

POLICE

v

MARK DONALD PAGE

Date: 24 July 2017

Counsel: Ms T Koteka for the Police
Mr M Short for Defendant

SENTENCING NOTES OF DOHERTY J

[9:11:00]

[1] Mark Page, you are for sentence following a plea of guilty to a charge of careless driving causing injury. You were the rider of a motor scooter near the hours of the morning of 26 May of this year. You were riding home having attended a wedding locally. You had a friend as a pillion on the back of the bike. You had been drinking. It appears from the summary of facts to which you have pleaded guilty there was also speed involved. At some stage you came across a dog on the road and in trying to avoid the dog you got into the side of the road, into unstable conditions and came of the bike.

[2] Your pillion passenger suffered injuries which meant that he was taken to the local hospital. He there received some stitches to his head and he suffered cuts and bruises to other parts of his body. He was held overnight checking on concussion but luckily he has made a quick and full recovery.

[3] I have had a note from him in terms of a victim impact report and also a letter that he has written to say that he does not bear any animosity towards you and he has made a full recovery.

[4] You have not been before the Courts either in New Zealand or the Cook Islands before.

[5] I have had the benefit of submissions from your counsel and he accentuates the fact that this is your first offence, you were cooperative at the time, you were and remain remorseful, you have been in contact with the victim, and you have made good as far as you can with him. You have always accepted your responsibility and you have now returned here to Rarotonga to face the music.

[6] I have also had the benefit of some testimonials from those that know you, particularly your parents as well as others, and I do not think there is any doubt that you are a hard working well achieving good citizen but you made an error of judgment here.

[7] The aggravating features of the offending are particularly that you had been drinking. You were not over the legal limit but it is a well-known fact that alcohol can impair judgment and who knows if you had not been drinking you might have been able to take the appropriate evasive action. You were also going too fast to take evasive action and that is not to your credit.

[8] In mitigation is your guilty plea, you are a first offender, and you are remorseful and your support for the victim.

[9] Unfortunately yours is an all too common situation here in Rarotonga. You are a visitor on a scooter. You are using the scooter at night or in early morning when conditions are not good, alcohol was involved, and injury was involved.

[10] The beautiful islands of the Cooks, in particular Rarotonga, are a wonderful experience for every visitor and one of those experiences, particularly for young people, is the fact that you can get a motor scooter licence relatively easily and drive around the island and enjoy its delights. Often those who do that are people who have very little experience on motorbikes or motor scooters and, to be fair, the Cook Islands roads are a bit problematic – potholes, loose gravel, puddles, narrow roads, access directly from properties onto the road and dogs can all be problematic, particularly for the unwary and the inexperienced driver of a motor scooter. And if you add to that the all too common situation of pillion passengers with

inexperienced drivers, alcohol, testosterone, and speed, it is probably no wonder that the Cook Islands is reported to have one of the highest driving injury rates anywhere.

[11] In 2012 in a case called the *Police v Teiti*¹, this Court gave ready notice to the world and particularly the people in the Cook Islands that the ante gone up because not long before that Parliament had increased by about 2000 percent the maximum sentence to show that this was indeed to be taken as serious offending. And in that *Teiti* case the Court said, “the people of the Cook Islands need to understand that if they are convicted of this charge or others like it the Court must start from a standpoint of considering a lengthy term of imprisonment.”

[12] Other cases in this Court, have endorsed that approach. And while the Court gave notice to “people in the Cook Islands”, there is no reason why this should be confined to Cook Islands residents.

[13] There is a licensing regime for visitor motorcycle licenses and that is to the islands’ credit. But the time has come I think that there needs to be education of visitors of the likely consequences of offending against this section in the Transport Act, that is the consequences of careless driving of injuries caused. It is not for me to determine how rigorous a licensing regime should be but I think it is clear that everyone ought to know that they are going to be treated equally before the law and it will no longer be necessarily a factor that because you do not live here that the maximum sentence and the starting point of imprisonment should not apply.

[14] So if visitors are convicted of this offence they must realise they face the same response that the Court will take to Cook Islands residents. This might also impact on the liberty of visitors while they await sentence or a defended case because the Court might not necessarily grant bail.

[15] Having said all that, imprisonment is for generally the worst cases or the more serious cases and everyone accepts (particularly the Crown) in your situation that you are at the lower end of any scale of carelessness. So I am not sending you to prison.

¹ *Police v Teiti* [2012] CKHC 18; CR 374 (29 June 2012)

[16] Mr Short's submission on your behalf that your approach to this case, your remorse, your cooperation has mean that you have already paid quite a price in terms of out of pocket expenses; an increased fare to get home because you had to wait for a while after the accident, your coming back here, your time off work.

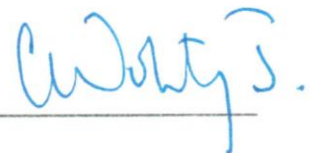
[17] I agree with the Crown that this is at a level where a fine is an appropriate response and I am taking into account all of those factors that have already impinged upon your pocket. But any fine has to be one which, firstly, denounces the conduct of anyone carelessly driving causing injury no matter what the level and, secondly, to show that there needs to be a deterrent for others who do come here.

[18] So I think a total cost to you somewhere in the vicinity of \$1,500 or \$2,000 is an appropriate one.

[19] You are convicted of the charge, you are fined \$1500, you are ordered to pay Court costs of \$50, you are ordered to pay reparation of the medical investigations of \$170. Those sums can be paid before you return.

[20] There is also mandatory disqualification and I disqualify you from holding or obtaining a motor vehicle driver's license here in the Cook Islands for a 12 month period starting from now.

[21] Thank you.



Colin Doherty, J