

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

414
CR NO. /2007
^

POLICE

V

GARY AMOS TOBIA
Defendant

Mr Elikana for Police

Mr T Arnold for Defendant

Date of sentence: 14 September 2007

SENTENCE OF WESTON J

1. Mr Tobia, you are here to be sentenced today having pleaded guilty to a charge of careless driving causing death. This offence carries a maximum term of imprisonment of 3 months. I have been advised that there is a Bill before Parliament at the moment being considered by the select committee in which this maximum is likely to be increased. I need to make it clear that I sentence you by reference to the existing law and without any sense that I should take into account matters that may or may not occur in the future by reference to decisions of Parliament.
2. A more serious charge of drunken driving causing death was withdrawn. Mr Elikana has advised that this was because of a lack of proof rather than for the reason stated in the Police caption report. On the basis of everything I have seen, it appears to me that that was an entirely appropriate decision.

3. The more real question, perhaps, is why no evidential breath test or similar was taken at the time of the accident. I have been advised that was because the attending officers formed the view that you did not show any of the usual signs of drunkenness. You have accepted, and told Police investigators, that you were drinking before the accident, although it seems you were taking some responsibility for your drinking by taking water as well as alcohol.
4. The fact that you were not properly tested by way of blood test (or some other breath test) means that, in effect, you were damned in the Court of public opinion and so are the Police. Whatever I say, it will always be said, no doubt, that the Police favoured you in some way and that you are a lucky man because you were not charged for drinking. It is quite possible, though, that if a test had been taken, it would have been a negative test and I cannot speculate as to what would have happened. You, through counsel, have quite properly admitted the drinking and you have not in any way sought to shrink from it. You accept that you were drinking; none of us can know whether that caused or contributed to the accident.
5. The offence occurred on the 30th of June of this year. It is common ground that your car collided with the motorbike of a young man. It seems quite likely that he was under the influence of either drugs or alcohol at the time of the accident but that is not in any sense a mitigating factor and your counsel has

certainly not suggested that it was. The reality is that your car was in a place on the road where it should not have been.

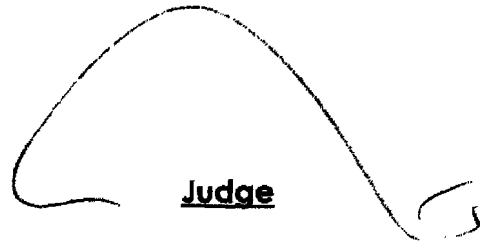
6. Mr Arnold has pointed out that the evidence shows that you were travelling at a reasonable speed and broadly in a straight line, on a straight road. It appears there was no violent action taken prior to the accident which might otherwise suggest you were under the influence. It also appears that the motorcycle was travelling fast and for all I know that may have been a cause also of the accident.
7. I can sentence you only on the basis that your car was on a place on the road it should not have been and again your counsel has candidly accepted that.
8. The deceased died the day later. It is not entirely clear to me why he died because no formal autopsy or post mortem was carried out. All people at the scene were surprised to learn what had occurred because his injuries did not appear consistent with his subsequent death.
9. So while there are issues as to the extent which your careless driving caused that death, they are not entirely clear. I suppose though, it is clear that without the accident occurring he probably would still be alive today.
10. It seems likely that you are going to lose your job which, in many respects, is going to be not only a loss for you but also for the Cook Islands because the evidence before me is that you were

a fine police officer and the island needs people like you. The Police really are between a rock and a hard place. If they are seen to support you in these circumstances, they will be seen to be condoning careless driving and it is common knowledge that the Police are trying to deal with what is a fairly poor standard of driving on this island. I do not envy them their job and dealing with your employment issues. I sympathize both with their decision and with your position.

11. Your wife also has stuck by you. I know you have one child to her with another on the way and you have a child by an earlier partner.
12. The references I have seen all speak highly in your favour. There is some uncertainty as to what the family seek. The Tahitian end of the family, which I understand are the grand parents, seek a custodial sentence; the uncle who lives in Rarotonga, and had the day to day care for the deceased, says that he does not want to see you penalized by way of custody.
13. Through counsel who, in his customarily eloquent way, has addressed me, you have asked for leniency in that there should be no jail time. You have responsibly accepted that the matter is finally balanced and that I will be addressing the question of jail.
14. I came here fully thinking that I should send you to jail for a short time and the Crown has said something less than a month and that was how I came today thinking about this. Everyone else is

between a rock and a hard place on this and so am I. Whatever I do, someone is going to say I made the wrong decision as well. If I am lenient, I should not have been. If I throw the book at you, people will say I was making an example of you simply because you are a policeman and no one else would have been treated so harshly. But, at the end of the day, I have to make the decision.

15. I have decided I will not send you to prison. I will sentence you to community service and I make an order in terms of the recommendation in the Probation report that you serve a term of 6 months community service and then there will be probation with the term set out there. The amount of compensation that is sought is subject to the Police running through this for the third time, \$3,228.00, and an order is made in that sum. Court costs \$30.00.

A handwritten signature in black ink, consisting of a large, sweeping arch that descends into a tail on the right side.

Judge