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

**CR NO'S 361/13
331/13**

POLICE

v

NOAH BAILEY

Hearing: 6 December 2013
Counsel: Mr Manavaroa for the Crown
Mr George for the Defendant
Sentence: 6 December 2013

SENTENCING NOTES OF GRICE J

[1] Mr Bailey, you appear today for sentence on two serious charges. The first of excess breath alcohol under s 28A of the Transport Act which carries a maximum penalty of 12 months imprisonment, a fine not exceeding \$1000, or both. And in addition, disqualification from holding or obtaining a drivers license for a minimum period of 12 months.

[2] The second charge is the more serious charge in this particular circumstance which is the drink driving causing injury. That carries a maximum penalty of 10 years imprisonment and a fine not exceeding \$10,000 and in addition disqualification for a period not exceeding 3 years or 5 years if you have had a previous similar conviction.

[3] The facts are that on 12th July 2013 at about 9.40 in the morning you were in your car behind the victim's motorcycle. You were both going in the same direction

when you came up behind the motorcycle and touched the motorcycle. As a result of which you collided with the motorcycle in which the collision sent the victim forward off his motorcycle and onto the hard road. He sustained cuts to his elbow and his left foot which required medical treatment and pain relief and there is a medical report from the incident which indicates that the victim had considerable pain and injuries. He had to return to get his wounds redressed some days later. The victim was very shaken by the incident and had to take some further time off work. He was in a state of shock after the accident and part of that no doubt was that it could have been so much worse – this could have been a death.

[4] You, to give you credit, admitted consuming alcohol the previous night and continuing the next morning, that is before you drove your car.

[5] The victim impact statement has also been produced and the victim has now gone back to Australia, he was here on holiday or for a family commitment and that the victim report indicates that the victim was in a state of shock, he was admitted to hospital and has suffered severe pain in his foot and elbow.

[6] The Crown has submitted that I must take into account certain of the sentencing principles and those are well known in this Court. In the Cook Islands there is no specific legislation that deals with the principles of sentencing but it is accepted that the principles set out in the New Zealand Sentencing Act are readily applicable in the Cook Islands. In general, those principles are:

- (a) first, punishment of the offence or the criminal behaviour;
- (b) secondly, deterrence so that you nor others will do it again, to send a warning to others; and
- (c) thirdly, prevention.

[7] The community is getting more and more concerned about these sorts of accidents caused by alcohol reflected by the amendment in 2007 to the drink driving alcohol laws here which increased the penalties and the disqualification periods.

[8] The Crown says this is a serious incident and any sentence must reflect the gravity of it as well as your culpability. It must also reflect the effect on the victim and the other principles – rehabilitation and reparation or restoration of the victim – should be reflected in the sentence today.

[9] Mr George on your behalf says that you have no major disagreement with the factual situations set out by the Crown. You entered an early guilty plea and stood up and took responsibility.

[10] The Probation report is helpful as to your background and some recommendations and, importantly, you have offered reparation to the victim both for damage to property, medical costs and a contribution toward loss of wages. That is a concrete reflection of the remorse that you have expressed.

[11] Mr George has suggested a fine with a range of going rates from \$200 to \$500 and also urged on me that probation would be a suitable sentence in this case. He referred to a reference from your employer which he read out and I will put on the Court file, which all seems to indicate that you are a hard working man, you kept your family, you have kept out of trouble for some 20 years, looks as though you have had some youthful sprees but I put those to one side for the purpose of this sentencing.

[12] The Crown also referred me to a number of cases in relation to drunken driving and driving causing injury cases with a range, again, of sentences. One with imprisonment on a first offence; others with probation.

[13] I agree with the Crown submission that denunciation of this type of offence needs to be clear, a message needs to come from the Court. In this case the factors are the seriousness of the incident – it was an accident causing injury. You were twice the alcohol limit allowed. You were substantially impaired. You had been drinking the evening before and the morning. However, luckily the injuries were not life threatening.

[14] Turning to your personal circumstances, as I said your last offence was some 20 years ago and seems unrelated to this offending and I have taken into account

what Mr George has said on your behalf and what is outlined in the Probation report about your personal circumstances and your otherwise good work ethic and provision for your family.

[15] I note you wanted to apologise to the victim, the victim was in no mind to take an apology at the time, perhaps that will change.

[16] In the circumstances, but for the fact that the injuries were not life threatening I would have considered a period of imprisonment. However, I have taken into account the submissions of your counsel and given this is a first offence of this nature for you, you are hardworking, shown remorse, offered reparation, and an early guilty plea, I have come to the conclusion that the recommendation of a period of probation is appropriate.

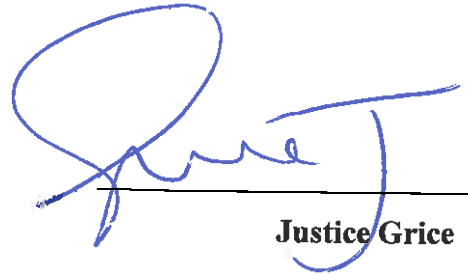
[17] I have received a variety of recommendations, the Probation Service are of the view 12 months is appropriate and the Crown have asked for 24 months. In view of the fact that you have offered the reparation, I will impose a sentence of 18 months probation, the first six months to be served on community service. The terms are as set out in the Probation Report, and to attend any training or workshop as directed by Probation Services. You are not to purchase or consume alcohol. You are not to enter into or stay on licensed premises and you are to take such alcohol and other counselling as is directed by the Probation Service.

[18] You will be disqualified for a period of 2 years from holding or obtaining a drivers license. Reparation is ordered to be paid to the Registrar in the sum of \$75 medical expenses, \$1000 toward loss of wages, \$1473 toward damage to the motorcycle.

[19] On the second charge of driving with excess breath alcohol I convict you and disqualify you for a period of 2 years from holding or obtaining a drivers license to run concurrently with the disqualification on the earlier offence.

[20] On each charge you are ordered to pay costs of \$30.

[21] Thank you Mr Bailey, I hope nothing like this happens again.



Justice Grice