

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

CR NO. 642/17

CROWN

v

NGATAE MOKOTUA

Sentence: 23 March 2018

Counsel: Mr T Manavaroa for the Police
Mr M Short for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE JUDITH POTTER

[10:39:05]

[1] Mr Mokotua you are before the Court for sentence on a charge that you carelessly drove a white Nissan van registration number 6195 on the main road and caused injuries to Terepai Matangaro at Atupa. It is an offence under s 26 of the Transport Act. The penalty for the offence is a term of imprisonment not exceeding 5 years or a fine not exceeding \$5000 and in addition to that, under s 31(2) of the Act the Court has a discretion in addition to imprisonment or a fine to disqualify the offender from holding or obtaining a drivers licence for a period not exceeding 3 years.

[2] You have pleaded guilty to the charge and Mr Short has advised me very clearly how much you regret what has happened and how you are remorseful.

[3] Briefly stated, the facts are that on Wednesday 6 December 2007 at about 0928hrs you were travelling from Arorangi heading towards the town, Avarua. The victim was approaching from the Avatiu back road onto the main road roundabout heading towards the harbour. You failed to give way to the victim and collided into the left middle side of his motorbike. As a result of the crash, he sustained minor injuries to his forehead. The cost

involved in repairing his motor vehicle was \$365 and I understand that has been paid and that no reparation order is required.

[4] Sentencing principles applicable in a sentencing of this kind: the Court must hold you accountable for the harm you have done, look to protect the community, denounce your offending and deter you and others from like offending.

[5] There are no really aggravating factors in the lack of care that you displayed.

[6] But there are mitigating factors. Your early guilty plea. Your co-operation. This is your first appearance in Court at the age of 58 years. You have shown very genuine remorse, visiting the victim in hospital and at home. I understand that the victim is a friend of yours. He has written a very conciliatory letter dated 23 March and asked that you be forgiven and that you be allowed to keep your licence otherwise you will lose your job.

[7] As you appreciate Mr Mokotua, the Court must impose a penalty for this type of offending. I intend to impose on you a fine but I do not intend to disqualify you from driving. I have discretion in that matter. The usual course on a conviction of this kind is to disqualify the offender from having or obtaining a drivers licence with 12 months. But given the situation where you are dependent on your licence for you work at the Airport Authority, and the favourable reference that they have given for you, I have decided not to disqualify you.

[8] The fine I impose on you is \$1,500 and there will be Court costs of \$50.

[9] You may stand down.

Potter, J.

Potter J