

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

CR NO. 413-414/19

POLICE

v

RIMAATI TAKAROKA

Date: 26 November 2019
Appearances: Mr T Manavaroa Snr for prosecution
Mr W Rasmussen for defendant
Sentence: 26 November 2019

SENTENCING NOTES OF WOODHOUSE J

[2:15:50]

[1] Mr Takaroka, you can remain seated until I impose the sentence. I need to explain the sentence I am going to impose so the community understands the reason. It will take me a minute or two.

[2] I do want to tell you at the beginning that I am not going to impose a sentence of imprisonment. But I want to emphasise to you that, both in terms of making sure that you do not do this again, and also in trying to send a strong message to anyone else who does the sort of thing you did, you have come very close to going to prison. Do you understand?

[3] Mr Takaroka, you have pleaded guilty to a charge of dangerous driving causing injury and the maximum penalty for that is imprisonment for 10 years. That is the maximum and that shows a seriousness of this offence. Or in the alternative a fine of \$10,000.

[4] In addition to that serious offence you have pleaded guilty to a charge of having excess alcohol in your blood which has a maximum fine of \$1,000 or 12 months in prison. And these are separate from what I have just said. And mandatory disqualification of 12 months.

[5] The facts in summary are as follows. On Saturday 29 June 2019 you were riding a motorcycle with a pillion passenger. You were beside the Nikao seawall on the inland side at a bend with a double yellow line prohibiting overtaking. You overtook one car and started overtaking a truck. A car was coming the other way. You pulled back towards the inland side, when you were not clear of the truck. You clipped the front of the truck, lost control and you and your passenger were thrown onto the road. Fortunately the truck driver took immediate evasive action because you and your passenger ended up only a few metres in front of the truck.

[6] You and your passenger sustained head injuries and abrasions on your legs and arms. The medical report for your passenger refers to the possibility of a skull fracture. But nothing of a particularly serious nature of that sort was in fact referred to in the report beyond the suspected fracture. Your passenger was unresponsive when ambulance staff arrived at the scene.

[7] Both you and your passenger had been drinking earlier in the day. An evidential test of your blood found 214mg of alcohol per 100ml of blood. Mr Takaroka that level of alcohol is almost three times the limit.

[8] The victim is a 55 year old male. He is a close friend of yours and he is still a close friend. He said in a victim impact statement that there is “no emotional affects” on him either in relation to his lifestyle or behaviour. He feels sorry for you. And I would add, it is to be hoped that the damage to his head does not have long term consequences.

[9] I need to fix what is called a starting point. That is to say, in effect, the maximum sentence that might be imposed. Senior Sergeant Manavaroa submits that it should be a sentence of imprisonment as a starting point. He has nevertheless

confirmed to me that he is not advancing imprisonment necessarily as the end sentence.

[10] This is a case of bad driving. And driving of this sort in Rarotonga requires consideration of reasonably severe penalties because of the extent of this sort of bad driving. I have noted the numbers of occasions that Judges have made those observations. In your case the bad driving is aggravated by the alcohol.

[11] I have been referred to cases by the prosecutor, and by Mr Rasmussen on your behalf, and I have taken account of what has been said in those, although some have more relevance to the circumstances of your case than others.

[12] The highly dangerous driving could justify prison. This is emphasised, as I have said, by the added factor of alcohol. But I do need to take into account a range of mitigating factors.

[13] You are aged 62, you are not married and you have no dependants. You are one of 13 children, but you have no close family now living in Rarotonga.

[14] It is certainly not in your favour that you have one previous conviction for driving with excess blood alcohol, but I do not know the circumstances of that in terms of the amount of alcohol or anything else. And it was now five years ago.

[15] In that regard, and quite importantly in your favour, that means that up to the age of about 57 you had apparently no previous convictions, apparently of any sort, but in particular no previous convictions in relation to driving. And that certainly stands to your credit given your age.

[16] You have strong support from your employer for whom you have worked for approximately 30 years, Ms Annie Nicholas. And I am told that a close supportive relationship similar to that of a family relationship has developed. That is important because I regard that as being supportive and a means by which some emphasis will be given hopefully to the things that I have said. Ms Nicholas has noted that you do drink on a regular basis, but she has not observed any matters that are untoward in that regard.

[17] Another factor is that you noted that you undertook this journey with your friend reluctantly after the two of you had been drinking, it seems, quite a bit earlier in the day. Under pressure from him you decided to take him home in the opposite direction to which you would otherwise have gone.

[18] Another matter, noted to the Probation Officer by Ms Nicholas, is that the house in which you are living is the family home where you have remained since all the rest of your family went to New Zealand, or overseas. Ms Nicholas has advised the Probation Officer that apparently there is some risk that other family members might move in if you were sent to prison. I do have regard to that without reaching any conclusion about the matters referred to.

[19] You have positive support from your victim. I have got to make the decision, but I note that he does not want you to go to prison.

[20] I accept that you have genuine remorse and I accept that you do actually have an understanding of the seriousness of what you have done, and of the need to ensure it does not happen again. You have confirmed to me that you do understand.

[21] The final thing I would mention is that you entered an early guilty plea, and that stands in your favour.

[22] Mr Rasmussen has recorded an offer you have made, a form of reparation to your friend of \$500. I take that as a proper, or one form of, acknowledgment by you of the seriousness of what you have done. But in this case, given what I have just said about your friend's position, I do not think it appropriate that a payment be made by you to him. In my judgment you need to respond in a positive way to the community as a whole, and part of that comes by imposing a fine on you.

[23] Mr Rasmussen has confirmed that you are, perhaps given time, in a position to pay a fine. He has noted that again Ms Nicholas stands behind you in that regard. I should say I hope that it will not result in her paying fines.

[24] In this case, as I said at the outset, although it is perhaps marginal for all the reasons I have outlined, and it was necessary to outline quite a lot of mitigating factors.

This is not a case requiring imprisonment. I can nevertheless impose a fine and I am satisfied that you should be placed on probation and that you should in addition provide community service for an appropriate period.

[25] Mr Takaroka, you are fined \$750.

[26] You are placed on probation for a period of 18 months. In the course of that probation you are to provide community service for a period of 12 months. As a condition of probation, you are not to consume alcohol on any occasion when you intend to drive any form of vehicle.

[27] I think it is unrealistic however to impose a condition that you do not drink anything throughout the period of probation. But I emphasise, and I think you understand, you are not to drink any alcohol if you intend to drive. Whether it is over or under the limit.

[28] You are disqualified from holding or obtaining a driver's license for a period of 12 months. So you are not going to be able to drive during that period anyway.

[29] You are ordered to pay the costs of the blood analysis and a related fee of \$170.

[30] You can stand down now, thank you.



Peter Woodhouse, J