

POLICE

v

CHARLES BOYLE

Hearing: 21 July 2017

Counsel: Ms A Mills for the Prosecution
Mr N George for the Defendant

Sentence: 27 July 2017

SENTENCING NOTES OF DOHERTY J

[10:16:39]

[1] Charles Boyle, a couple of days ago I found you guilty of driving carelessly and causing injury to a motorcyclist.

[2] This was a case where you turned in front of an oncoming cyclist. You looked, you did not see him but you should have seen him. You showed no remorse in relation to that and I am referring particularly to the Probation Service report in which for a good part of you maintain your position that someone else was the cause of this accident or collision, not you.

[3] It appears to be based on your view that the damage to the motorcycle and where the victim ended up meant somehow he was speeding and it was all his fault. Well you did not bring any expert evidence in relation to that, nor did the Crown, so there was nothing to go on there. And in my view, your view also defies the laws of physics.

[4] I accepted the evidence of independent bystander witnesses in support of the evidence of the complainant primarily to come to my decision.

[5] Apart from this incident you have not been before the Courts before. You seem to be a good businessman who has run a good business over the years, and you are well-settled in this community and apart from this aspect of your driving fault you are unremarkable.

[6] Curiously the Probation report refers only very obliquely to your health and I am advised that you are not in good health. I saw that during the trial and counsel has conveyed your instructions about your illnesses and the surgeries etcetera you have had and their effect on you. I think it is plain to see that there is some health fragility in your life.

[7] The aggravating features really were your gross lack of care. You may recall in my judgment I did not necessarily make findings that this was a case where you were trying to beat oncoming traffic by getting into your driveway. I took the view that this was a matter where you looked, you did try to take care, you did not see when you should have seen, and that is the driving mischief. And I do not agree with the Crown that it was necessarily the top end of the spectrum of carelessness.

[8] In mitigation there is only your previous character really and your medical position. I do not agree with the Crown's position on imprisonment for this particular offending but there has to be an appropriate response to hold you accountable for what you did, to make you responsible, to take account of what has happened to this victim. There is also the safety of the public and I also agree with the Crown on general deterrence.

[9] The Courts have said that Parliament's recent response to increasing the maximum sentence for this offending means that the Courts have to take heed of that and look very closely at all of this offending but, like other cases, there are no tariffs for it because each case generally relies on its own facts and it is the degree of carelessness that is important.

[10] I think, however, your degree of carelessness and its consequences are not insubstantial. One of the worst things one can do is impede upon the proper carriageway of opposing traffic. People are so vulnerable particularly on motorcycles.

[11] This had a real effect on this young man and I have to say that when I saw him still on crutches a year later in obvious pain coming to give his evidence two days ago and when I read his statement which is rather indignant at your attitude to him that you think it was all his fault and you have acted accordingly, he is understandably very frustrated by that. He

wants you to take responsibility for your offending. You have not yet in the sense of being contrite for it but I hope that the end point of this sentencing he will see that his interests have been taken into account.

[12] The Probation Service has recommended a sentence of probation and probationary supervision and I agree with that. I think that that is the least response to give effect to the purposes of sentencing.

[13] You are sentenced to 12 months' probation with the first 3 months of that on community service. That is the deterrence and the punishment side of things.

[14] There will be a special condition of supervision that you not leave Rarotonga without the approval of the Court.

[15] The second part of sentencing is to make good damage. You are ordered to pay reparation of \$550 for medical costs, the cost of the bike when it was written-off, not the cost of replacement which was more, but \$2,700 to be paid to the owner of the bike. And also, bearing in mind the effect this incident has had on the victim, you are to pay emotional harm reparation of \$2,000 to him. So that is a total of around \$5,000 in costs.

[16] There is a final point and that is the public interest in public road safety. There is a mandatory period of disqualification, I take into account that that will have some effect perhaps on your business.

[17] You are disqualified from holding or obtaining a motor vehicle driver's license in the Cook Islands for the mandatory minimum period of 9 months that starts from now.

[18] Thank you.

A handwritten signature in blue ink, appearing to read 'C. Doherty, J.', is written above a horizontal line.

Colin Doherty, J