

POLICE

v

MERVYN JOHN TANSLEY

Date: 18 March 2016

Counsel: Ms A Mills for Crown
Mr D McNair for Defendant

**SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH
POTTER**

[1] Mr Tansley, you are before the Court for sentence on one charge of careless driving causing injury under s 26 of the Land Transport Act 1966. The maximum penalty for the offence is 5 years imprisonment or a fine not exceeding \$5000.

[2] The Court has discretion to impose a disqualification period of up to 3 years. The maximum penalties speak for themselves; this offence is viewed seriously by the Cook Islands Parliament.

[3] A summary of facts has been prepared on the basis of which you entered your guilty plea.

[4] On Sunday 22 February 2015 at about 4pm there was a collision on the main road at Vaimaanga in Titikaveka at the intersection with the road leading to Wigmore's Waterfall.

[5] You were driving your car in a queue of vehicles on the main road. Ahead of you was a motorcycle with a pillion passenger which was at the head of a queue of traffic in which

you were positioned. Behind that motorcycle were two other motorcycles and another car. You were in line behind that other car and there was another vehicle behind you. All these vehicles were travelling at about 40 to 50 kilometres per hour.

[6] The victim's motorcycle had slowed and indicated a turn right into the road leading to the Wigmore Waterfalls. The other vehicles following slowed but you increased your speed and overtook the vehicles in front of you with the result that you collided with the right turning vehicle on the right hand side of the road. After you had continued a short distance you stopped and came back to the scene of the accident. Both the driver of the motorcycle and the pillion passenger required medical treatment and both were taken to hospital.

[7] I note you dispute some aspects of the summary of facts and those Mr McNair has alluded to in his submissions today, but the fact of the matter is that you entered your guilty plea on the basis of that summary of facts.

[8] I have received Victim Impact Statements in respect of both the injured parties and also a report from Doctor Deacon Willie Teapa at the Rarotonga Hospital. It appears that the pillion passenger was the more seriously injured being in hospital for a week and then unable to work for a period of two weeks, total period of three weeks, of hospitalisation and inability to work.

[9] The driver of the motorcycle was medically examined on the day of the collision and discharged. The motorcycle was considerably damaged and the Victim Impact Statement refers to a quote from Motor Centre for \$1,170 for the cost of repairs.

[10] The statement is made that the motorcycle would need to be replaced but there are no details of replacement costs.

[11] There are considerable mitigating factors in this matter which are referred to in the comprehensive probation report provided to the Court. You are 74 years old Mr Tansley and you have never before been before the Court. You have had a very successful career and have led a thoroughly decent life supportive of the community and in the community.

[12] I note that you are apologetic and remorseful for what has happened.

[13] As the Crown has submitted, custodial sentences are often the appropriate response to this type of offending but as I earlier indicated, I do not propose in your case to impose a custodial sentence. Given your age, your record, the fact that you come before the Court as a first offender, and also the fortunate outcome that there was not in this case serious permanent injury suffered or a resultant and death. I propose to impose a penalty by way of a fine.

[14] There will be a fine of \$1,700.

[15] The issue of reparation is difficult because of the lack of information but I consider reparation should be paid. If I can have the defendant's consent through you Mr McNair, my proposal is to order reparation of \$1300.00, \$1100.00 to be paid to the owner of the motorcycle and the balance to the pillion passenger on account of medical costs and loss of earnings. Thank you.

[16] So there will be an order for \$1300.00 reparation, and Court costs of \$30.

[17] Thank you, you may stand down.



Dame Judith Potter, J