

POLICE

v

PITA MONGA

Sentence: 5 December 2017

Counsel: Mr T Manavaroa for the Crown
Mr W Rasmussen for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[09:50:16]

[1] Mr Monga, you are appearing before the Court today on one charge of careless driving causing injury. It is a serious charge and in the Cook Islands it carries a maximum term of 5 years imprisonment meaning you could go to jail for this for up to 5 years and face a maximum fine of \$5,000.

[2] It also attracts a maximum term of disqualification from holding or obtaining a drivers license of 3 years.

[3] I have heard from the Crown outlining the facts. Mr Rasmussen elaborated on what happened that day. It was in December 2015 – so it is two years old. You were at an intersection on one of the inland roads near Tupapa. You were edging up to the intersection trying to see beyond the hedge which was obscuring your view and as you did this, Mr Mani, driving along the intersecting road, collided with the side of your vehicle.

[4] I understand that there was some discussion about whether to enter a not guilty plea should be entered given the circumstances but it seems clear that while there is an explanation

due to the height of the hedge as to why you edged out, nevertheless you did not exercise the care of a reasonable prudent driver in the circumstances. Mr Rasmussen would have advised you on that and you entered a guilty plea.

[5] Unfortunately, for such a small inadvertent action, it had serious consequences for the victim.

[6] Mr Mani, whom I understand you know, was driving along on his motorbike and apparently was sent into the air on collision and onto the ground landing heavily. He sustained a broken hip. He had to have hip surgery in New Zealand for this and he continues to suffer.

[7] Mr Mani has provided a victim impact statement and that sets out what the injuries have meant for him. He had to go to New Zealand for surgery. The surgery obviously took a bit of time. He had to fly across there, could not work here, and had to leave his home and family during that time. He lost income as he cannot do the part time work that he used to do. He cannot do his chores and other things.

[8] Substantial changes have been made in his life. He cannot walk without walking aids. That is likely to be the case for the next 18 months according to the medical evidence. He cannot do his planting. He is dependent on his family for help. He said he often suffers pain which makes him less tolerant and makes life more difficult for him.

[9] The loss of his wages was put at \$250 a week which is a matter I will consider later. The damage to the motorbike was minimal. I have no figures in front of me but I understand the repairs cost less than \$1,000.

[10] As I said, this offence is serious. The Cook Islands Parliament increased the imprisonment term from 3 months and a fine of \$100 in 2007. Parliament has indicated to the Court it must take these offences seriously. One of the reasons is the number of similar offences that are coming before this Court. In fact in the 2 weeks that I am sitting here I have had seven of these cases of driving causing injury come before me. They cover a range of circumstances. Some caused by inadvertence, as your case, but some involving speed and more serious causes.

[11] The Court has indicated that sentencing will need to send a message to the public and drivers that this type of offending must stop. That is why, as you heard from the Crown, that the Court has said that in a situation of a collision like this where there is careless driving or dangerous driving which involves aggravating factors such as alcohol and speed, the Court will be looking at a custodial sentence.

[12] The Court of Appeal last week considered a careless driving charge causing injury in *Boyle*.¹ In that case the Court said there are a range of circumstances that I have to look at considering sentencing on these offences including the nature of the offence and whether it was caused by inadvertence or otherwise.

[13] The Crown has also referred me to *Reichardt*² which did involve alcohol. In that case the offender was imprisoned for 6 months and ordered to pay reparation of \$1,600 together with \$1,000 for emotional harm. He was disqualified for 2 years from holding or obtaining a drivers license. That case was more serious because of the alcohol involved which was not a factor in this case.

[14] In cases that are similar to this where inadvertence has played a major part such as *Bartley* where a U-turn caused a collision which caused serious injuries to a motorbike following the victim, a payment was made of \$10,000 voluntarily to the victims. In that case a fine of \$750 together with a term of disqualification was imposed.

[15] In Mr Boyle's case he just turned into a driveway at night and did not look when a motorcycle hit him. He was sentenced to 12 months probation, 3 months on community service, and a condition he not leave Rarotonga without approval of this Court. He also had to pay reparation in total of about \$5,000 and he was disqualified for 9 months.

[16] Mr Rasmussen made careful submissions on your behalf. He accepted the facts and explained what happened. He also indicated this was your first offence in all your years of driving – that is a good record. He accepted that there needed to be a message of deterrence, to signal to you and the public.

¹ *Charles Boyle v Crown*, CA 5/17, 24 November 2017, Fisher White Grice JJ; *R v Charles Boyle*, CR 423/16, 27 July 2017, Doherty J

² *Police v Reichardt*, CRN 257/17, 26 July 2017, Doherty J

[17] He indicated that there were no aggravating factors in this case, which I accept.

[18] Mr Rasmussen also said that you had expressed remorse to the victim. You were waiting to see what reparation would be appropriate which you were willing to pay. He indicated you would be able to make arrangements to pay by instalments a sum in the vicinity of \$1,500.

[19] The Crown has also noted that you rely on your license for driving and Mr Rasmussen has confirmed that. You are obviously a valued employee because your employer has said he wants to assist you in relation to sorting this matter out. I take your work requirements into account, in relation to whether or not I impose disqualification.

[20] Nevertheless I must consider the principles which provide guidance in sentencing. These include holding you to account, that you must pay for what you have done, and also to promote responsibility both by you but also in others and to send a message of deterrence. Also, as the Crown recognised, it must be the least restrictive sentence that I can impose in the circumstances. It should not interfere inappropriately or disproportionately with things like your work.

[21] The Crown gave me a useful range of levels of reparation that had been ordered or paid in similar cases. That ranged from *Reichardt* at about \$1,500 to a voluntary payment of about \$10,000 made in another case. The general range of amounts made in orders for reparation appear to be about \$1,000 to \$3,000.

[22] In the circumstances I accept the submissions of your counsel – it was a relatively minor example of this type of offending; you pleaded guilty relatively early, once you had sorted out the facts; and it is your first offence.

[23] I accept that a term of imprisonment is not appropriate in this case. But I do need to send a message showing the concern that the Courts are expressing or talking about so it needs to send a message to both you and the community.

[24] Taking into account all those circumstances, I have come to the conclusion that a term of probation is appropriate, and also a fine.

[25] I propose imposing the least term of probation I can, which is 12 months.

[26] I do not intend imposing community service given the submissions by your counsel that you do have some issues with your knees and joints. It is probably not appropriate and in any event this is your first driving offence.

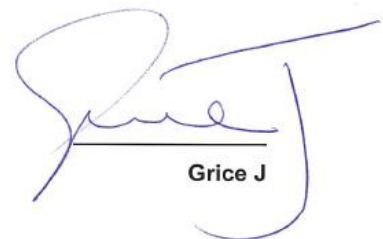
[27] Mr Monga, I impose a period of 12 months probation with special conditions:

- a) that you attend any workshops or training directed by the Probation Service; and
- b) that you not leave the country without the approval of this Court.

[28] I am not going to disqualify you from holding or obtaining a drivers license in the circumstances. I am however going to order a fine of \$150 and reparation to be a condition under s 8(1)(c) of the Criminal Justice Act payable to a maximum amount of \$1,500 to the victim for his physical and emotional harm.

[29] I order Court costs of \$50.

[30] I also impose \$20 costs payable to the police for the medical report.



Grice J