

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

CR NO 380/12

POLICE

v

VAINERII AKAAPA

Hearing: 29 June 2012
Counsel: Mr Manavaroa for the Crown
Mr Petero for the Defendant
Sentence: 29 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] You appear here for sentence having pleaded guilty to a charge that on the 4th April 2012 at about 7.00 pm you drove in a manner which was dangerous to public and caused bodily injury to Tourima Porima.

[2] It is your first offence and you have heard me discussing with Mr Petero the dilemma that judges or lawyers and more particularly defendants such as yourself now face because the charge to which you have pleaded guilty carries the potential for you to go to jail for 10 years.

[3] Now as I have said to Mr Petero, I suspect that you were overcharged by the Police in this case and that what happened was really equivalent to careless driving causing injury. But even that, now, carries a potential penalty of 5 years imprisonment.

[4] On the night of 4 April at about 7 o'clock in the evening you had been visiting your late partner's grave - he died about a year ago - you got onto your bike and rode, it now seems, about 50 metres without your headlights on. You saw an oncoming bike driven by Mr Porima with his wife on the pillion and there was a crash.

[5] Because the Probation Service did not have the full papers concerning the case, its report seems to have been prepared as if you had been charged with careless driving causing injury not driving in a manner dangerous causing injury. It tells me you have been unemployed since you came back from New Zealand earlier this year. You plainly suffered greatly from not just the stress and anguish from your partner's death, but now the stress and anguish from this incident and you feel isolated and downcast, apologetic, remorseful, and your family are prepared to pay - in fact someone has already paid compensation in the sense of the repair costs - in order to keep you out of jail. You have in your favour that the victim suffered relatively minor injuries, certainly more minor than Mr Teiti's case just before you.

[6] But the Crown draws my attention to the fact that in 2007 the maximum penalty for the offence to which you pleaded guilty has doubled. It went up by 100 percent.

[7] The maximum penalty as you heard me say to Mr Teiti for careless driving causing injury or death went up by 2000 percent. and as a result, again as you have heard me say earlier on this morning, Courts have to start the exercise of sentencing people who have been convicted on charges such as this by looking at a substantial term of imprisonment.

[8] The Crown acknowledges and Mr Petero of course emphasises your very early plea, the fact that it is your first time in Court, the distress you have suffered

from the loss of your partner, and then from the circumstances of this accident, the fact that you have got wide family support, and draws my attention to a number of cases which they suggest are similar where terms of imprisonment or terms of probation or any other of the range of penalties are imposed.

[9] Mr Petero for you suggests that I should dismiss the charge against you or simply order you to come up for sentence in 12 months if called upon. That cannot be the sentence anymore. As you heard in my discussion with him, potentially on this charge you could go to jail for 10 years. Even if I regard it as if you were convicted of careless driving causing injury you could go to jail for 5 years. Courts now have to start looking at these cases with a view to sending people to jail unless there are absolutely massive circumstances indicating the contrary.

[10] And you have heard me say also that there are only a limited range of sentences that can be imposed on somebody such as you. You cannot pay a fine, you have no money. Probation would be helpful, I have no doubt, but the seriousness of the offence precludes that. Dismissal of the charge is not open because you pleaded guilty and there has been no application to change that plea. Simply ordering you to come up for sentence if called upon is not a realistic option against a 10 year maximum, or even if it is regarded as a 5 year maximum.

[11] What the Courts need and the lawyers need, and drivers in the Cook Islands need, is a what the lawyers call a tariff judgment from the Court of Appeal where they can look at all these charges, all the sentences that have been imposed over the past 3 or 4 years and suggest what is the correct approach and a graduated scale is given as a guideline for the range of offences.

[12] In your case, as in the other two cases I mentioned, were it not for the increase in penalty you would have as good a suite of mitigating circumstances to reduce the seriousness of the offence as anyone. Your personal anguish, your personal circumstances, your first offence in 39 years, your early plea plus the fact that although you should have put your headlights on before you took off on your bike, it is common enough for people to get onto a bike or get into a car, drive off

and turn the lights on within a few seconds of starting. You had only driven about 50 metres when this crash occurred.

[13] I have to start by looking at the appropriate sentence for you as being about half the maximum as if you had been convicted of careless driving causing injury, that is to say about 2 ½ years in jail. You have, as I said, a very powerful set of personal circumstances which operate to reduce that, plea, you paid the reparation, it is your first offence, you are more remorseful and upset than many others are, and though a matter of luck, the injury caused to the other driver was relatively minor. But faced with the starting point of 2 ½ years or thereabouts it is impossible, as I said in Mr Castillo's case, for people charged with this offence to avoid jail unless there is something absolutely extraordinary.

[14] I sentenced Mr Castillo to 10 months in jail for driving which was very much worse and resulted in a death.

[15] In my opinion in your case, the appropriate sentence to impose on you is one of 4 months in jail, with 12 months probation to follow, on the statutory conditions and on the condition that you will be disqualified from holding or obtaining a drivers licence for 2 years.

A handwritten signature in cursive script, appearing to read 'H Williams', written in black ink on a white background.

Hugh Williams, J