

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

CR NO's 532/19 & 534/19

POLICE

v

SIMIONE RAKACIKACI

Date: 1 September 2020

Appearances: Snr Sgt T Manavaroa for prosecution
Mr M Short for defendant

Decision: 1 September 2020

DECISION OF THE HONOURABLE JUSTICE PATRICK KEANE

[11:28:21]

[1] Simione Rakacikaci, you appear for sentence for two offences on 8 September 2019 at Avarua. You drove carelessly and caused injury to a motorcyclist and passenger. You failed to stop to find out whether they needed help, or to render help.

[2] On 8 September 2019, at 12.10 am, you failed to check whether the way was clear, and when you joined the road drove into the back of their motorcycle as they were travelling towards Tupapa. They fell and sustained injuries. You failed to stop.

[3] When questioned you admitted that this is what happened. You said that you had been at On The Rocks and had two Heineken stubbies just beforehand. You fled the scene, because people were chasing you.

[4] Very luckily, the motorcyclists suffered minor injuries, some cuts and abrasions. Both were angry. But you later apologised to them, and the mother of the

motorcyclist whose motorcycle it was. The costs of repair were met by insurance. You made a donation for loss of wages.

Probation report

[5] You are a Fijian national, and came first to Aitutaki to gain better work to support your family. After five years you were promoted to a position in Rarotonga. You are about to be offered a three-year extension. You are highly valued.

[6] You explained that you were not under the influence of alcohol and you were very sorry about what happened. You did not stop because you were chased by a person who said he was a police officer and demanded reparation. You gave him \$70. You later met your victims to apologise, and met their loss of wages. Your report confirms that the motorcyclist wishes the charge against you withdrawn.

[7] Your report confirms that this is your first appearance, and records your fear that a conviction might prejudice your ability to remain on Rarotonga, and to support your family in Fiji. It recommends you be discharged without conviction.

Submissions

[8] The police assess your culpability in much the same way as I have just outlined but after surveying recent similar sentencing decisions, recommend a conviction and fine. They are unable to comment on whether you are at risk of deportation.

[9] Your counsel has buttressed your pre-sentence report with character references which establish just how valued you are here. You took responsibility as soon after the event as you could. You were genuinely frightened on the night. The person who chased you was in fact a client of his and disturbed. Your response, he submits, was understandable.

[10] In contact with the family afterwards, he says, you were willing to meet the costs of repair, but the motorcycle was insured. You made a \$300 donation on account of lost wages and, of course, apologised.

[11] Counsel puts to the forefront your fear that you might, if convicted and fined, be at risk of deportation. That risk he says cannot be dismissed. It is the policy of the Cook Islands to deport those with convictions.

[12] If a conviction were entered he said, and you were at risk of deportation, he would rely on the character references to establish your value to the Rarotongan community. He asks however that I discharge you without conviction.

Conclusions

[13] Careless driving causing injury is common in Rarotonga, and because so many travel by motorcycle even slight accidents can cause serious injuries. That is reflected in the range of sentences imposed, especially where alcohol is a causative factor.

[14] You did have two drinks that night as you have admitted, but there is no evidence that they were causative. You are guilty at most, on the face of it, of a moment's inattention, which fortunately did not result in more than minor injuries to motorcyclist and passenger. After panic at the accident, and to your credit, you did face up to your responsibility. You concretely demonstrated your remorse by apologising and meeting the loss of wages.

[15] I am only able to discharge you without conviction if I am satisfied that a conviction would be a penalty disproportionate to your offences. I accept that it is highly important to your family, as well as to you, that you retain your work and you are clearly highly valued. The issue is whether a conviction, standing alone or perhaps coupled with a fine, would prejudice your immigration status.

[16] That is not something that I can assess myself. I have decided however that if that were the consequence, the prejudice to you and your family would be disproportionate to your fault. I discharge you without conviction on both these offences.



Patrick Keane, J