

**IN THE HIGH COURT OF THE COOK ISLANDS CR NO'S: 502/14 & 508/14
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

**SUPPRESSION ORDER AS TO DETAILS OF THE FAMILY MATTERS
REFERRED TO IN PARAGRAPH 12**

POLICE

v

NGATOKORUA TONORIO

Date: 28 November 2014

Counsel: Ms P Dengate-Thrush for the Police
 Mr M Scowcroft for the Defendant

DECISION OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[1] Mr Tonorio, you are charged today with two charges. The first of careless driving causing injury to Mr Taoro and Mr George. The maximum term of imprisonment on that is five years. It has a maximum fine of \$5000.00.

[2] On the second charge which relates to the same incident, you are charged with an excess blood alcohol offence under section 28(a)(1) of the Transport Act for which there is a maximum term of 21 months imprisonment and a maximum fine of \$1000.00 with a mandatory minimum of 12 months disqualification.

[3] The offences occurred on 7 August 2014 about 11pm at night when you crossed head on into another motor vehicle. You were driving your motor vehicle home from a function.

The driver of the other vehicle tried to swerve but he could not get out of your way, and the pillion passenger were both injured as a result of the crash. You'd been drinking at a function earlier but could not remember too much detail about that when you were questioned a few weeks later.

[4] Your blood alcohol reading was taken at the hospital and you were found to have 231mg of alcohol per 100ml of blood, very substantially over the limit which is 80mg of alcohol. You broke your hand and had abrasions to your foot.

[5] The victims were also injured and there is a victim impact statement. The victims seek reparation for costs to repair the motorcycle of \$1246.00 together with various analysts' costs and medical report costs totalling approximately \$340.00. The victim Mr Taoro says he was traumatised by what happened. He realises it could have been much worse and he says he puts it entirely down to the alcohol consumed by you. He is grateful that he and his friend were not seriously injured or more seriously or indeed dead. He broke his hand and had injuries, various abrasions, to his foot, arms and leg.

[6] The Crown submits this is a serious matter. Ms Dengate-Thrush points to the fact that Parliament, in 2007, increased the maximum penalty for careless driving causing injury from 3 months imprisonment to a maximum of 5 years imprisonment. This denotes the seriousness with which Parliament views these offences. She also says that alcohol related offences are prevalent in the Cook Islands and are committed frequently with tragic circumstances. She points to the fact that there's a 12 month mandatory disqualification which also underscores the seriousness of the offence.

[7] The Crown referred me to two recent Court decisions which reflect the more serious view that the Court is taking of these offences. These decisions were *R v. Raeina*¹ and *R v. Akaapa*². In the first case, a case of dangerous driving causing injury which the Court considered was more equivalent to careless driving. The Judge emphasised the need for the Court to look at these cases with a view to sending people to prison. In that case, there was no alcohol involved and the Court heard that the victim suffered relatively minor injuries. In

¹ Police v Raeina Cr No 33/13. 15/3/13 Williams J

² Police v Akaapa Cr No 33/13. 15/3/13 Williams J

that case the collision occurred because the accused got onto his motorcycle and drove about 50 metres with his headlights off and so caused the collision. In that case, the sentence was 4 months in jail with 12 months probation. The offender had no previous convictions.

[8] The other case which the Crown referred to me was the case of *Police v Raeina*. In that case there was alcohol involved. The defendant had an alcohol level of 261.4mg per 100ml of blood against the legal limit of 80. That was about three and a half times over. In that case reparation was paid and a term of imprisonment taking into account the previous good character of the defendant and other circumstances was imposed.

[9] Your defence Counsel also referred me to cases which related to similar offending and he referred me in particular to the decision in *Spain*³. The Chief Justice in sentencing on two charges of bodily injuring while driving under the influence of drink. The excess of alcohol in the blood was almost twice the legal limit. He took into account all the circumstances and noted that it was out of character for someone who is otherwise a quiet character and had no previous offences. In that case those matters were taken into account as well as the fact there was likely to be civil damages claim and the defendant was fined as well as various other orders. A fine of \$2000.00 was imposed. That decision was in March of 2012.

[10] Taking careful account of your counsel's submissions, both the written submissions which I have read and his oral submissions, he emphasises that you are the bread winner, that you have offered to borrow money to repay this, that you are of good character, although accepts the previous convictions which were some time ago, that you were co-operative and entered pleas early, you are remorseful and seek to apologise to the victim. He suggests a sentence of 12 months probation with reparation and 12 months disqualification. He also provided me with an affidavit from your wife who I see is sitting in the back of the Court. She has indicated that you are a very good provider, a good husband and father and they rely heavily on you for support of the family. Mrs Tonorio stays at home although she does have a part time job which brings in some money for the family. I have also noted that your employer has indicated you are hard working and reliable and is willing to stand behind you. He has provided a reference indeed and offered to lend you the money for reparation.

³ Police v Spain Cr Nos 24,25 & 26/12. 23/3/12. Weston CJ

[11] Turning to the offences themselves, the factors which I must take into account are the very high level of alcohol that was in your blood. You seemed to be in a very drowsy and tired condition, it must have been even before you left the drinks. You certainly were when you awoke in hospital after the crash. I also note that the victim was injured, luckily not majorly seriously but nevertheless reasonably significant injuries. Against that I balance your early guilty plea and the fact you've offered reparation. In particular I take into account your personal circumstances including the matter that counsel referred me to the stress that's on your family due to a family member issue.

[12] In that regard, counsel in chambers, made me aware of those family matters and submitted that they have led to severe and ongoing stress on the family. The detail of which is subject to suppression orders. These matters are ongoing but have badly affected the family. The reference to that incident is also suppressed in this judgment.

[13] I have to take into account the principles of sentencing. The community requires that these offences be denounced and I am required to pass a sentence that punishes you for this offence but also deters others from similar offending. The sentence must reflect the gravity and seriousness of the offence and hold you accountable for it. It must take into account any effect on the victims but I am also entitled to take into account your particular family circumstances including the matters that your counsel has drawn my attention to and impose the last restrictive sentence that is appropriate in the circumstances and also consider other options which might contribute to rehabilitation.

[14] As I mentioned, and taken some care over, counsel have referred me to a range of sentencing levels in these matters. Each case sits on its own merits and circumstances but nevertheless, the recent cases have sent a clear message that the Court must consider imprisonment in these offences. I will give appropriate weight to all the factors I have heard and the principles in purposes of sentencing but I am satisfied that in this case I can't achieve that by a sentence other than a term of imprisonment. No other sentence would be consistent with the application of the principles and the relevant cases. However, I have taken into account in fixing that, your personal circumstances.

[15] As the Crown suggested I start from a starting point of two and a half years to three years in the case of the careless driving causing injury and four months on the excess breath

alcohol. The Crown urged me to impose a sentence of 18 months imprisonment on the careless driving causing injury. Your Counsel urged me to impose a period of Probation and reparation.

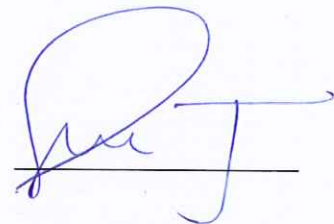
[16] I have come to the conclusion bearing in mind all the circumstances including the personal circumstances that I will impose a term of four months imprisonment in relation to the careless driving causing injury and on the excess breath alcohol, four months imprisonment.

[17] I do not propose making an Order as to reparation given that it's likely to be your family that suffers rather than yourself. That may be a matter that might be pursued in another forum.

[18] In addition you are disqualified from holding or obtaining a drivers licence for 12 months following your release from jail.

[19] The sentences are to be served concurrently and following that will be the statutory term of Probation according to the statutory terms and conditions.

[20] For clarity there is no reparation order made to on either the claim on the motor vehicle or the medical analyst costs.



Grice J

[21] For completeness I note that Mr Scowcroft Counsel for the defendant sought a deferral of the term of imprisonment for family reasons. Ms Dengate-Thrush for the Crown opposed the application and referred me to the provisions of s 14(3) of the Criminal Procedure Act which requires the term to begin on the day it is imposed. The application was taken no further.