

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

**CR NO: 1509/25**

**POLICE**

v

**MADDISON SHANKS**

Hearing: 29 August 2025  
Appearances: Snr Sgnt P Tararo for Police  
Ms J Crawford for Defendant  
Sentence: 29 August 2025

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**SENTENCE OF GORDON J**

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[1] Maddison Shanks, you appear for sentence having pleaded guilty to one charge of careless driving causing injury, pursuant to s 26(1) of the Transport Act 1966. The maximum penalty for this offence is 5 years' imprisonment and/or a \$5,000 fine.

[2] You apply to this Court for a discharge without conviction on the basis that the consequences of a conviction would be out of all proportion to the gravity of your offending.

[3] The Police do not oppose your application for discharge. Nevertheless, this Court must follow a recognised process in determining whether you should be discharged without conviction. The Police position is also that the Court should impose a monetary penalty by way of reparation and reimbursement.

**Factual background**

[4] The summary of facts describes the incident which gave rise to the charge as follows.

[5] On Saturday, 16 August 2025 at about 5:07 pm, a motor vehicle crash was reported to Police, which occurred on Back Road at the Avatiu T-intersection.

[6] Two vehicles were involved in the crash, a rental car you were driving, and a motor cycle driven by the victim, Natt Joseph.

[7] Police investigations revealed that you were driving from Tamarind House to Pokoinu Place at Nikao, where you were staying. When you got to the big roundabout at Avatiu, you took an unfamiliar road leading you to a T-intersection on Back Road at Avatiu.

[8] Because you were unfamiliar with the route you took, you missed a Stop sign at the intersection. By the time you realised there was a Stop sign it was already too late, as you had crossed into the middle of the road. By the time you put your foot on the brake you had crashed into the victim, throwing him off his bike into a taro patch nearby.

[9] After the impact you assisted the victim. He received a deep cut to his right leg just below the ankle, and also an ankle fracture. His motorcycle was damaged during the crash, as was his mobile phone.

[10] The summary of facts further records that you were very remorseful and worried about the victim, when you were spoken to during your Police interview on Monday, 18 August 2025.

### **Victim Impact Statement**

[11] The Police have filed a victim impact statement from Mr Joseph. He refers to his physical injuries, which are further explained in medical reports also filed by the Police. Mr Joseph suffered a compound fracture of his right ankle which required surgery, a laceration to his rear right foot, and lacerations and abrasions to his arms and knees.

[12] Mr Joseph says he is aged 54 years and his occupation is as an electrician. He says he is not from Rarotonga and he is supposed to return to his family in Penrhyn.

[13] Mr Joseph is concerned about how long he will be in hospital, and is also concerned that the injury might affect his work as his work requires him to be physical.

### **Police submissions**

[14] Senior Sergeant Tararo, who appears for the Police, recognises that the offence itself does not involve any aggravating circumstances, but nevertheless submits it is worth noting that Mr Joseph, as a motor cyclist, was a vulnerable road user who was exposed to an increased risk of significant injury.

[15] Senior Sergeant Tararo refers to a sentencing decision of Williams J in *Police v Teiti*<sup>1</sup> where the defendant was similarly appearing for sentence on a charge of careless driving causing injury. In his decision the Judge referred to the increase in penalty (to the current penalty) and the number of charges arising from accidents involving motorbikes. The Judge said that people in the Cook Islands need to understand that if they are convicted of a charge such as this, the Courts must start from a standpoint of considering a lengthy term of imprisonment.<sup>2</sup>

[16] Senior Sergeant Tararo submits, in reliance on that case, that the appropriate starting point for this type of offending should be a term of imprisonment. He nevertheless goes on to acknowledge that imprisonment is typically reserved for the most serious offences or repeated misconduct. In this instance, Senior Sergeant Tararo says the Police accept that your conduct falls at the lower end of the spectrum of negligence, despite involving an injured party.

[17] Senior Sergeant Tararo accordingly submits that the Court should impose a monetary penalty on you. As I have already noted, the Police do not oppose a discharge without conviction. The Police further leave it to the discretion of the Court whether to disqualify you from driving and holding a driver's licence.

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<sup>1</sup> *Police Teiti* CRN 374/12, 29 June 2012.

<sup>2</sup> At [16].

[18] The total monetary penalty sought is \$10,327.12. There are various component parts to this sum, all of which are supported by documentation filed by the Police as follows:

(a)	Emotional and psychological distress	\$5,000.00
(b)	Medical documentation costs	\$40.00
(c)	Blood analysis report for the victim	\$150.00
(d)	Property damage to the victim's motorbike	\$1,147.00
(e)	Lost wages	\$3,990.12

### **The law – Discharge without conviction**

[19] This Court has the power to discharge a defendant without conviction.<sup>3</sup> A discharge under s 112 of the Criminal Procedure Act 1980–1981 is deemed to be an acquittal<sup>4</sup>.

[20] When considering an application for a discharge without conviction the Court follows a four-step test. The Court must:<sup>5</sup>

- (a) identify the gravity of the offending, including aggravating and mitigating factors relating both to the offence and the offender;
- (b) identify the direct and indirect consequences of a conviction;
- (c) determine whether those consequences would be out of all proportion to the gravity of the offending; and
- (d) decide whether the overall discretion conferred by s 112 of the Criminal Procedure Act should be exercised.

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<sup>3</sup> Criminal Procedure Act 1980–81, s 112(1).

<sup>4</sup> Section 112(3).

<sup>5</sup> *R v Katoa* (CA 508/2022), 14 November 2022.

[21] Where the Court discharges any person without conviction it may, if satisfied the charge is proved against a defendant, make an order for the payment of costs, damages, or compensation, or for the restitution of any property.

**Step one: gravity of offending**

[22] Mrs Shanks, you have sworn an affidavit in support of your application. I draw the following from that affidavit as well as having regard to the summary of facts.

[23] You are a nurse, and a New Zealand-national but you live in Australia. You came here to Rarotonga on 9 August 2025 with your husband and eight week-old baby to attend a wedding.

[24] That wedding was on 16 August 2025. You attended with your husband. You left your baby with your mother, who had travelled from New Zealand to help look after her.

[25] You say you were apprehensive about leaving the baby, as this was your first time away from her and she has been exclusively breastfed. Accordingly, after the ceremony you decided to drive back to your accommodation and check on her.

[26] On the way home you took a wrong turn inland and travelled down a road that was unfamiliar to you. You were unaware that you had come to an intersection and proceeded, but then realised you had gone through a Stop sign. Once you realised that you braked, but you were already across the line and you collided with the victim who was on a motorbike.

[27] The victim came off the motorbike and landed some distance away. You immediately stopped the car you were driving and attempted to provide assistance to the victim. You could see an injury to his leg. You placed him in the recovery position, but you say he was in too much discomfort so you placed him on his back again. You asked someone to call an ambulance.

[28] You say you were likely in shock as you do not remember what happened immediately after that. You say the next thing you recall clearly was the Police and

an ambulance arriving. A Police officer asked you if you had had any alcohol. You said you had had a glass of champagne approximately 1.5 hours earlier at the wedding.

[29] You were told by the Police that their breathalyser machine was broken, and so you were told you needed to go to the hospital to have a blood test to determine the level of alcohol in your blood. You had managed to phone your husband and you and he met the Police at the hospital.

[30] You say the Police did not tell you were you under arrest, nor were you given a right to a lawyer at any point before the blood test was taken. However, you were co-operative and compliant and undertook the blood test without issue. The result was 5.9 milligrams of alcohol per litre of blood<sup>6</sup>.

[31] You say that during that night you were distraught knowing you had injured someone and, at your request, your husband went to the hospital to check on the victim's welfare. You say the nurses on the ward told your husband that the victim had broken his leg but was doing okay.

[32] On Monday, 18 August, you were interviewed by the Police and gave a full statement admitting to the facts outlined.

[33] You entered a guilty plea at your first appearance on Thursday, 21 August 2025.

[34] Appearing on your behalf, Ms Crawford acknowledges, as you do, the harm caused to the victim; but Ms Crawford submits in assessing the driving itself the offending represents a momentary lapse of judgment, which she submits must fall at the lower end of seriousness for offending of this nature. I accept that submission. I also accept there are no other aggravating features of the offending.

[35] As I have noted, the gravity of the offending must also take into account the mitigating features personal to you. I accept Ms Crawford's submission that the following mitigating features are relevant:

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<sup>6</sup> The legal limit is 50 milligrams of alcohol per 100 millilitres of blood.

- (a) Previous good character: You are 32 years of age and have no previous convictions. I have read the many character references filed for the sentencing and they all speak overwhelmingly of your good character, and also your dedication to your profession as a nurse.
- (b) Remorse: You have shown genuine remorse for your actions. You have written a letter of apology to the victim and also you apologise to the Court. You have acknowledged the impact your conduct has had on the victim. I accept your remorse can be seen both in your conduct immediately following the collision, and from what you say about the significant emotional toll it has taken on you personally.
- (c) Attempts to make amends: I have already referred to your letter of apology, and you say you are willing to contribute financially to any costs suffered by the victim as a result of the incident; and
- (d) Guilty plea: You pleaded guilty at the earliest opportunity; and accordingly would be entitled to the full discount for a guilty plea.

[36] I accept the mitigating factors I have referred to all serve to reduce the overall gravity of your offending. When they are taken into account I assess the overall gravity as being at the lower end of the scale for offending of this type.

**Step two: Consequences of conviction**

[37] You are a registered nurse working in the Emergency Department currently in a hospital on the Sunshine Coast in Queensland, Australia.

[38] It is apparent to me from your affidavit and the references I have referred to, that you have dedicated your professional life to caring for others, and you have achieved considerable academic success in your chosen career.

[39] The evidence you have filed satisfies me that such a conviction is likely to have a serious and lasting impact on your nursing career. I say that because in New Zealand and Australia annual registration for nurses requires disclosure of all criminal

convictions. I accept a conviction would have a permanent effect over the whole of your professional life.

[40] As to travel between Australia and New Zealand, Ms Crawford properly acknowledges that a conviction of this nature will not in itself prevent you from travelling between New Zealand and Australia, as a New Zealand Passport holder. However, as a New Zealand Passport holder, you would be required to engage in formal pre-departure assessment processes before travelling into Australia. An assessment under this process can take up to 25 working days.

[41] This is relevant when your personal circumstances are considered. While you are living in Australia, your parents remain in New Zealand and your grandmother is undergoing treatment for terminal cancer. You anticipate regular trans-Tasman travel in the future, often with your young daughter. Any uncertainties or delays, even if there is ultimately no refusal, would be distressing for you when you are travelling with a child or when you may have to travel at short notice due to family illness.

[42] In short, the consequences of a conviction both on your chosen occupation, which you see as a vocation and I accept that, and for travel to Australia from New Zealand will have significant consequences for you.

**Step three: Are the consequences of conviction out of all proportion to the gravity of the offending?**

[43] I have assessed the overall gravity of the offending as being at the lower end of the scale. When I weigh consequences of a conviction on you against the gravity of the offending, I consider that the consequences of conviction would be out of all proportion to the gravity of your offending.

**Step four: Discretion**

[44] Having found that the consequences of conviction would be out of all proportion to the gravity of your offending, then I consider the only appropriate course for the Court is to exercise its discretion under s 112 and discharge you without conviction.

## **Reparation and Costs**

[45] You are willing to make a reparation payment towards the harm and loss suffered by the victim as a result of the collision.

[46] As already noted the Police confirm that the reparation and compensation costs amount is \$10,327.12. Ms Crawford, on your behalf, takes issue with two categories of payments but accepts the others.

[47] The first is the \$5,000 for emotional harm and psychological distress, and the second is the payment of \$150 for the blood analysis report for the victim. As to the \$5,000, Ms Crawford, while accepting there will be emotional and psychological distress suffered by the victim, submits the sum of \$5,000 is in excess of amounts ordered in other cases, which seem to be within the range of \$500 to \$1,500.

[48] However, Ms Crawford also recognises that in this case the victim does not normally live here in Rarotonga, but lives on Penrhyn, and is accordingly, at least for the near future, having to be away from his family. Taking Ms Crawford's submissions into account I consider the appropriate level for emotional and psychological distress is \$2,000.

[49] I also accept Ms Crawford's submission that the \$150 sought for payment of the blood report for the victim is not a cost in your prosecution. It would be a cost if there were to be a prosecution of the victim. So I will not order repayment of \$150. I note for completeness that the Police initially sought a further \$150 for payment of the blood analysis report for you. However, I accept that, in fact, you made that payment and the Police also accept that this morning.

[50] I make an order that you make payment by way of reparation and compensation costs in the sum of \$7,177.12. The component parts of that sum are: \$2,000 for emotional and psychological distress; \$40 for medical documentation costs; \$1,147 for repair to the victim's motorcycle; and \$3,990.12 for lost wages.

[51] I direct that payment is to be made before you return to Australia. Payment is to be made to the Court through the Registrar. The Registrar will then disburse the \$2,000, \$1,147 and \$3,990.12 to the victim.

[52] I understand your passport has been surrendered to the Police. The Police are to return your passport to you after you have made the payment that I have directed.

### **Disqualification**

[53] Given that I have not entered a conviction against you, I believe I cannot make an order disqualifying you from driving or holding a driver's licence. I do not do so.

### **Result**

[54] I discharge you without conviction on the charge of reckless driving causing injury.

[55] I direct that you make a payment of \$7,177.12 to the Court, through the Registrar, before you leave the Cook Islands. The component parts of that sum are to be disbursed by the Court to the victim, as I have already directed.



Gordon J