

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

**CR NOS: 625/2021, 102/2022**

**POLICE**

v

**NGATOKOA ELIKANA**

Hearing date: 1 September 2022

Counsel: Ms A Maxwell-Scott for Crown  
Mr M Short for Defendant

Sentence: 1 September 2022

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**SENTENCING NOTES OF THE HON. JUSTICE C GRICE**

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[1] Mr Elikana, I will now impose sentence on you. You have pleaded guilty to two charges: one of driving while the proportion of alcohol in your bloodstream exceeded the prescribed limit and, secondly, careless driving causing injury. Both are as the result of an accident that occurred on 24 December 2021.

[2] The alcohol offence carries a maximum term of imprisonment of 12 months or a fine not exceeding \$1,000.00, or both, plus a mandatory disqualification period of 12 months. The careless driving charge carries a maximum term of imprisonment of five (5) years, or a fine not exceeding \$5,000.00.

[3] The facts have been accepted by Mr Elikana. In brief, they are that Mr Elikana had been drinking with friends at a local bar. When he left the bar he collided with

the victim which caused substantial injuries to the victim. The collision was caused by Mr Elikana not ascertaining the road was safe and clear from oncoming traffic.

[4] The victim's injuries included injuries to his left collarbone, ribs, and a dislocated shoulder. He is still not working and, in terms of the last report, is presently residing in New Zealand recovering from his injuries.

[5] As a result of the accident Mr Elikana immediately offered his assistance to the victim. He accepted his guilt immediately and has entered into an arrangement with the victim for payments toward the total amount of the medical costs, and a contribution towards lost wages. Produced today were the receipts for those contributions; when paid, the total amount compensated will be over \$4,000.00.

[6] The victim said he bears no ill will towards the defendant. He says that Mr Elikana has showed genuine remorse and care for the victim's wellbeing and that Mr Elikana has learnt his lesson. Incidentally, the victim also comments that he was very pleased the helmet laws were in place in the Cook Islands, because if he had not been wearing a helmet his injuries would have been much more substantial.

[7] Turning to the offending. The aggravating factors in relation to the offending were, of course, alcohol. In relation to the mitigating factors there really are no mitigating factors. Mr George says that it was a Christmas celebration with friends that led to the drinking. However, he also accepts on your behalf that that is not an excuse for drinking alcohol and driving.

[8] In relation to your personal circumstances, you are employed. I have references from your employer and other people indicating that you are a contributing member of society, a good employer, and have been involved in large jobs and done very well.

[9] I also note that you were cooperative with the Police, you helped the victim, and you have paid the compensation out of your own pocket without being forced to do so. You entered a guilty plea early and you have shown genuine remorse. I must also take into account the victim's views and the fact you have paid reparation. You

are presently employed and you are expecting your first child. However, you have a previous offence for a blood/breath alcohol offending which occurred in 2019.

[10] The consequences for the victim have been substantial, and it is to his credit that he has found that he has forgiven you for it and given such a supportive letter to the Court in your favour. However, drunk driving is a matter that must be denounced in the Cook Islands community. It has serious consequences and I must reflect that denunciation and reflect the public concern at the extent of drunk driving. This is your second blood/breath alcohol offence.

[11] Therefore, I did consider a term of imprisonment; however, in view of the victim's approach and support, and in view of the Police position both supporting a non-custodial sentence in the circumstances, I have determined that a non-custodial sentence is appropriate. However, if there is a further alcohol offence the Court will be seriously looking at a term of imprisonment.

[12] On this occasion I consider that the following sentence reflects the denunciation of the community of this type of offending.

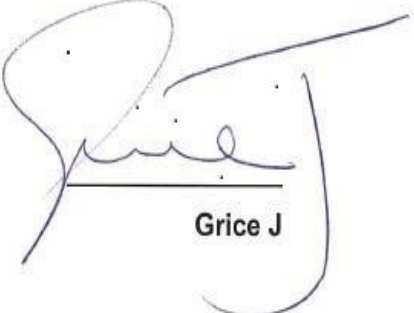
[13] I impose a fine of \$300.00 and probation for a period of 12 months, on special conditions. The special conditions include conditions in relation to alcohol, which appears to be the problem that you have at present. The special conditions are:

- (a) not to purchase and consume alcohol;
- (b) not to enter liquor licensed premises, such as bars and nightclubs;
- (c) not to leave the Cook Islands without the approval of the High Court;  
and
- (d) to attend any workshop or counselling as directed by the Probation Service.

[14] In addition, you are disqualified from holding or obtaining a driver's licence for a period of 12 months. I order reparation of \$300.00 for the blood analysis, and \$40.00 for the medical report.

[15] I hope you take this opportunity to reflect upon your drinking, Mr Elikana, and consider taking counselling for it.

[16] Mr Elikana, you may stand down.



Grice J