

**IN THE HIGH COURT OF THE COOK ISLANDS    CR NO: 405/15  
HELD AT RAROTONGA  
(CRIMINAL DIVISION)**

**POLICE**

v

**OPURA PUIA**

Date:            11 March 2016  
Counsel:        Mrs A Mills for the Police  
                      Mr M Short for Defendant

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

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[1]    Mr Puia you are before the Court for sentence on four charges: driving while under the influence of alcohol, failing to stop on demand, driving while disqualified and assault on a Constable.

[2]    The lead charge is driving while under the influence of alcohol. That carries a maximum penalty of 12 months imprisonment or a \$1000.00 fine or both. The other charges carry lesser penalties.

[3]    You were disqualified from driving on the 9<sup>th</sup> of April 2015 for a period of 12 months. The reason you were disqualified was an excess breath alcohol charge such as you face again today. I am told that you have paid the Court costs of \$200.00 and reparation of \$150.00 but of course the 12 months disqualification then imposed continues to run.

[4] Briefly, the facts giving rise to the charges against you are that at 5pm on Saturday the 15<sup>th</sup> August 2015, you were driving a motor cycle towards Avatiu on the main road in Avarua at speed and in an erratic manner. A police officer activated the siren and emergency lights on his police vehicle and pursued you. He managed to close the distance between you and him clocking speeds at 70k per hour. Because the risk of pursuit was too high, the police officer abandoned pursuit. Police on patrol at Nikao were engaged to stop you, you were sighted, and an officer in the middle of the road raised his right hand and yelled to you to stop. You increased your speed. Two police officers then pursued you and eventually found your motorcycle parked and abandoned just past the Avatea School playground. You were sighted, chased and apprehended by one of the police officers and during the struggle, you struck a police officer on the right side of his face with your elbow. I accept Mr Short's submission that that should be treated as accidental and consequential rather than deliberate.

[5] This is serious offending. Mr Short has confirmed on your behalf that you acknowledge this to be the case and that you made a bad error of judgment when you decided to drive at a busy time of day, 5pm on a Saturday, clearly, heavily inebriated.

[6] The aggravating factors are that it took two police pursuits to close in on you and apprehend you. The offending took place at a busy time of the day and there was considerable risk to the public. I understand through Mr Short that you appreciate how fortunate it was that the outcome was not much more serious with the potential for injury not only to yourself, but to innocent members of the public. You were driving far too fast, 70k per hour, and you unfortunately struck a police officer during the course of a struggle. It goes without saying that while all this was happening, you demonstrated a blatant disregard for the law.

[7] The excellent Probation report provided, notes that you are 42 years old, that you have lived in Australia for a considerable length of time, something like 14 years, that you returned to Rarotonga in February last year to be with your family for a period and it was shortly after this on the 12<sup>th</sup> April 2015, that you were first apprehended for driving with excess breath alcohol. It is fair to say that you have not been a great asset to Rarotonga, nor to your family, since you returned here.

[8] I understand that you wish to return to Australia as soon as possible where you have a partner and a five year old daughter and I bear that in mind in determining the appropriate sentence for you.

[9] The sentence I impose on you must recognise that your conduct is to be denounced, that you must be held accountable for the harm that you have done and hopefully promote in you a sense of responsibility as well as deterring others who might be inclined to disregard the law in the way you have. Alcohol related driving offences are prevalent in the Cook Islands and it is a matter of concern which is recognised by the Courts.

[10] I must look at the totality of your offending. I accept Mr Short's submission that the four charges all relate to the same incident but there is no doubt, as the Probation report records, that the offending was "serious indeed". It is also of great concern that you were driving while disqualified when these events occurred.

[11] I have given very careful consideration to the penalty which should be imposed on you. In all the circumstances I have reached the conclusion that a short term of imprisonment is appropriate. You must answer for your wrongdoing. A short term of imprisonment will enable you to return to Australia, as you say you wish to do, after your sentence has been served.

[12] I take a starting point of four months imprisonment, which I regard as extremely lenient in the circumstances. You are entitled to a discount for your guilty plea and as the result of that discount, the sentence imposed on you is two and a half months imprisonment.

[13] That sentence is imposed on each of the charges of driving while under the influence of alcohol, driving while disqualified and assault on a constable.

[14] The sentence of two and a half months imprisonment is to be served concurrently on those charges.

[15] On the charge of failing to stop on demand, you are convicted and discharged.

[16] There is a mandatory period of 12 months disqualification required. If you were to remain in the Cook Islands, this will impact for 12 months from the expiration of your current period of disqualification which I understand was imposed on the 9<sup>th</sup> April 2015.

[17] You may stand down.



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**Judith Potter, J**