown
R Philip for Defence

Sentencing: 27 July 2020

SENTENCING NOTES OF CULL J

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[1] Mr Matamata, while I read my sentencing notes to you, you may remain seated. I will ask you to stand again at the end when I formally sentence you.[1]

[1] These notes are the record of the oral delivery in court, with amendments made for clarity, grammatical error, repetition of phrases and oral corrections.

[2] You appear for sentence today having been found guilty by a jury of 10 charges of human trafficking[2] and 13 charges of dealing in slaves.[3] The maximum penalty for trafficking is 20 years' imprisonment and the maximum penalty for slavery is 14 years' imprisonment. Now I sentence you on the basis of my own assessment of the evidence given at trial.[4]

[3] In sentencing you, I shall explain:

(a) your offending;

(b) your personal circumstances;

(c) the sentencing goals and methodology;

(d) an appropriate starting point;

(e) any adjustments for personal aggravating or mitigating factors;

(f) whether to order a minimum period of imprisonment;

(g) reparation; and then

(h) your sentence.

The offending

[4] I start then with your offending. Counsel have traversed this both orally and in their written submissions and we have heard 5 weeks of evidence during the trial.

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2 Crimes Act 1961, s 98D(1)(a). Seven of the trafficking charges occurred from July 2003 and before 7 November 2015 and were laid in accordance with s 98D before the enactment of s 5 of the Crimes Amendment Act 2015 on 7 November 2015. The four trafficking charges referring to trafficking after 7 November 2015 (charges 17, 19, 21 and 23) contain the amended wording ("knowing that the entry involved deceiving" the complainant), in accordance with amended s 98D(1)(a).

3 Section 98(1)(b), which was enacted on 1 January 1962 and subsequently amended on 3 April 2001. Although two of the slavery charges allegedly occurred prior to the 2001 amendment, in both versions s 98(1)(b) contains the same wording ("employs or uses any person as a slave, or permits any person to be so employed or used").

4 Sentencing Act 2002, s 24.

[5] By way of an overview, from 1994, you brought Samoan nationals, some of them your relatives, others from your village, into New Zealand to illegally work for you in the horticultural industry. They were told that that they could earn significant income by Samoan standards, which they would be able to send back to their families in Samoa. Once in New Zealand, these Samoan nationals were exploited by you for your own, and that of your family's, financial gain.

[6] Prior to the victims' travel to New Zealand, you, either personally or through other connections, represented to the victims and in some cases, their families, the financial advantages of working for you in New Zealand. The victims were told they would live with you and your family, they would work for you, and that the rewards would be significant. They were told that the money they earned would come to you, and once they had paid off the cost of the visas and airfares, they would receive the net income earned by them after deduction of accommodation, food and petrol costs. They would then be able to send this money back to their families in Samoa. The level of detail provided to the victims varied, but the consistent theme conveyed by you was that they would have a better opportunity to provide for their families if they came to New Zealand to work for you. The jury found, Mr Matamata, that you deceived ten of those victims. You made these representations, either directly or indirectly through those you instructed, and that you knew they were false.

[7] You arranged and paid for their visas (apart from group 4) and for the victims' travel to New Zealand. The visas were three-month visitor visas only, which you knew did not allow them to work in New Zealand. Some of the victims were ignorant of this, and others were told that once in New Zealand, extended visas could be arranged. All of the victims were vulnerable individuals. They were poorly educated and had little access to income or assets. Most could not could speak English and some could not read.

[8] The victims arrived in Hastings throughout the course of the last two decades and began living with and working for you. They worked long hours at various locations six days a week, for some occasionally seven. The horticultural owners or contractors that they worked for, would make payment for their work directly to you, and the money was retained by you. Some victims were given small amounts of

money such as $10 or $20 a week. On one occasion, you sent approximately $1000 to a victim's family to help with funeral expenses. Two victims received money from you when they returned to Samoa: one received $850 for over 17 months' work, and the other received $1,700 for two and a half months' work.

[9] The jury accepted, as I directed, that a "slave" means a person held as property and "using a person as a slave" involves an intentional use of power over that person, as though that person was the property and under the control of the user. They accepted that you so used these victims and also accepted the Crown case, that you derived a financial benefit from that work. Aside from the failure to pay the victims for their labour, there were other important aspects to the relationship of slavery.

[10] The evidence revealed that there were various ways in which you controlled the victims. You took their passports on arrival and never returned them. You told the victims you needed the passports to extend their visas, but you never took any steps to try and legitimise their immigration status. This was another form of control over them.

[11] The victims lived on your property, which comprised two houses and two garages surrounded by a high wire fence. The front gate was secured by a padlock. The victims were instructed when they were not working they were to remain at the property. On occasions that padlock was unlocked but the victims gave evidence that they perceived they could not go beyond the property without your permission. At the property, they had to carry out various daily chores such as cooking and cleaning. They were told not to connect with other persons at the weekly church services they attended. They were instructed not to communicate with passers-by or other people that they came across. They were not allowed communicate with their families back in Samoa unless you permitted it, and in any event, did not have the means to do so. There were exceptions to these restrictions, and there are examples, but one is that one of the victims was allowed to play rugby, and two of the adopted victims had cell phones for local use but any exceptions were few and given only with your permission.

[12] If the victims did not comply with the restrictions set in place, or fulfil their household chores or horticultural work to an appropriate standard, you assaulted them

and created a climate of fear and intimidation. The victims' evidence on the assaults they received and the violence that they endured at your hands was compelling. It included assaults with objects and assaults to the head. Some of those assaults caused injuries and scarring. I am in no doubt that such violence occurred and I consider the Crown has proved those fact beyond a reasonable doubt.[5] This installed fear in the victims and ensured their compliance with your wishes.

[13] A number of the victims eventually absconded. Some of them were located by the police or immigration officers and deported soon after absconding, while others managed to remain in the country longer before being located and deported. On their return to Samoa, most of the victims were unwilling to talk about their experiences or the fact that they were not paid because of a cultural sense of shame about what had happened to them and their embarrassment. This sense of shame was reinforced by your respected matai status.

[14] You pleaded not guilty to the charges. You still deny any responsibility or culpability for the offences of which you are now convicted. The jury however, found that in respect of the 13 victims you are guilty of slavery, and in respect of 10 of those victims you are also guilty of human trafficking. It is clear that the jury was satisfied that you brought 10 victims into New Zealand by your false representations and used all the victims as slaves, controlling them and possessing them for your financial benefit.

[15] I am not going to repeat the detail at this hearing, of the ordeal each of the victims suffered at your hands, Mr Matamata. You have already heard excerpts from some of their victim impact statements. Instead, I propose to outline what generally happened to each of the four groups of victims. This is not to detract from the seriousness of the offending in relation to all of the victims involved but to add some detail and context to the above summary. Now in doing so I am making reference to certain victims but there is a suppression order in place and I would ask that that was respected and not communicated in the media.

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5 Sentencing Act, s 24(2)(c).

[16] The individuals fall into four categories. The first group comprised two victims, a brother and a sister aged 17 and 15 years, who came to New Zealand in 1994. There are no trafficking convictions in relation to them. It was not an offence at the time. You sponsored them to arrive in New Zealand. They lived with you at your property. The brother was put to work in the orchards. He worked long days, five days a week. He expected to be paid for his labour which he could then send home to his family. He was never paid and was ultimately deported in 2002. It is clear to me that the jury found there was a sufficient degree of control and restriction of his movements, coupled with the requirement to work, to find that he was kept as your property, that he was physically abused by you and was used as a slave. The same finding was made in respect of his sister. She was required to do the cooking and cleaning and childcare but was never paid. She understood she was to finish her education in New Zealand but that did not occur. She was fearful of you and was assaulted and sworn at. She escaped and you travelled to Auckland and brought her back to Hastings in a car, restraining her on the journey back. She escaped again and left New Zealand in 1995.

[17] The second and third groups involve similar facts. Group 2 involves five victims aged between 18 and 44 years who arrived in New Zealand in 2003. Group 3 involves three victims aged between 31 and 53 years who arrived in New Zealand in 2015 and 2016. In respect of all group 2 and 3 victims you are convicted of both trafficking and slavery. You organised their visas and plane tickets and if you did not do that directly you organised for that to be done. They lived at your property and you kept their passports on arrival. The victims were not allowed to speak to other people, to leave your property or to talk to people at church – except with your strict approval. They worked in the orchards as arranged by you. They were also required to complete concreting in and around your property in relation to group 2 in particular, and do other chores such as cooking and cleaning. You prevented the victims from communicating with their family in Samoa. None of them were paid for their work. You controlled them by your anger, threats of violence and actual violence. The victims feared you. Of the group 2 victims, four out of five were deported back to Samoa by 2005. Of the group 3 victims, two out of three were deported by 2017.

[18] Group 4 involves the final three victims, aged between 12 and 19 years. You adopted these victims, so no visas were required for them. You were able to exercise parental control over them. You told the victims' parents they would come to New Zealand for a better future – to work and send money home. This would assist their families. You knew they would not be paid for their labour. In relation to the slavery convictions, the same controls were in place for these three. You retained the victims' passport and bank cards. You restricted their movement and communication. They worked long hours in the orchards and then completed household chores. Again, you controlled them by actual or threatened violence.

[19] Victim impact statements have been provided by all 13 victims. A recurrent theme as you have heard is the deep sense of cultural shame and humiliation experienced by the victims on their return, and in some cases deportation, to Samoa. They came back with nothing to show for their time away and were criminalised by their illegal immigration status. This is coupled by a deep sense of sadness that they were not able to do more for their families financially. Some of the victims are hopeful for their future but many still feel a lot of guilt and pain for what occurred to them at your hands.

[20] This is particularly so for those that were deported because you did not follow immigration rules. They cannot return to New Zealand for work and many feel this stigma and history will limit their ability to work and improve their financial situation and that of their families, for the rest of their lives.

[21] I turn then to consider your personal circumstances.

Personal circumstances

[22] You are 65 years old. You are a Samoan national and a New Zealand resident. You live in Hastings with your wife and some of your children, and you work in the horticultural industry. Within the Samoan culture, you have matai, or chiefly, status.

[23] You have previously appeared before the courts, though you only have one conviction in the last 20 years. That offence occurred in 2012 and was a family violence incident. Your other previous convictions all occurred before 1999, for some

of which you received short prison sentences. The present offences of human trafficking and slavery represent a significant escalation in severity.

Sentencing goals and methodology

[24] Turning to sentencing goals and methodology, in sentencing the Court must have regard to the sentencing goals and principles identified in the Sentencing Act 2002.[6] In this context, the most significant objectives are the denunciation of your conduct, holding you accountable for your actions and deterring others from offending in this way.

[25] This Court, in the only other sentencing decision for people trafficking, stressed the need for denunciation and deterrence.[7] I refer to this case as the most comparable. As both parties recognised, deterrence is required for crimes of this type. In a recent English decision, the Court said that deterrent sentences are required to reinforce the message that the degradation of the worth of a fellow human being through exploitation is totally unacceptable.[8] The modern definition of slavery criminalises anyone who holds a person as property. Human trafficking and slavery are abhorrent crimes. They are crimes against human dignity and degrade the rights and autonomy of individual people and human life.[9]

[26] In New Zealand, the seriousness of the trafficking offending is indicated by the maximum penalty of 20 years' imprisonment, making it one of the most serious offences in our legislation. This is consistent with New Zealand's obligations as part of international efforts to combat this type of offending, the fulfilment of which is necessary to demonstrate that New Zealand is doing its part to eliminate exploitative behaviour, to protect New Zealand's international reputation and, most importantly, to reduce the potentially devastating impact of such offending on the lives of victims.[10]

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6 Sections 7 and 8.
7 *R v Ali* [2016] NZHC 3077 at [45].
8 *R v MC* [2019] EWCA Crim 1026 at [38], approving the sentencing judge's comments.
9 *R v Ali*, above n 7, at [43].
10 Sentencing Act, s 8(b). New Zealand is also a signatory to the *United Nations Convention Against Transnational Organised Crime and the Protocols Thereto* GA Res 55/25 (15 November 2000), which includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

[27] The sentencing approach as you have heard from both Counsel, is to take a starting point that reflects the culpability of your offending in light of the maximum penalties available for the offending. In this instance, trafficking is the most serious offence, having the higher maximum penalty. Both the Crown and defence agree, as you have heard, that the appropriate approach here is to identify an overall starting point to cover the totality of the offending, because of the interconnectedness of the trafficking and slavery offending. It is as the Crown described it to the jury, the two sides of the same coin. The trafficking offences capture the means by which you brought the victims to New Zealand for the purpose of exploiting them; the slavery offences capture the means by which you exploited them once here.

[28] Practically, whether I take trafficking as the lead offence and uplift for slavery, or whether I assess an overall starting point for both the trafficking and the slavery offences together, I consider will make little difference to the final outcome. What is appropriate is that the starting point should reflect both sets of offending. I also bear in mind that the total period of imprisonment must not be wholly out of proportion to the gravity of the overall offending and must also be proportionate.[11] I accordingly proceed on the basis on which the parties submitted.

[29] The Court must then consider whether there are any personal aggravating or mitigating factors for which uplifts or discounts should be made. Finally, I will consider whether a minimum period of imprisonment is appropriate.

Starting point

[30] Taking a global starting point reflecting both the trafficking and slavery offending, I again record that the maximum penalty for human trafficking is 20 years' and maximum for slavery is 14 years' imprisonment.

[31] There are three basic steps involved in setting a starting point:

(a) identifying and evaluating the aggravating and mitigating factors of the offending;

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[11] Section 85(2).

(b) placing the offending within the appropriate "band" if there is a tariff judgment for the relevant offence; and

(c) fixing an appropriate starting point by reference to other cases which are comparable by reason of involving similar aggravating and mitigating factors.

Aggravating and mitigating factors

[32] Section 9 of the Sentencing Act provides a non-exhaustive list of the aggravating and mitigating factors.

[33] In my view, the relevant aggravating factors to the global offending are:

(a) *The extent of the harm resulting from the offending.*[12] I have already referred to the victim impact statements and you have heard portions of them being read. Both the emotional harm of being victimised for, in some cases, many years, and the consequential financial harm here is serious. A common theme as I have said is the deep sense of shame and humiliation experienced by the victims on their return, and in some cases deportation, to Samoa with nothing to show for their time away. This is coupled by a sense of sadness that they were not able to do more for their families financially, and in most cases according to the victim impact statements, worsened their families' financial situation.

(b) *You abused your position of trust and authority in relation to the victims.*[13] You are a Matai – you hold the family chief title. This is a position of authority which commands significant respect in Samoan culture. Second, for the group 4 victims you were also a father figure. All victims wholly placed their trust in you: you organised and brought them over from Samoa, you organised their visitor visas (except group 4), not work visas for them; you kept their passports; you then obtained work for them which was contrary to their visa and was illegal; and you

12 Sentencing Act, s 9(1)(d).
13 Section 9(1)(f).

kept their wages. This is a serious abuse of your position of trust and authority.

(c) *The vulnerability of the victims*.[14] They were poor, mostly poorly educated and most had never travelled out of Samoa before. Once in New Zealand they were in a foreign culture and could not communicate in English. Group 1, 2, and 3 victims were all, because of your arrangements, illegal workers and illegal immigrants. This created a high level of vulnerability for those victims, which in turn, gave you more power and control over them.

(d) *Premeditation*.[15] The level of premeditation to plan the entry into New Zealand from Samoa and the ongoing work of 13 Samoan nationals over a span of over 20 years is high. I accept your defence Counsel's submissions that these were four groups at specific times, I reject any inference that this was a continuing state of offending, I just wanted to make that clear. You arranged, either personally or with the assistance of others, for the necessary travel documents to be obtained and you paid all the necessary expenses, knowing that you would recover them. I accept this required "full scale planning and orchestration" as opposed to, for example, a mere few minutes of deciding to take action, as we have seen in other cases.[16]

(e) *The sheer number* of victims (13) and convictions (23) for which you are being sentenced.[17]

[34] In addition to those factors, s 98E of the Crimes Act requires the Court to take into account further aggravating factors when determining sentence for trafficking offences. Although the Act requires them to be considered for trafficking offences, I consider in this instance they are also relevant to the slavery offences. The aggravating factors are the nature of exploitation of the victims and the degree and method of

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14 Section 9(1)(g).
15 Section 9(1)(i).
16 *R v Taueki* [2005] NZCA 174, [2005] 3 NZLR 372 at [30].
17 Section 9(1)(j); see also Crimes Act, s 98E(1)(d).

control exercised over them, including degrading treatment and any actual or threatened violence,[18] the age of the victims[19] and the financial benefit you received.[20]

[35] In relation to the nature of the exploitation, once the trafficking had been commissioned and the victims were in New Zealand, you used them all as slaves. This involves a course of conduct whereby you used the victims as your property, asserting control over them in various ways as if you owned them and as a result, you derived a financial benefit.[21]

[36] First, all victims, except the sister in group 1, were required to undertake horticultural labour, for long hours and you retained the net income. The sister in Group 1 was required to undertake housework and child-minding for no reward. You led victims to believe you would eventually pay them, and this was used as a method of control over the victims, ensuring their continued compliance and labour.

[37] Second, you placed restrictions on the victims' freedom of movement and communication. And as I have said, such restrictions included retaining the victims' passports, preventing them from leaving the property aside from work, church and sport and instructing them not to engage in conversation with outsiders.[22] Such restrictions were another form of control, to ensure the victims did not get caught or did not have the opportunity to complain about you.

[38] Third, you exercised control over the victims through the actual or threatened violence for breaching rules, for not behaving, for performing to the standard you required. Even if a victim was not personally assaulted, the threat of violence and resulting fear of you, combined with your status and authority, was a significant factor in your being able to use the victims as your property.

[39] As noted, the age of the victims is relevant - three of the victims were under the age of 18 when the offending was committed and another three were aged under

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18 Section 98E(2)(a), (1)(c) and (1)(a).
19 Section 98E(2)(b).
20 Section 98E(2)(c).
21 *R v Matamata* [2020] NZHC 677 at [28].
22 I find this fact proved beyond a reasonable doubt. Sentencing Act, s 24(2)(e).

20. So too is the fact that you committed the offence for your financial benefit. The figure provided to the Court of just over $300,000 is an estimate of what income you could possibly have received. And of course, both parties have to acknowledged that because of the absence of full records, these are estimates. Although the precise figures cannot be ascertained with any certainty, I am satisfied you obtained a material financial benefit.

[40] I also consider the following factors to be aggravating:[23]

(a) *The duration of the offending and the circumstances in which it stopped.* Over a 24-year period, beginning in late 1994 and continuing through to April 2019, four groups of victims were identified who resided with you for varying finite periods of time. The offending persisted even after many of those victims ran away or were arrested and deported and stopped only when law enforcement officers became involved.

(b) *The nature and degree of deception practised upon the victims in Samoa.* I have already alluded to this but I am referring here to the fact that you led the trafficking victims believe that by coming to New Zealand to work for you in the horticultural industry they would earn significantly more than they could in Samoa. You encouraged them that in doing so, they and their families would have a better future. One of the victims had good employment in Samoa. You knew the representations of financial advantage formed a principal reason for the victims' accepting your offer, but you never intended to pay them for their work.

(c) *The mechanism of gaining entry into New Zealand*. You brought the group 1, 2 and 3 victims to New Zealand on visitor visas, in breach of New Zealand's immigration laws when they began working (and then overstaying). Such an abuse compromises the integrity of

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[23] *R v Ali,* above n 7, at [50]; and *Re Attorney-General's Reference Nos 37, 38 and 65 od 2010 (Kahn)* [2010] EWCA Crim 2880.

> New Zealand's immigration system, and I accept the Crown's submission this relies in part on the honesty of users.

[41] I come then to your maintaining your innocence on cultural grounds. I have considered this factor and I have decided I am not taking this into account as an aggravating factor in this instance, as I consider your lack of remorse is balanced by your concession on forfeiture, which I will deal with shortly. I consider that to be significant, given the number of victims and what I have just described.

[42] That said, there are no mitigating factors of the offending.

Parties' positions

[43] The Crown submits that based on the aggravating factors of the offending, the appropriate starting point is in the range of 15 to 16 years' imprisonment as you have heard. This, it is submitted, pays due regard to s 8(c) and (d) of the Sentencing Act, recognising that the present offending lies near the upper end of cases involving labour exploitation while still allowing room for more serious cases, whether involving labour, sexual or some other form of exploitation.

[44] The Crown has submitted that another way of looking at the offending is that the 20-year spectrum could be broken into five-year bands: offending of this nature involving this number of aggravating features must, it submits, fall into the top band, even if towards the lower end of that band.

[45] The defence submits that an appropriate starting point for all offences together is in the range of 13 to 14 years. You heard your Counsel submit that the present offending does not justify the maximum or near to the maximum penalty. It does not incorporate sexual exploitation, inhuman accommodation, starvation, physical restraint for elongated period of time, subjection to the infliction of serious bodily injury and permanent disfiguration or related death – a matrix of which would justify a start point near or at the maximum penalty. The defence submits your offending would fall below the maximum closer to the middle range between 10 to 15 years' imprisonment.

Comparable cases

[46] As you have heard, there is no tariff case for the offences of trafficking in persons or dealing in slaves. There has only been one case in New Zealand that both Counsel have referred to and which I have referred as the 'comparable case', where a defendant has been convicted and sentenced for trafficking in humans.[24] There are two cases in which a defendant has been convicted and sentenced for dealing in slaves.[25] This is the first sentencing in New Zealand for the offence of using a person as a slave and the first to involve both trafficking and slavery charges together.

[47] I have also been referred to another New Zealand case involving people smuggling[26] and a number of United Kingdom cases involving the equivalent of our slavery offence and the offence of trafficking for labour exploitation.[27]

[48] I begin with the most comparable case being the only other trafficking sentencing in New Zealand, the facts of which are similar but not the same to the present offending.[28] The victims were all Fijian residents, who were tricked into coming to New Zealand on the false pretence of the opportunity for employment which would pay significantly more than they could receive in Fiji. The defendant made the travel arrangements, organised their employment, and kept their income.

[49] In that case, a number of the same aggravating factors as here, were present.[29] Deterrence was emphasised as one of the most significant objectives in sentencing. The Court in that case took a starting point of 10 years' imprisonment.[30] This was held to reflect the nature of the offending and to act as a general deterrent.[31]

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24 *R v Ali*, above n 7.
25 *R v Lata* [2018] NZHC 707; *R v Lata* [2018] NZCA 615; and *R v Decha-Iamsakun* [1993] 1 NZLR 141 (CA), though both those cases concerned different subsections of s 98.
26 *R v Chechelnitski* HC Auckland CRI-2004-092-1239, 6 April 2004, confirmed in *R v Chechelnitski* CA160/04, 1 September 2004.
27 *R v Connors (Josie) & Ors* [2013] EWCA Crim 1165; *R v Rooney & Ors* [2019] EWCA Crim 681; *R v Zielinksi (David)* [2017] EWCA Crim 758; and *R v MC*, above n 8.
28 *R v Ali*, above n 7.
29 At [48] and [50].
30 At [55].
31 At [56].

[50] As I have mentioned, the offending in that case is similar in many ways to your offending, Mr Matamata. In both situations, the defendants (this is you and the other defendant) organised for a significant number of individuals to come to New Zealand from another country to illegally work for you and bring them financial gain.[32] In both instances, the victims were particularly vulnerable because of their lack of English and their immigrant status, and they were all completely reliant on the respective defendant to provide them with food, clothing, accommodation and work.

[51] In both instances, the victims were either unpaid for that labour or were woefully underpaid and subjected to exploitative conduct and degrading treatment in other ways. In both situations, the victims were reluctant to go to the police or report the defendant, not only because of a practical inability to leave the premises without the defendant's knowledge, but also because of a deep sense of cultural shame about being "had" in what essentially were organised criminal enterprises. Finally, in both situations, the victims suffered psychological and financial harm as a result of the defendants' deception and manipulation.

[52] There are, however, significant differences between that case and yours. Your offending spanned 24 years compared to 18 months; yours included young victims; and involved many overstayers compared to one overstayer in the comparable case. Most importantly in the comparable case, there was no offending involving slavery, no retention of passports, no violence, no abuse, no restrictions on movement or communication and no requirement to perform domestic chores. The victims were underpaid, as opposed to not being paid at all. You however, are convicted of slavery charges in respect of each victim. The extent to which the victims were subjected to degrading treatment and method of control you exercised was very high and they were never paid. Finally, you gained a much more significant financial benefit than in the comparable case. For those reasons, I consider the present facts are more serious and that requires recognition in the starting point.

[53] I must acknowledge defence Counsel's submission, that it is possible to envisage much more serious situations than the present, that would be addressed by

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[32] In *R v Ali* there were 15 victims who were the subject of trafficking, in the present case there were 10 victims the subject of trafficking.

the relevant section, s 98D.[33] For example, those who traffic innocent children from poor countries to work in the sex industry, which would have a much higher culpability and where a starting point near to the maximum would be appropriate. I consider the present case lies between the circumstances of the comparable case, which had a 10 year starting point and another case, which involved sexual exploitation and with a 16 year or higher starting point. I consider the starting point falls in the middle to high of the range for offending of this type.

[54] I have also considered another New Zealand case concerning slavery.[34] In that case, the defendant forced her daughter into prostitution to help pay for food and expenses. The victim was required to engage in sexual activity with paying clients on approximately 1,000 occasions. Most of the payments went to the defendant.

[55] Because of the sexual nature of that offending, the gross breach of trust, the high levels of premeditation and the vulnerability of the victim, the Court of Appeal identified that the totality of the aggravating circumstances of the offending, placed the case squarely within the category of the most serious of cases. The starting point there was the statutory maximum of 14 years' imprisonment. Clearly, I consider that case to be more serious than the present offending, despite the fact there were no trafficking charges and there was only one victim. I have included this case in my sentencing notes to illustrate an example of one of the most serious cases of slavery.

[56] Now I have also been referred to several United Kingdom cases involving the equivalent of our slavery offence and the offence of trafficking for labour exploitation. However, as Counsel for the Crown, Mr Walker acknowledged, the overseas jurisprudence is of somewhat limited value because of the different maximum penalties available and the differences in the equivalent offences particularly in relation to the labour exploitation offences. However, it provides guidance as to how other courts have approached similar offences and I included it in my sentencing notes for completeness.

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33 As noted in *R v Ali*, above n 7, at [54].
34 *R v Lata*, above n 25.

[57] In two of the cases,[35] the end sentences were respectively 11 and 10.5 years on the relevant offending. While both cases appear less serious than the present offending, given that there was a shorter duration of the offending, a lower number and vulnerability of the victims and the absence of trafficking, other factors make them more serious. The living and working conditions appear to have been significantly worse in both instances, as well as the degrading treatment and violent behaviour the victims were subjected to.

[58] In one of the cases, the victims had no access to bathrooms, one of their heads was shaved, food was scarce, at times there was no heating or running water, and threats of deaths and actual violence were common. It is not clear what the starting points were in those cases, but it was likely to have been somewhere in the vicinity of 12-13 years.

[59] Another case referred to appears to involve a defendant who was not the primary offender.[36] In that case, the defendant was sentenced on two counts of arranging or facilitating the travel of another for exploitation and one count of conspiring with others to require another to perform forced or compulsory labour.[37] There, the defendant was ultimately sentenced to one years' imprisonment on the first two counts and seven years on the latter. I consider this case reinforces the view that a starting point higher than seven years' imprisonment is required, though not double or more of that figure given the substantial similarities in the two cases.

[60] There is one other case to which I was referred, which I consider is an example of more serious offending than the present case, although the sentencing did not involve the principal offender.[38] In that case, the starting point was considered to be 12 to 13 years and the defendant, who was not the principal offender, was sentenced to 11 years' imprisonment on charges of conspiracy of trafficking into the

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35 *R v Connors (Josie) & Ors*, above n 27; and *R v Rooney & Ors*, above n 27. In *R v Connors*, the offences were holding a person in servitude and requiring a person to perform forced or compulsory labour, the maximum penalties of which were 14 years' imprisonment: Coroners and Justice Act 2009 (UK), s 71(1)(a) and (b). In *R v Rooney*, the offence was conspiracy to require a person to perform forced or compulsory labour, and again the maximum penalty was 14 years' imprisonment: Coroners and Justice Act, s 71(1)(b).

36 *R v Zielinksi*, above n 27.

37 Modern Slavery Act 2015 (UK), ss 2(1) and 1(1)(b).

38 *R v MC*, above n 8.

United Kingdom, trafficking within the United Kingdom,[39] requiring a person to perform forced or compulsory labour[40] and money laundering.

[61] Taking account of the numerous aggravating factors I have identified, the various cases referred to me both in New Zealand and overseas, the culpability of Mr Matamata and the maximum available sentences on each of the charges, I have reached a view that a global starting point of **12 years' six months** imprisonment is appropriate here. It reflects a higher starting point than the comparable New Zealand authority, because of the significant differences in, and charges for this offending; the length of the offending; the financial benefits received and broadly reflects a similar approach to the overseas authorities referred to. Using the Crown's "band" terminology, this would put it in the middle of the second band of seriousness for the trafficking offences, and at the top of the most serious band for the slavery offences.

[62] I turn then to your personal aggravating or mitigating factors, and any necessary adjustments.

Adjustments for personal aggravating or mitigating factors

Uplift for previous convictions

[63] Mr Matamata, you have a significant list of previous convictions for violent and other offences that the Court must consider.[41] They include convictions for assault with intent to injure, three other convictions of assault, four convictions of wilfully ill-treating your children and wounding with intent to cause grievous bodily harm – the latter for which you were sentenced to two years, three months' imprisonment in 1999. More recently, in 2012 you were sentenced to community work and supervision for two counts of assault with a weapon.

[64] The offences are now largely historic, although the defence do accept the violence offences may suggest the formation of "character".[42] It is accepted by all

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39 Asylum and Immigration (Treatment of Claimants etc) Act 2004 (UK), s 4(1A); maximum penalty 14 years' imprisonment.

40 Coroners and Justice Act, s 71(1)(b), maximum penalty 14 years' imprisonment; and Modern Slavery Act, s 1(1)(b), maximum penalty life imprisonment.

41 Sentencing Act, s 9(1)(j).

42 *Orchard v R* [2019] NZCA 529 at [39].

parties that your criminal history justifies an uplift of six months. I agree. They show the need for a greater deterrent response and are an indicator of risk of reoffending. Although, I hasten to add that I acknowledge and agree with the PAC report that the likelihood of your reoffending on the slavery and trafficking charges is low. This relates to the violence offending. This takes the sentence to 13 years.

Discount for instrument forfeiture order

[65] On 23 June, I made an order by consent for instrument forfeiture over two properties in which you had partial interests.[43] The value of $215,000 was forfeited and paid last Wednesday. I have to note, you conceded this amount. The Sentencing Act requires the Court on sentencing to take into account any such instrument forfeiture orders.[44] Both parties accept a discount is appropriate. The Crown submits for an 18 month discount; the defence for a two year discount.

[66] There is no guidance as to the relationship between the sentence that would ordinarily be imposed and instrument forfeiture. Each case depends on its own facts and the exercise of judgment on the part of the sentencing court.[45] In deciding the weight to be given to such a discount, the Court must take into account the value of the property that is the subject of the instrument forfeiture order, and the nature and extent of the offender's interest in that property.[46]

[67] As noted, the financial benefit to you and your family from the offending has been estimated as being just over $300,000. It is accepted that there is not full compensation to the victims here but the amount forfeited is therefore two-thirds of that figure. The forfeiture is over your only significant assets, the two properties. It is not clear what the exact nature and extent of your interest in those properties are, as compared with the interests of your family, but I am satisfied it is significant.

[68] Comparing the present forfeiture order to other cases in which they have been given,[47] I consider a two-year discount is appropriate here to reflect the forfeiture of

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43 *R v Matamata* [2020] NZHC 1530.
44 Section 10B.
45 *Macpherson v R* [2012] NZCA 552 at [64].
46 Sentencing Act, s 10B(2).
47 *Macpherson v R*, above n 45; *R v Bright* HC Hamilton CRI-2012-019-3826, 25 March 2013; *R v*

your partial interests in the two properties. This takes into account the fact that the forfeited sum equates to your only significant assets, that you are 65 years old and your future earning capabilities are limited. I also take into account that you conceded the forfeiture order as I have said.[48] This takes the sentence to 11 years imprisonment.

Cultural discount

[69] Your Counsel submits a modest discount is appropriate to acknowledge the cultural complexity of the case and your ill-health, which will increase the hardship on you if you serve a substantive imprisonment sentence. It is submitted such a discount would encapsulate your erroneous, yet embraced, perception of the right as a Samoan Matai to issue directives and engage victims to work for the collective good of the entire extended family, rather than to increase the wealth of the individual worker.

[70] When fixing sentence, the Court may consider any mitigating factor it thinks fit.[49] The Sentencing Act mandates consideration of the full social and cultural matrix of the offending and the offending if requested. Now it is acknowledged that a s 27 report was not required and we heard expert evidence offered at the trial in light of the cultural perspective of the Samoan community and how your cultural perception may have related to the commission of this offending.

[71] Both parties accept the expert evidence of Dr Falaniki Tominiko on Samoan culture and matai status. He explained that the role of matai is to support the family and they have a number of roles. They are the leader of the family, they serve the family and they protect family treasure. Matai authority is binding and rarely does someone question what a matai has asked them to do. Now your Counsel submits the status of matai empowered you to impose authority and make decisions without any review or conceptual understanding of what is in the best interests of all persons under your guidance and control.

Corless [2014] NZHC 1211; and *R v Vant Leven* DC Rotorua CRI-2010-063-6250, 29 November 2013, upheld by the Court of Appeal in *Vant Leven v R* [2014] NZCA 330.

48 *R v Bright*, above n 47, at [38].

49 Sentencing Act, s 9(4).

[72] More generally, the defence submit that despite living in New Zealand for 40 years, you have never discarded your cultural existence. Remaining engrained in the Samoan culture and your role as matai as you have, your Counsel submits you have had very limited cause to develop New Zealand pro-social behaviours.

[73] The PAC report before the Court, that is the corrections department report, records that you do not accept the seriousness of what you have done; you maintain that you are not guilty; and that your convictions do not reflect the cultural norms of Samoa, where extended family members are expected to perform tasks for the benefit of everyone.

[74] I note first that you did not engage the victims to work for the collective good of the entire extended family. You engaged them to work for you, and you and your immediate family gained a substantial financial advantage. As the Crown submits, I do not consider this is something that can be attributed to Samoan or Matai culture.

[75] While it may be part of the Samoan culture for people in certain circumstances to work unpaid for the collective benefit of the extended family, that was not the basis on which you offered the victims work in New Zealand. Nor is it the basis on which they accepted your offer, or what actually occurred.

[76] While I accept that your sense of entitlement may be in part be due to Samoan culture and your role of Matai, which is intertwined within the social fabric of the Samoan culture and does not translate easily into New Zealand culture, I do not accept any discount for the cultural position is available. The facts remain that you abused your position of Matai and the trust that was placed in you by the victims and their families. This is repeated in a number of the victim impact statements and I do not consider any discount for cultural values in the context of this offending is appropriate or should be entertained.

[77] The end sentence is therefore 11 years' imprisonment. I turn to consider whether a minimum period of imprisonment is required.

Minimum period of imprisonment

[78] In any case involving offending as serious as this, the Court must give consideration to making an order requiring the offender to serve a minimum period of imprisonment (MPI) before being eligible to apply for parole. The Court must be satisfied that the usual parole provisions will be insufficient to reflect principle of deterrence, denunciation and accountability.

[79] As you have heard, the Crown submits an MPI of at least 50 per cent is appropriate. The defence submit that an MPI should be imposed.

[80] I bear in mind that I must consider the principles of s 8 of the Sentencing Act, which I have done throughout. Relevant to the MPI is the consideration to impose the least restrictive outcome that is appropriate, and to take into account the particular circumstances of the offender that might make a sentence that would otherwise be disproportionately severe. The defence submit these principles point towards no MPI. I have given this considerable thought and I agree.

[81] I am not imposing a minimum sentence of imprisonment in this case. I consider the sentence of 11 years' imprisonment is sufficient to hold you accountable for the harm done to the victims and society by your offending and I also consider that it sends a signal of deterrence. These are the reasons for not imposing an MPI:

(a) firstly, the starting point reflects the seriousness of this offending;

(b) secondly, the sentence both denounces your conduct and is a deterrent to others committing the same offences;

(c) thirdly, the sentence importantly reflects the interests of the victims and provides reparation for the harm done by your offending. You conceded the $215,000 reparation figure; and

(d) lastly, the length of your prison term is ultimately a matter for the Parole Board in these circumstances.

[82] I also note that the PAC report to which I have referred, that you are unlikely to reoffend in relation to these offences.

[83] I also take into account in making this decision, that for the first part of the offending, before 2004, the minimum period of imprisonment provisions were not enacted.

Sentence

[84] So, Mr Matamata please now stand.

[85] On each of the 10 charges of trafficking in respect of which you faced a maximum sentence of 20 years' imprisonment, and on each of the 13 charges of slavery in respect of which you faced a maximum sentence of 14 years' imprisonment, you are sentenced to 11 years' imprisonment. All convictions are to be served concurrently which means you serve them all at the same time, 11 years being the total.

Reparation

[86] I also make an order for reparation. Reparation in the sum of $183,000 or such lesser sum remaining from the forfeited sum of $215,000 after payment of the costs referred to in paragraphs 1(d)(i) and (ii) of the instrument forfeiture order dated 23 June 2020 with apportionment of the final reparation sum among the 13 victims by payments apportioned according to the percentages shown in appendix 1 of the Crown's memorandum dated 24 July 2020, after payment of the sum of $5,000 to one of the victims.

[87] I also commend the recommendation of the PAC report writer, that while you serve your sentence, you undergo the Medium Intensity Rehabilitation Programme to address your tendency towards violence.

[88] You may stand down.

Cull J

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