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**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

CR NO. 603/17

POLICE

v

ETUATE RAGOLEA

Sentence: 30 November 2017

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

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[4:33:37]

[1] Mr Ragolea, you face one charge of dangerous driving causing injury. This charge under the Transport Act 1968 attracts a maximum term of imprisonment of 10 years or a fine not exceeding \$10,000. It also attracts a mandatory period of disqualification not exceeding 3 years.

[2] The offence occurred when you were driving your motor vehicle from Rutaki toward Nikao. The victim was travelling in the opposite direction on the correct side of the road. You candidly accepted the facts, to your credit.

[3] As you approached the Onemaru Villa you overtook a truck that was travelling in front of you and crossed the double yellow lines in the centre of the road. The summary of facts indicate that you failed to ascertain whether there was any oncoming vehicle or whether the lane was clear. There is also a suggestion that speed was involved.

[4] As a result you collided head on with the victim's motorcycle. The victim was thrown onto your vehicle's windscreen and then to the side of the road. Your vehicle ended up in a hedge with the victim's motorbike underneath it.

[5] The victim suffered reasonably serious injuries which included a fractured hand, scratches, lacerations and abrasions and facial injuries.

[6] The motorbike was a total write-off and no longer road worthy. The victim has had ongoing medical treatment. He was not able to work for 3 months and he lost wages of \$295 a week. He has a hospital bill outstanding of \$40 for being an in-patient. Reparation was also sought and I will refer to that further as you have gone a long way to deal with that.

[7] Counsel on your behalf, Mr Short, has made some strong submissions on your behalf. He made written submissions and addressed those. These have been helpful.

[8] He points out that you fully co-operated with the police. You assisted the victim at the scene of the accident. At the hospital you spoke to the victim's parents to apologise to them for causing the accident. In addition you entered into a loan agreement to purchase a new motorcycle for the victim. That documentation was produced and the motor vehicle was chosen by the victim's father who has also written a letter to the Court.

[9] I note also to your credit it is your first offence and you pleaded guilty at the first opportunity. The explanation that you gave for overtaking the vehicle at speed was that you were in a hurry because you had a prayer meeting at your home. You were also trying to get some luggage to a cousin who was leaving the country. While that explains it, it is not a good excuse.

[10] A number of references were produced by Mr Short on your behalf. It is clear that you are a well-regarded member of the community, very active in the church, a God-fearing person and highly regarded. I take these into account.

[11] The father of the victim, as I said, provided a letter saying he was angry at the time but now that you have arranged for the purchase of a new motorbike he believes you are genuinely remorseful. He has asked the Court to show leniency. He comments that it is fortunate that no one died in the accident.

[12] I also note you are a hard worker, you are in employment and send money home to your family. Your employer supports you. I also note that the loan arrangement will stretch your financial resources considerably. You are to be commended for that.

[13] However, these driving offences are being treated very seriously by the Courts. It may be unfortunate that you have come before the Court in a year which has seen a number of these types of incidents. The Courts have regularly noted that imprisonment will be a starting point for these offences.

[14] Parliament increased the maximum sentence for this offence from a maximum of 5 years imprisonment and \$500 to 10 years imprisonment and \$10,000 respectively in 2007.

[15] The Chief Justice, then Williams J in *Police v Timoti*¹ recently noted that Parliament's response was a principled reaction to mark its disquiet at the prevalence of cases coming before the Courts of serious injury or death caused by the most serious driving offences, especially those involving alcohol coupled with injury or death. He said it was a plain indication of Parliament's wish and determination to denounce such conduct. He said in addition there had been repeated and frequent public calls from the police for motorists to modify the driving behaviour generally. These calls had been insistent but seem to have been of little avail.

[16] In *Timoti* His Honour said:

[25] It must be said that, although Courts have increased their sentences in response, the increases have been modest when set against the doubling of the possible term of imprisonment nine years ago and the tenfold increase in fines. The sentence increases must be seen as minimal, tentative and, where imprisonment has been imposed for convictions for such offences, the increases have been in terms of a few weeks or months rather than years. Even now, the sentences imposed to which counsel referred me, tend only to be around two and a half percent of the maximum or even less. Non-custodial sentences are often still the result following conviction for such offences.

[17] He said that the sentence increases must be seen as minimal and tentative. Where imprisonment had been imposed for convictions for such offence, the increases had been in terms of a few weeks or months rather than years. The sentences imposed which Counsel referred to me tend only to be around 2 percent of the maximum or less.

¹ *Police v Timoti*, CRN 477/2016, 1 June 2016, Hugh Williams J

[18] Non-custodial sentences often still result.

[19] In that case His Honour indicated it was overdue to increase the starting point for penalties in relation to offences under s 25.

[20] His Honour indicated particularly cases where alcohol is involved that the offending needed to be taken seriously. I accept in this case there was no alcohol involved, in fact your Counsel submitted you do not drink or smoke to your credit.

[21] However, His Honour also said if there is no slackening in the commission of such offences having these consequences the Courts may well be justified in the future in adopting a higher starting point than he did in that case. He adopted a starting point in that case of imprisonment of 12 months. It was reduced for various reasons including the fact the defendant was a mother of a small baby and the final penalty imposed was a term of imprisonment of 6 months with disqualification from holding or obtaining a drivers licence for 2 months as well as reparation.

[22] This case did not involve alcohol however, it did involve speed in the sense that you sped up to overtake the car in front of you. You did not check that the road was clear. You crossed the double yellow lines. The driving was intentional and not than merely inadvertent. The incident also occurred in the hours of darkness or dusk. These factors indicate a starting point of imprisonment in this case.

[23] The Crown pointed to *Akaapa*² in which the Court took a harsher approach on one charge of dangerous driving. In that case a starting point of 2 ½ years' imprisonment resulted in a end sentence of 4 months imprisonment with 12 months' probation to follow.

[24] Another recent decision referred to by the Crown, *Reichardt*³, was a careless driving causing injury case. This is a lesser offence than dangerous driving, but it did involve alcohol. The defendant had been previously sentenced on the alcohol offence. In that case the Court

² *Police v Akaapa*, CRN 380/12, 29 June 2012, Hugh Williams J

³ *Police v Reichardt*, CRN 257/17, 26 July 2017, Doherty J

took a starting point of 12 months imprisonment and imposed a sentence of 6 months imprisonment.

[25] Mr Short has referred me to the case of *Felisimino*⁴. In that case Doherty J was dealing with a charge of careless driving causing injury to the pillion passenger who was on Mr Felisimino's motorcycle. The offender was convicted on the careless driving charge and sentenced to a term of 12 months probation with 4 months on community service, ordered to pay reparation of \$300 to recompense the pillion passenger for her pain and suffering. There was no reparation for damage to the cycle as it was Mr Felisimino's own. He was disqualified for 24 months.

[26] Mr Short pointed out that this was a decision of careless driving causing injury which carries half the maximum term of imprisonment and half the maximum fine that the present dangerous driving charges carries.

[27] In this case my starting point must be a period of imprisonment as I said and that starting point I take as 4 months imprisonment. There were no aggravating factors such as alcohol or drugs. However there was an overtaking manoeuvre without looking to see whether there was anything coming from the other direction. That is an aggravating factor.

[28] Mr Short's submissions noted that you do not have any previous convictions. In particular you deserve a full discount for an early guilty plea. This is usually 25 percent, you have expressed remorse and paid reparation. I take those factors into account.

[29] I note that you are not a Cook Islands citizen and there will be matters that flow from this conviction, including perhaps relating to your work and your ability to stay in the country. But while they are unfortunate they are inevitable consequences of a person's conviction on these serious offences. I do take into account your personal circumstances which have been urged on me strongly by Counsel.

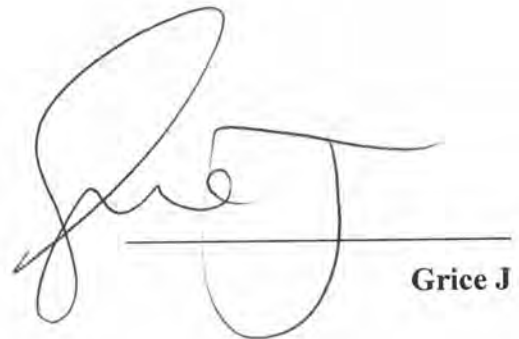
⁴ *Police v Felisimino*, CRN 39/16, 13 July 2016, Doherty J

[30] Nevertheless the important thing in this case is the driving involved. Taking into account all the factors including the early guilty plea I come to the conclusion that a term of imprisonment is appropriate. I impose a term of imprisonment for a period of 2 months.

[31] You will be disqualified from holding or obtaining a drivers license for a period of 2 years from following your release from imprisonment.

[32] As I have noted you have entered a loan agreement for reparation. It is unclear what the effect of the term of imprisonment will do to that arrangement. The motorbike has been replaced so there will be no order for reparation.

[33] In the circumstances I do not intend to impose any other costs.



Grice J