

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

CR NO. 519/09, 518/09, 417/09 & ORS

QUEEN

v

PAUL MATTHEW WILLIAMS

Date: 10 November 2010

Counsel: Mrs Catherine Evans for Crown
Mr Paul Williams, appearing on his own behalf
Mr Norman George given leave to withdraw as counsel for Mr Williams

Sentence: 10 November 2010

SENTENCING NOTES OF HUGH WILLIAMS J

Solicitors:

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P Williams, C/- Arorangi Prison, Rarotonga

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[1] Mr Williams, following a lengthy trial on 9 September this year a jury convicted you of two charges: one of driving with excess breath alcohol on 29 May 2009; and one of manslaughter the same day by breaching a legal duty you owed to road users and to Mr Barrowman, the deceased, in particular. At the age of 34, today you have come before the Court to be sentenced on those two charges.

[2] The maximum sentence on manslaughter, as Ms Evans has said, is life imprisonment. The maximum sentence on the excess breath alcohol is a jail term for 12 months or a fine of \$1,000, and a minimum disqualification of 6 months. As I said during Ms Evans' comments, the excess breach alcohol pales into insignificance, of course, alongside the manslaughter charge.

[3] At the conclusion of the trial, because at that stage it was thought that another Judge would do the sentencing, I issued a lengthy Minute setting out my view of the facts of the matter in order to assist that sentencing Judge. Had there been people present who were unaware of the facts of the matter I was going to read nearly the whole of that, certainly paragraphs [5] – [27]. In view of the fact that everyone here is aware of the circumstances I will not read those paragraphs this morning, but I will ask Madam Associate to include them in the sentencing remarks so that at the end you get a complete copy of what influenced the sentence I intend to impose. In my Minute I noted as follows.

[4] Dealing first with the charge of driving with excess breath alcohol, the position was that you were administered a breath alcohol test shortly after the accident which gave rise to the manslaughter conviction. That test returned a reading of 440 micrograms of alcohol per litre of breath against the permitted limit of 400 micrograms of alcohol per litre of breath. No defence was offered by you to this charge at trial: indeed, through counsel, you accepted that the test was properly administered and that the reading was valid. However, as you had been placed in charge of the jury on that count, it was for the jury to return a verdict of guilty which they ultimately did.

[5] The manslaughter conviction, of course, is by far the more serious charge on which you were convicted.

[6] The matter had its beginnings with the visit to Rarotonga of a New Zealand Golden Oldies rugby team which arrived late on the afternoon of 28 May 2009 and booked in at the Club Raro.

[7] After having a few drinks there, the members of the squad walked down the seaward side of the highway to the Fishing Club some 280 metres distance for further drinks and a meal.

[8] They appear to have arrived at the Fishing Club at about 8:00 pm and remained drinking there and having a moderately large meal until the bar closed at approximately midnight.

[9] During that time it was common ground that at one point the group invited you and your friend, Manakaa Vakapora, to join them and bought them some drinks.

[10] It was also common ground that during this period there was an altercation between members of the Golden Oldie group and you, which resulted in Mr Vakapora apologising repeatedly to the group, and the bar manager, Rere Wildin (called throughout the trial "Aunty Rere") to intervene by slapping you several times and ordering you and Mr Vakapora to leave the bar and not return.

[11] During the trial there were significant differences between the witnesses as to what was said during the altercation and by whom it was instigated, but it seemed clear that the remarks had a racist basis which was critical of the European occupation of New Zealand and also critical of Papa 'a tourists coming to the Cook Islands. It seemed to be clear that you were a participant in these arguments, probably the instigator.

[12] It was common ground that, towards the end of the evening, one of the Golden Oldies, Mr Greg Thomas, was sufficiently incensed to say something along the lines of "I've had enough of this", go around the table and grab you by the

clothing and pull you from the table. You said Mr Thomas attempted to throttle you. You and Mr Thomas were separated by the rest of the Golden Oldies squad and Mr Vakapora, and it was at that point that Aunty Rere intervened.

[13] It was suggested by the Crown that the motivation for your driving which followed shortly afterwards was either your resentment of the Golden Oldies group or your resentment at being evicted from the bar unjustifiably. The jury may have taken that view, but it could not be said to have been proved.

[14] It is common ground that the Golden Oldies group then left the Fishing Club to walk back to Club Raro, again choosing to walk on the seaward side of the road. It was common ground that most had drunk a good deal that evening and that the deceased, Mr Duncan Barrowman, had been dozing off during the evening. He had not been a participant in the earlier altercation.

[15] It is common ground that you and Mr Vakapora left after the Golden Oldies group, with you driving.

[16] Mr Vakapora said that as they exited the Fishing Club driveway to turn left he could see the Golden Oldies group walking away from you down the highway towards Club Raro. In your evidence you denied ever seeing the group on the road.

[17] As the Golden Oldies group walked down the highway, they became somewhat strung out with Mr Greg Thomas and Mr Hazelwood at the head of the file and others, including Mr Barrowman and a Mr Bunce – who were both smokers – lagging somewhat behind.

[18] It was common ground - indeed conceded by the defence - that your vehicle hit Mr Barrowman at somewhere in the region of what was shown in the plans to be Ake Patia's driveway in Exhibit 1, photo A14. You conceded that your wing mirrors hit Mr Barrowman but contended that no other part of your vehicle hit the deceased, whereas it was the Crown case, based on the injuries described by the forensic pathologist, Dr Stables, that Mr Barrowman was hit in the right buttock or side and in the centre of the back between the scapulae at sites which corresponded, given

Mr Barrowman's height and the measurements of your vehicle, with an impact from the front bumper (buttock and side) and the wing mirrors (mid-back). Dr Stables' view was that Mr Barrowman suffered rib fractures on the right in the impact but was thrown up and to the side by the impact, falling to the ground and suffering rib fractures on the left side and fatal injuries to the brain and brain stem on landing.

[19] In your evidence you said you drove your truck in the centre of the left-hand lane of the highway at an appropriate speed, saw nothing of Mr Barrowman or the other Golden Oldies walking at the side of the road and knew nothing of the impact with Mr Barrowman until you heard the bang of the impact on your wing mirrors. You then drove on before turning at Club Raro and returning to the scene. You said you were always intending to return to the scene and were looking for a safe place to turn around and you denied that Mr Samuel, the security guard at Club Raro, brought about your turn by flagging you down with his torch.

[20] The situation is accordingly one where had you continued in what you said was your line of travel and had Mr Barrowman continued walking on the grass and gravel to the left of the tarseal, there would never have been a collision. It therefore follows that either Mr Barrowman walked or stumbled onto the asphalt to intercept the path of your truck, or you veered your truck to the left so as to intercept Mr Barrowman's line of travel. Which was correct was one of the central issues at trial.

[21] Apart from speculative suggestions about reported conversations from Mr Hazelwood of the Golden Oldies, there was no evidence suggesting Mr Barrowman deviated from his line of travel and walked or stumbled into your path. The jury's verdict must mean it accepted there was no evidence of Mr Barrowman walking or stumbling into the path of your truck.

[22] By the verdict, therefore, the jury must have accepted the Crown contention that you, making a split-second decision when you saw the Golden Oldies group, decided to veer towards them, probably to frighten them, but misjudged your action and hit Mr Barrowman not just with your wing mirrors but with part of the left front of your truck leaving the dents and other damage later found by Police.

[23] The evidence varied on whether you veered to the left as the Crown claimed but, although there were no eye witnesses to the impact, there was significant support for the Crown's version of events especially from Mr Greg Thomas and from Mr Vakapora.

[24] Mr Thomas was walking at the head of the line, turned to his left into the bushes to relieve himself and then turned back towards the Fishing Club having realised he had left his cellphone behind. He said he could see the other members of his squad walking behind him and although he could not identify Mr Barrowman by name, he could see a figure about 20 or 25 metres away which was off the road at time. He had no concerns as to the manner or direction of the way in which the figure was walking. He said that as he turned he immediately saw your headlights coming from the Fishing Club and that they "highlighted" Mr Barrowman at some stage. He said the truck was on its correct side of the road until "some metres prior to Mr Barrowman it changed direction ... and headed towards Mr Barrowman." It passed from his sight because of the roadside foliage, but he realised it was going to hit Mr Barrowman and shouted a warning, unavailingly as it turned out. He ran back to find Mr Barrowman on the grass verge with no part of his body on the road surface.

[25] The second major witness giving evidentiary support to the Crown's version of events was Mr Vakapora who said that, having seen the Golden Oldies as the truck turned left from the Fishing Club, he continued to argue with you as he drove down the road and nudged you with his elbow. That produced no reaction and did not alter the direction of your travel. Mr Vakapora then said:

"I felt the truck sway a bit to the sea side as we were at [Ake Patia's driveway]. We were drifting to the sea side of the road and if we were moving left I knew we would go off the road. I can't really say if we went off the road but I know the truck was moving to the left."

[26] To the extent possible, other witnesses from the Golden Oldies and bystanders and local residents who were alerted by the impact provided a certain measure of evidentiary support for that evidence.

[27] Looking at the probation report, a very helpful report, it makes it clear that you have had a good relationship with your partner for about eight years now, and there are four children of the union, the latest, as you said, born as recently as Monday of this week, 8 November. The other three children I understand are with your family in New Zealand.

[28] You were in work at one stage as a self-employed builder employing some 16 workers, and with a lawn mowing contract where you employed another five workers plus your partner. But the work declined and you had to lay off your workers and were only able to carry on by taking employment yourself, having sub-contracted the building work.

[29] As you have emphasised this morning, your financial situation is poor, particularly as a result of the conviction and your imprisonment since the jury's verdict. You owe about \$300,000 on the two units which were in the course of construction. The repayments are stiff and, as you made the point this morning, it seems quite likely that you and your family will lose those units as a result of your imprisonment. Your partner is doing what she can to keep the payments up, but over the period of your jail term it is probably fairly unlikely that she will be able to continue to do that and there will either be a forced sale by her or at the instigation of the Bank.

[30] To the Probation Service and again this morning you have been critical of aspects of the trial. You say the investigation was not properly handled, that witnesses lied, and that the verdict was, in legal terms, contrary to the evidence or not born out by the evidence. You suggest other evidence was available which might have caused the jury to reach a different verdict, and you are somewhat critical of your former counsel, Mr George, for not putting those matters before the Court.

[31] As I told you during your remarks on sentencing, we all have to deal with the matter today on the basis that the jury's verdict was justified by the evidence. If you wish to raise those matters you can do so only by appeal. It is only within the power of the Court of Appeal to order a retrial if they think the points you make are valid. And, as I have advised you, whilst you are entitled to run an appeal yourself,

because of the sorts of issues you want to raise you might be advised to seek legal assistance and to do so earlier rather than later because those issues take some time to assemble and put before a Court of Appeal. All that, however, is entirely a matter for you. It is beyond the power of anyone in the Court today to do anything in that respect.

[32] I note also from the probation report that you have got some previous convictions between 1986 and 1994 for violence, dishonesty and firearms but they, like the excess breath alcohol, look pretty unimportant against the manslaughter conviction.

[33] The Crown's submissions make the point that with there being no tariff for manslaughter in the Cook Islands, nor for that matter in New Zealand, the Courts in the Cook Islands customarily look to New Zealand cases to give guidance for sentencing, particularly on issues like this. But there is no tariff because the facts that give rise to manslaughter are so very different. They vary from something which is little more than common assault to something which can be next door to murder.

[34] However, the Crown has referred me to cases such as *R v Johnson*,¹ *R v Tauira*,² *R v Luke*,³ and *R v Copping*.⁴ *R v Johnson* is probably the nearest to your case on facts, although there the accused drove into a large crowd of people and injured a large number of folk, including killing one. In that case the trial Judge selected a starting point of ten years' imprisonment. There were major mitigating factors – those are factors which make the offending less serious - in that case and the sentence imposed was one of seven years' imprisonment. *R v Tauira* has some similarities. In that case a starting point of six-and-a-half years' imprisonment was selected, with a final sentence of four years and three months' imprisonment, but it is only vaguely similar to your case in terms of the facts. *R v Luke* and *R v Copping* were boy racers and not of great assistance.

¹ *R v Johnson* HC Whangarei T031987, (June 2004, Nicholson J

² *R v Tauira* HC Christchurch CRI-2006-092-11737, 19 June 2009, Allan J

³ *R v Luke* HC Rotorua, CRI-2007-070-3532, 19 October 2007, Ronald Young J

⁴ *R v Copping* HC Tauranga, CRI-2007-270-104, 26 September 2008, Heath J

[35] Ms Evans points to a number of what are called, aggravating factors - that is to say factors which make the offending worse than it might have first seemed. They include, of course, the harm to Mr Barrowman, and indeed his death; and the duty of all drivers to drive so as to avoid impact with other road users. She also points to the fact that you were over the alcohol limit for driving, even though it was a relatively modest excess, and that you were unlicensed at the time. Although as I remarked to her during her comments, it seems you are quite an experienced driver even if you were an unlicensed one.

[36] In your remarks this morning, apart from the criticisms of the investigation and trial process which are outside what we can consider this morning, you make the point that you and your family are going to suffer significant financial hardship as a result of your being jailed for the manslaughter conviction. That is acknowledged. What you did on the night of 29 May last year will have an enormous impact on your partner and your children, to say nothing of your financial circumstances.

[37] It has, however, had a very much graver effect as far as the Barrowman family is concerned. As it turns out, by chance, this is the second death within their family for a motor accident that the family has suffered. That could never have been known to you, but, of course, heightens the impact on the family of what happened on 29 May last year. It is clear from the victim impact statements that the wider family have suffered very severe personal consequences as a result of Duncan Barrowman's death. They have suffered significant financial strain and they, even now, have had great difficulty coming to terms with the trial. As you are probably aware the family, including members of the extended family, sat throughout the trial in order to gain more knowledge of what happened on the night of 29 May, and to try and come to terms and achieve closure with what happened.

[38] Mr Barrowman's father gives graphic evidence as to the impact on him of his son's death. His stepmother similarly gives supporting evidence, as do his brother and sister and his widow. Duncan Barrowman, too, had four children. She had great emotional hurt as a result of what you did that night. She has had to give up her job. She has had to change her lifestyle and that of her children in order to try to accommodate. The Barrowman family say that what happened that night was

“senseless and unnecessary” and one can only endorse those comments as to what took place.

[39] I am required to try and fashion the sentence which will hold you accountable for what you did that particular night, and try and promote a sense of responsibility in you, denounce your conduct, of course, and try to deter other drivers from drinking and driving in the circumstances in which you drove that night.

[40] As to the circumstances of the offence this was, in my view, a bad case of manslaughter by breach of a legal duty as a driver. What happened could so easily have been avoided. It seems, as the Crown emphasised throughout the case, that what you wanted to do after the arguments at the Fishing Club was probably to try and frighten – I know you disagree with that but that is what the Crown argued, and the jury may well have accepted it. It may be, and I make no finding about this, that there was an element of retribution in what you did. But swerving to your left, as you did according to the evidence of Mr Thomas and Mr Vakapora, and as must have been accepted by the jury, was always a dangerous thing to do in the dark, on a narrow road without pavements. And whether you intended to frighten or not or whether you just swerved, we do not know, but it certainly had tragic consequences.

[41] In terms of *R v Johnson*, although as I said that was a worse case than yours, in my view the appropriate starting point for sentencing on the manslaughter, having regard to the circumstances of the offence, is seven years' imprisonment. There is little really that has legal weight in terms of mitigating features apart from your personal circumstances, that of your family and your financial circumstances. That, in my view, to try and give you some hope of rehabilitation and recovery for your family justifies no more than one year off the starting point.

[42] Therefore, in terms of the breath alcohol conviction you are simply convicted and discharged on the conviction and, although it makes no difference, ordered to serve the minimum disqualification from holding or obtaining a driver's licence of six months.

[43] On the manslaughter conviction you are sentenced to six years' imprisonment.

[44] Stand down.

A handwritten signature in black ink, appearing to read "Hugh Williams J". The signature is written in a cursive style with a large, sweeping initial "H".

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Hugh Williams J