

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

CR NO 884/12

POLICE

v

RATU SAVENACA VIRIVIRISAI

Hearing: 15 March 2013
Counsel: Ms King for the Crown
Mr Rasmussen for the Defendant
Sentence: 15 March 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 11:40:10]

[1] Ratu Savenaca Virivirisai, you appear here for sentence today having pleaded guilty to one charge of drunk driving causing injury to a Mr Tamariki on the 29th November 2012. At least one other charge arising out of the incident has been dealt with in the Justices of the Peace Court.

[2] Your plea was on the 21st February this year but I am prepared to accept that that was essentially the first available opportunity for you to plea.

[3] The facts are that from the night before this incident you and your friends were drinking for what must have been at least ten hours and you had no sleep throughout the night. At about 7.00 a.m. on the morning of the 29th you decided to get into a rental car that your wife had hired and drive off. The facts show that you drove off at what was described as a “very high” speed. You had two passengers in the car, people with whom you had been drinking. They and you must have known it was an exceptionally foolish thing to do. Unsurprisingly driving the car at the very high speed you lost control on a bend, the car went off the road and hit a tree about 3 metres off the road. The car was written off. One passenger suffered some cuts, the other suffered a broken leg. When you were interviewed by the Police your blood alcohol reading was 188.2 milligrams of alcohol in your blood. You had no licence for the Cook Islands and your wife now faces a claim by the rental car company for \$16,000 being the pre-accident value of the vehicle.

[4] The Probation Service tells me that you were here as a visitor visiting your wife. She has employment here in Rarotonga and has already commenced saving money to pay for the reparation for the car despite the financial difficulties that causes her in her ability to send money back to Fiji to support the family. She has agreed to pay \$1000 a month. That is the liability your foolishness saddled her with.

[5] You told the Probation Officer that you “should have known better” which is a wild understatement for what you did on that night. And you also acknowledged the Probation Officer that a jail sentence is a possible or even likely outcome. The Probation Service however recommends a period of supervision.

[6] For the Crown, Ms King, draws my attention to a number of cases in this Court where judges have said that because of the high accident and injury rate in driving, especially drunken driving, in the Cook Islands, persons who come before the Court having been convicted of that offence must be looking at a jail term. Although if the mitigating, the lessening circumstances are particularly strong it is possible that non-custodial sentence can be considered.

[7] Your driving on this occasion was a gross danger to the public and it was just a matter of luck that no-one else outside the car was killed or injured by your

wayward driving. The length of your drinking session, the lack of sleep, the fact that your alcohol level was twice the limit, and your speed plus the injuries to the occupants that followed are counted against you.

[8] I acknowledge that you have pleaded at an early date, this is your first offence, and that you want to assist your wife in meeting the sizeable bill she has undertaken.

[9] Mr Rasmussen has said everything that could be said on your behalf but with no disrespect to him there is not much that can be said. This was a madcap incident. You had been drinking all night, you had not been to bed, you got into a car which did not belong to you and which you had no right to be driving, both because you were drunk and because you had no licence, you were over twice the legal limit for alcohol, you drove at very high speed and as I said it was just a matter of good fortune that you are not facing a charge of injuring or killing some other road user. But you did injure your passengers. So, I have to begin the sentencing process for you by looking at a term of imprisonment.

[10] You are entitled to a reduction for your early plea. You are entitled to some allowance for the fact that no doubt you want to help your wife save up to meet the \$16,000 she has to pay the rental car company and you are entitled to consideration for the fact that you have no previous convictions.

[11] But the start point for you has to be something of the order of 3 to 6 months imprisonment. As I said, there is a reduction to which you are entitled for the factors I just mentioned.

[12] But, at the end of the day, there must be a jail sentence imposed in this case. Whether that will have consequences for you with the Immigration Department remains to be seen but the Court cannot be dissuaded from doing what is the appropriate thing by the fact you might possibly face deportation.

[13] You are sentenced to 3 months imprisonment. From the date of your release you will be admitted to Probation for 12 months and operating from the date of your

release you are disqualified from holding or obtaining a driver's licence for a period of 24 months.

[14] You are ordered to pay reparation of \$16,000, via your wife to Polynesian Rentals and you are also ordered to pay the analysts medical fees of \$170 and Court costs of \$30. All the financial payments are to be as directed by the Probation Officer. Stand down.

A handwritten signature in black ink, appearing to read "Hugh Williams, J". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

Hugh Williams, J