

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

POLICE

V

R BROWN

Defendant

Mr T Elikana for Police

Mr N George for Defendant

Date: 30 March 1999

DECISION OF DILLON J

It is now my duty and responsibility to impose what is the appropriate sentence for the offence of which you have been found guilty by your countrymen. It is certainly surprising to me that even now you say that you are innocent and you deny that you are guilty in any way for the tragic loss of life and which the jury had no difficulty in saying that you were to blame for that offence. A Judge when it comes to sentencing has responsibilities which can be summarised, especially how the offender must be punished. Further punishment is due because you have seen fit voluntarily to break the laws of your country.

Secondly any penalty or punishment must be notice to the public of this country as to the consequences that will flow if anyone else commits a similar offence. And there is a third factor which over recent years has grown in importance, when it comes to the question of sentencing prisoners. That third factor is recognition that there are

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quite often innocent victims injured and that the Court should take note of the damage to those people. This third factor has developed over recent years because of the horrendous crimes that have been committed mainly against old people and mainly against young children. So the Court has accepted a responsibility that not only must a prison sentence for an offence be punishment but also innocent people involved should be recognised by the Court and if possible the penalty should involve some form of compensation. So considering the first of those factors, I have no hesitation in saying that if this is the punishment I have to provide then you will be sentenced to two years imprisonment.

Considering the third factor to which I have referred, I believe I am required to consider the plight of the widow and the plight of the 13 year old child and the fact that she has to give up part of her employment and financially she is now deprived of the deceased's present income and she will be deprived of that for a very long time during the growing up period of her daughter.

In considering that factor, I take into account that the Probation Report indicated that the widow has expressed the view that you do not be sent to jail. She believes that her loss and her child's loss would be better satisfied to some extent if it was possible for you to pay something towards her maintenance, her up-keep and her child's education and welfare. So that consideration is what is basically presented to me by your counsel Mr George as the appropriate way of imposing a sentence.

Whereas Mr Elikana has suggested that I should follow precedent. That indicated that as far back as 20 years with the exception of one occasion only everyone has been put into jail. Mr Elikana can rightly rely on those precedents and those sentences that have been imposed previously as the basis on which people on Rarotonga will be aware and will be warned of the consequences of the punishment that will result from similar activities such as your own.

So we have the interesting situation today that what is proposed by Mr George is sound, reasonable and justifiable. What is proposed by Mr Elikana follows precedent. It is a precedent which has been set over the last 20 years and to that extent he says any deviation from that precedent will send the wrong message to the community.

So both submissions are correct and I have the unenviable task of selecting which one I should take. Mr Elikana refers to the incident in Niue where one of the government Ministers I sent to prison for two years. Mr George refers to Mr Eric Rush in New Zealand who was not sent to jail but was required to pay very substantial compensation to those people who were the family of the person that was killed and to those that were severely injured. Once again, a sentence has a question as to which is the most appropriate, what must be followed.

One of the paramount considerations which Mr Elikana has not referred to but it was implied, if I deviate from established precedent after all this time that people have known and accepted then it might be said that those who are more well off in the

community may be able to buy their way out of prison. He says that if I was not to follow that precedent then it might very well be implied that that is the case here.

On the other hand I have a serious concern and I believe an important responsibility to consider firstly the wishes of the widow and secondly the possibility of securing for the widow some kind of financial support for her losses. In fact I believe that that is a paramount consideration which I accept as my responsibility in imposing what I consider as an appropriate penalty. If I send you to jail then I am in a way defaulting on what I believe are my responsibilities to the innocent widow and innocent child.

Taking all those factors into consideration a penalty along the following lines will be imposed:

You have been convicted by a jury and for that offence you will be sentenced to 2 years imprisonment. That sentence will be suspended provided you pay forthwith a fine of \$1000.00 and provided further that you pay to the widow within two months from today the sum of \$10,000 and provided you pay a further \$10,000 twelve months from today which amount shall be put in a trust account administered by the Registrar of the High Court for the child until she reaches the age of 21. Those funds are to be invested by the Registrar and to be available for the maintenance, education and advancement of the child prior to her reaching 21 with the Registrar being able to seek assistance and directions from any Judge of the High Court.

In the event of those two conditions not being complied with, the suspended sentence will take effect and you will be referred to prison. In addition your licence will be

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suspended and cancelled and you will be refused any driving licence for a period of 2 years.

Finally, the compensation is in accordance with the wishes of the widow and I trust that this will be some consolation in her efforts to bring up on her own now her 13 year old child. I trust also that the trust fund for the child will go some way towards her education and advancement in life which she now has to pursue without the assistance of her father. Small those amounts are, I hope they do make some contribution towards the widow and her daughter which assistance would not be available to them if I send you to prison.

George J.