

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CRIMINAL DIVISION)**

**CR NOS: 57/06, 58/06**

**POLICE**

**V**

**POKO NELIO**  
**Defendant**

Sergeant T Howard for Police  
Mr Petero for Defendant  
Date of Sentence: 31 March 2006

**SENTENCE OF NICHOLSON J**

Poko Nelio, you have pleaded guilty to two offences committed on the 25<sup>th</sup> of December last year of driving a motor cycle on the main road under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle and by an act or omission in relation there to cause bodily injury. The first offence was for causing injury to Alan Stretch, the second for causing injury to Sue Stretch.

The facts are that at about 10.40 on the morning of Sunday the 25<sup>th</sup> of December last year, Christmas day, you drove your motor cycle on the main road at Matavera heading towards Ngatangia, as you passed the Takitumu Primary School your motor cycle veered on to the right lane and crashed head on into an oncoming motor cycle which was being driven by Mr Stretch and on which his wife Mrs Stretch was a pillion passenger. Both Mr and Mrs Stretch received severe injuries in the collision. Their injuries were so serious that having been taken to hospital in Rarotonga each of them were taken individually by a special flight back to New Zealand for intensive care. Mr Stretch had very severe head

injuries and it was of great concern as to whether he would live. I will deal with the injuries he suffered in more detail later.

However when spoken to by the Police after the collision you said you couldn't recall how it happened, that all you could remember was driving the motor cycle to get some cigarettes and cat food. You frankly admitted being under the influence of alcohol at the time of the crash and said that before it you had drunk Jim Beam mixed with diet coke from about 11.00pm the earlier Saturday night right up until the time of the crash. Reparation for \$386,684.00 is sought, that being mainly the cost of flying them urgently to New Zealand for their treatment there and for loss of income and expenses incurred by family members and going to see their very badly injured parents.

Now the injuries to Mr and Mrs Stretch are described in a number of medical reports. A report from Auckland Hospital in January this year said that both were admitted to Auckland City Hospital on the 26<sup>th</sup> of December, they had both been taken to Rarotonga Hospital. Mr Stretch's head injury was severe and accordingly he was flown to Auckland to the critical care medicine unit in a critical condition as a medical emergency. He was intubated and ventilated; in other words, he was put on life support. His injuries included contusion, that's bruising to the brain; a traumatic sub arachnoid haemorrhage, that's bruising under the brain cover; subdural haemorrhage – similar; a fracture to the base of his skull; fractures to a back vertebrae; pneumothorax which is fluid on the lungs; a comminuted compound fracture of the right radius and ulna, the bones in his right arm; a dislocated right elbow and a fracture to the right tibial (foot bone). Tracheostomy was performed on the 31<sup>st</sup> of December, putting a tube into him to sustain life and he remained in critical condition due to prolonged coma, he was unconscious. This was not induced by drugs but was a direct consequence of what he suffered in the accident. It was said then he would require long term hospitalization in a specialized neurological unit.

Mrs Stretch's injuries included a fractured pelvis, a fracture right femur – that's the main leg bone, fracture to the left distal radius – an arm bone, fracture to a right metacarpal – a hand bone, and fracture to two ribs. She was taken urgently also to Auckland Hospital and she was there for 6 weeks because of her pelvis injury and would remain so for another 4-6 weeks. At that stage the outcome for Mr Stretch was still unknown.

Mr Stretch has been transferred to a special neurological unit, still suffering from severe effects and it is clear that he will never return to his normal activities and he is unlikely to function again as he was before the accident. Mrs Stretch will have ongoing medical problems.

Mr Divine, the son in law of Mr and Mrs Stretch has written to the Court advising of the consequences of the collision. Mr Stretch is 53 years of age and his wife is 52. Mr Divine says that he's known them for 36 years, they are both fantastic people, have reached the stage in their life where the children have grown up and they were able to enjoy grandchildren and travel. Mr Stretch was a talented and successful engineer, his business however will have to be sold and it is unlikely he'll ever be able to return to work. He says the accident has an indescribable effect on each of them and on their family. Mr Divine made a point of acknowledging the assistance of Janet Dearlove, a resident of Rarotonga who provided assistance at the time of the accident, support for his parents or his in-laws while they were in Rarotonga Hospital and has taken a continued interest in their recovery and welfare.

Now Mr and Mrs Stretch's daughter Melanie has written a very detailed statement of the effect that the accident or the collision has had upon her parents and herself. She's told how her brother who is 30 when he heard of the accident had to quit his job and leave England and fly home to be with his

parents as they were facing the real possibility of Mr Stretch dying. He's still in New Zealand now and he's trying to piece together a future to help his parents. She also mentions extreme gratitude to the woman in Rarotonga who helped at the hospital and later. She says she finds it very hard to put into words the effect that this collision has had on the family. She's asked the Court to explain to the person responsible what has happened and how the lives of her parents and their children have been totally destroyed. Her parents will not be able to enjoy the rest of their days, as they otherwise would. Their children have devoted their lives to helping as best they can. So the consequences of your drunken driving that day are enormous.

In the pre-sentence report the Probation Officer tells of your age of 22 years; has told of how your parents have endeavoured to guide you and particularly assist you in restraining from drinking but they say that nothing seems to be getting through to you, that you seem a very independent person. They say how you are a good person but stubborn at times.

You have previously been convicted of a similar offence on the 31<sup>st</sup> of July 2002, you were sentenced to 18 months probation for the same type of offence, alcohol impaired driving causing injury.

The Probation Officer in her report says that the Probation Services wishes to advise the Court that this type of offending is increasing and people are not taking heed to the awareness programs and warnings offered by the Police and that innocent members of the public are falling victims of this type of offending. Your offence was a serious case of its kind, you drove after you had drunk alcohol over a considerable time. Aggravating factors relating to the offence itself are the considerable harm done to each of the two victims.

Having regard to that aggravating factor relating to the offence and the serious nature of the offending I consider that imprisonment is the only appropriate sentence. The deterrent aspects of sentencing is paramount in a case such as this, not only to deter you from ever doing it again and causing harm or death to any other innocent people but also as a message to the general community that they must not drive after drinking a substantial amount of alcohol. If they do there will continue to be serious accidents. So people must realize if they drink and drive, they take the risk not only of killing or injuring themselves but are likely to be sentenced to imprisonment when dealt with by the Court. In the circumstances of this case I consider that an appropriate starting point for an assessment of imprisonment is 1 year 6 months imprisonment. Now to that needs to be added a further term for the aggravating factor that you have previously committed a similar offence, this is your second offence for that. So accordingly I add 1 year's imprisonment to the one year 6 months to make 2 years 6 months, now that's 30 months imprisonment.

Now the mitigating factors to be taken into account are first your co-operation when you admitted when interviewed by the Police that you had been drinking and the extent of your drinking and your pleas of guilty to the offences. There is also the mitigating factor of your age, you are in your early 20s. So taking those mitigating factors into account I consider that there should be a reduction of 10 months so as to bring the total effective sentence to one of 20 months imprisonment, i.e. 1 year 8 months. I accordingly sentence you for each of the two offences to 1 year 8 months imprisonment, those will be concurrent. Also I disqualify you from holding a drivers license for a term of 3 years from today. This sentence reflects the seriousness of what you did and I trust it will be a deterrent to you in the future never to drink and drive again.

  
**JUDGE**