

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

**CR 1920-1921/2022
216/2023**

POLICE

v

JOHN PAUL WILSON

Hearing: 20 January 2025
Appearances: Mr T White for Crown
Mr N George for Defendant
Sentence: 20 January 2025

SENTENCING NOTES OF KEANE, CJ

[1] John Paul Wilson, you appear for sentence for three offences on 26 November 2022: careless driving causing injury (twice), and refusing to undergo a breath alcohol test

[2] Towards midnight, you and your wife were driving from Avarua to your home in Tupapa. In the vicinity of the Super Brown Store you collided with a motor scooter travelling towards Avarua carrying two people, who were thrown off and who suffered significant injuries.

[3] Daniel Lohja, the motor scooter rider, said in evidence that as he approached the store he slowed, and to avoid a parked car moved more towards the centre line. His evidence was that the accident happened because you crossed the centreline, and that was the Crown case.

[4] You denied that you crossed the centreline. Your evidence was that you were within your lane when the collision happened and that it was not attributable to you. The jury by its verdict preferred the Crown case.

[5] At the roadside you refused a breath test. The Police had searched your van, to identify the driver. That was without your consent and that upset you. You did agree to accompany them to the Police station, but there too refused a test.

Victim impact

[6] As a result of the collision the motor scooter was extensively damaged. Daniel Lohja, and his passenger, Catherine Hauac, were both thrown to the road and suffered significant injuries.

[7] Mr Lohja suffered a fractured jaw and fractures to his right fingers. He spent two weeks in hospital and underwent surgery to his jaw, which had to be repeated in New Zealand. He has lasting related deficits. He was off work for 22 weeks.

[8] Ms Hauac suffered fractures to her right femur, and deep related lacerations. She spent three weeks in hospital and underwent surgery. She suffered lasting emotional trauma. She was off work for about a month, and had to abandon her travel plans.

[9] Both suffered significant financial losses, principally losses of wages. As you know, I have reviewed with counsel your liability to make reparation; and that aspect is now agreed.

Pre-sentence report

[10] You have the benefit of a positive probation report. As it says, at age 45 this is your first appearance before the Court. You sincerely regret your offending, and you apologise to Mr Lohja and Ms Hauac.

[11] Your offences, your report says, are completely out of character. You are a responsible husband and father, highly regarded in your work place. You have contributed significantly to the Cook Islands community in a variety of ways over years. Attached to your report are highly positive references from sports and community organisations, and your counsel has supplied me with still more.

[12] Your report recommends that you be sentenced to probation supervision for 18 months, subject to these conditions:

- (a) that you not purchase or consume alcohol or enter licensed premises;
- (b) that you attend any workshops or counselling directed;
- (c) that you not leave the Cook Islands without the approval of this Court; and
- (d) that you make reparation to Mr Lohja and Ms Hauac.

Sentencing principles

[13] Your two primary offences, the careless driving causing injury offences, carry a maximum term of imprisonment of 5 years, and a \$5000 fine.¹ An order for disqualification of up to 3 years lies within the Court's discretion.²

[14] As our Court of Appeal confirmed in *Boyle v Crown*³, to fix your sentence I must, first, identify the extent to which you were careless. As the Court said:

At the lower end of the spectrum would be instances as where the offender has caused an accident through a moment's inadvertence. More serious cases might involve such factors as excess speed, alcohol/other substances or serious carelessness.

[15] Then I must take into account the result of your carelessness, wherever that lies in that spectrum. As the Court said:

The consequences are also an important factor to be taken into account by the sentencing Judge. These may range from minor injuries to the victim to more serious injuries or death.

[16] In cases like yours, where the consequences outweigh the carelessness, the level of carelessness is the governing factor on sentence, not the severity of the consequences, but the consequences are still very significant.

¹ Transport Act 1966, s 26(1).

² Transport Act 1966, s 31(2).

³ *Boyle v Crown* CKCA5/17, 24 November 2017, [28] – [29].

[17] Your second offence, refusing an excess breath alcohol test, carries a maximum prison sentence of 12 months, or a \$1000 fine, and 12 months' minimum disqualification.

[18] Your sentence for this offence must be consistent with that for an actual excess breath alcohol offence. Otherwise, as has been held,⁴ 'there will be no incentive for intoxicated drivers to agree to these tests'. How much you were affected by alcohol we will never know.

[19] Finally, as to reparation. As I have recorded separately⁵, I will order that you compensate Mr Lohja for the damage to his motor scooter⁶, and, as a condition of probation, that you compensate Mr Lohja for his medical costs; and he and Ms Hauac for their losses of wages⁷.

Conclusion

[20] I accept, as counsel agree, that your two driving offences, very serious though they were for Mr Lohja and Ms Hauac, resulted from momentary carelessness. They do not require that you be imprisoned.

[21] As counsel accept, I accept also that as your probation report recommends, you should be sentenced to supervision and make reparation as agreed. In other cases I might also impose community work; but you already contribute very significantly to the community, and I do not want to limit your ability to make reparation.

[22] Reparation will be the primary probation condition I will impose. I will not impose any relating to alcohol use. Alcohol is not an obvious issue for you; and you and your wife say, and I accept, as does the Crown, you have not had a drink since May 2023.

[23] I therefore sentence you for your three offences to probation supervision for 18 months on the following conditions:

- (a) that you attend any workshops or counselling directed;

⁴ *Atrill v Ministry of Transport* HC Rotorua AP 19/91, 5 August 1991.

⁵ Minute [6], 10 January 2025.

⁶ Crimes Act 1969, s 415.

⁷ Criminal Justice Act 1967, s 8(1).

(b) that you not leave the Cook Islands without the approval of this Court; and

(c) that you make reparation to Mr Lohja and Ms Hauac.

[24] You will pay Mr Lohja \$1000 in respect of his damaged motor scooter. As a condition of probation you will also pay him \$1,560 medical costs and \$8,684 lost wages. You will pay Ms Hauac \$1,316 lost wages. You will pay these sums rateably by instalments of \$150 a week, the first such payment within the next three days.

[25] To the extent you still have payments to make when your supervision sentence expires, the Probation service may apply to have your term extended; or Mr Lohja and Ms Hauac may obtain a certificate for the balance from the Registrar, and enforce it as a civil judgment.⁸

[26] Finally for your refusal offence, quite apart from your two careless driving offences, I must disqualify you from holding or obtaining a driver's license for 12 months. I disqualify you equivalently also for the careless driving offences. You may apply for a limited license for work purposes after six months.⁹

[27] Your inability to drive for the first six months may make it difficult for you to work sufficiently to pay \$150 reparation weekly. If that proves so, I will reduce that weekly rate until you have a limited licence.



P J Keane, CJ

⁸ Criminal Justice Act 1967, s 8(2).

⁹ Transport Act 1966, s 31(3), (4).