

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

CR NO'S 110/13 & 111/13

POLICE

v

TUAINA MAUNGA

Hearing: 3 May 2013

Counsel: Ms C King for the Crown
Mr C Petero for the Defendant

Sentence: 3 May 2013

SENTENCING NOTES OF POTTER J

[FTR 09:35:33]

[1] Tuaine Maunga you are before the Court this morning for sentence on two charges. One charge of causing bodily injury while driving under the influence of alcohol under s 25(2) of the Transport Act 1966. The maximum penalty for that offence is 10 years imprisonment and a fine not exceeding \$10,000.

[2] As Ms King for the Crown noted, that penalty was doubled in 2007 by the Legislature which indicates the seriousness with which Parliament views this type of offending.

[3] The second charge is one of excess blood alcohol under s 28A (1) and (2) of the Transport Act. The penalty for that offence is a maximum term of imprisonment of 12 months or a fine not exceeding \$1000 or both.

[4] The Court is required to impose a mandatory disqualification from driving period of 12 months. Likewise in respect of the first charge, there is a requirement for mandatory disqualification for a period not exceeding 3 years.

[5] The facts of the matter have been set out well by counsel for the Crown and by your counsel. On Sunday the 2nd December 2012 you were driving with a pillion passenger on a black Honda Wave motorbike along the Main Road coming into town from Avatiu towards the direction of Tupapa. As you approached the bend in front of the Catholic Church you veered the bike to the left, off the road and crashed into the curb of the footpath. You lost control and the bike fell on the road.

[6] You and your passenger both suffered injuries in the nature of abrasions and cuts but fortunately those injuries can be described as not serious. Fortunately also no other people were involved in the collision.

[7] You stated to the Police that you consumed five bottles of Heineken and five glasses of vodka and coke prior to the crash. You said you swerved to try to avoid a car in front of you.

[8] Subsequently an evidential blood test was taken which recorded 248.9 milligrams of alcohol per 100 millilitres of blood. That is more than three and half times the legal limit. You were heavily intoxicated that night.

[9] The aggravating factors of the offending clearly include the level of intoxication and the fact that injury was suffered by both you and your pillion passenger Mr Sila. But those injuries as I have said were fortunately not serious.

[10] In relation to mitigating factors they relate to you personally. You have an exemplary record and at the age of 28 you have never been before the Court on any matter.

[11] You accepted unreservedly the facts of the matter as detailed by the Police and you accepted responsibility for your offending by entering an early guilty plea.

[12] I have read the references attached to the Probation report and I note that two of the people who provided references are in Court today in your support. It is testimony to your good character both as a person and an employee, that people have been prepared to be so uncompromising in their support and value of you. It is fair to say that this offending is an aberration but it cannot be denied that it was serious drunk driving offending.

[13] I have received written and oral submissions from your counsel and from the Crown. The Crown seeks a short period of imprisonment by way of penalty. Mr Petero on your behalf submits that the appropriate penalty could be in terms of a significant fine coupled with a term of probation.

[14] The Crown has provided a number of sentencing decisions which establish the approach to sentencing in cases of this kind. They are judgments of the High Court over approximately the last two years. I do not intend to refer to them individually. Suffice to say it is clear that in cases of this type of offending the penalty will be a term of imprisonment unless there are exceptional circumstances which justify the Court in departing from that approach. I do not find such exceptional circumstances in your case. And in saying that I do not overlook the matters of mitigation advanced on your behalf by Mr Petero.

[15] Nevertheless the law requires that the Courts recognise the need for deterrence generally, and that is very important, and the need for deterrence specifically in your case. I rate the need for specific deterrence in your case at a lower level than the need for general deterrence because I am quite sure when you say that you have learned a very hard lesson from your experience in this matter, that you are being completely forthright. I do not expect that you will offend again in such a way.

[16] Nevertheless the need for deterrence requires, I consider, that the penalty be a short term of imprisonment. I take into account that your early guilty, your remorse, your willingness to pay reparation are all matters I can consider in mitigation.

[17] I impose on you a sentence of one month imprisonment. That will be followed by a period of 12 months probation on standard conditions.

[18] You are disqualified from holding or obtaining a drivers licence for 18 months.

[19] You are to pay reparation of \$175 for the medical report and blood analysis.

[20] You are to pay Court costs of \$30 on each of the informations.

[21] Please stand down.

Potter, J

Judith Potter, J