

POLICE

v

VAIANA GEORGE

Date: 25 September 2015

Counsel: Mrs P Dengate Thrush for the Police
Mr N George for Defendant

**SENTENCING NOTES OF THE HONOURABLE CHIEF JUSTICE TOM
WESTON**

[1] Mrs George you are charged with Careless use causing injury. You exercised your right to a jury trial and following a hearing the jury found you guilty on the charge of careless use causing injury.

[2] I was the trial Judge and had the opportunity of course of listening to all of the evidence. You gave evidence in that trial. Your account and that of the complainant differed. The essential facts though were not in dispute which were that you were on your way to work, you backed out of your garage, and you backed up your drive towards the road that in turn leads to the main road. This is a reasonably quiet side road which has recently been sealed.

[3] On your evidence, you heard a bike coming and you stopped. The accident then occurred. On the Complainant's evidence, you were backing out into the road at the point the accident occurred. The Complainant was not driving very fast. The evidence appears to show that he hit the back of your car, that he glanced off that, and ended up on the other side of the road having hit a concrete pillar box. In the course of all of that, his leg was very badly broken.

[4] The Crown has submitted that the extent of damage to the Complainant is an aggravating feature in this case. I'm not so sure about that. The damage suffered by the Complainant was indeed significant and has had terrible consequences for him. There is little doubt about that. But in many senses the extent of the injuries are not truly relative to the offence which is alleged against you. If the circumstances were even slightly different, it is quite possible that the Complainant would have suffered virtually no injury at all. Unfortunately for him, and unfortunately also for you, the injuries that he suffered were quite significant.

[5] Mr Samuel has submitted that you should be Discharged without conviction under s.112 of the Criminal Procedure Act which is in the following terms;

“The Court must not discharge an offender without conviction unless the Court is satisfied that the direct and indirect consequence of a conviction would be out of all proportion to the gravity of the offence.”

[6] The Crown in response the Defence submission has said that Discharging you without conviction would be manifestly disproportionate to the offending in this case.

[7] As part of the submission made by Mr Samuel he has referred to there being a real and appreciable risk that you will lose your employment with Air New Zealand. You have sworn an affidavit referring to the employment contract and your obligations as a consequence of that employment contract. I understand the matter has been referred to your superiors in Air New Zealand. Despite requests by counsel, Air New Zealand has declined to provide any further information about that. That is a fairly standard response in these circumstances because your employer no doubt wishes to protect itself in terms of how it deals with an employment dispute.

[8] The Crown has complained that your evidence in relation to this is only speculative. Reference has also been made to an earlier decision of mine in Police v. Anguna in which I addressed the extent to which there should be evidence about this and the extent to which that may be or may not be speculative.

[9] I have reconsidered the decision that I issued in 2013 and it brings the matter back to mind. The circumstances in that case were, for the reasons that I set out there, speculative. I believe that the circumstances that you have set out in your affidavit can be said to be more certain. I think there is a real risk of consequences occurring as you have said.

[10] Mr Samuel has emphasised that none of us can know the future and that is correct. I am conscious that the standard in the Act is that I must be satisfied of the relevant consequences. I believe that these consequences are real and I believe I need to take them into account.

[11] The material before me also gives a lot of detail about your community service. There's a reference to the Christmas Box Charity which you are heavily involved in and there is concern expressed that if you were to be convicted you may no longer be able to undertake this role. There is a concern that if that occurs the Charity itself will collapse and that a large number of families who benefit from this Charity would thus be prejudiced. There are also other references before me as to your contributions to the community and all of those are to your credit.

[12] I need to look at the gravity of the offending. In my opinion the gravity of the offending is very much at the low end. There is no question of speed. There is no question of tiredness. There is no question of alcohol. In many ways the offence for which you were convicted could be said to be one of those things that happens.

[13] On your account you did pay attention. The jury, it seems, rejected that account. Nevertheless, there is no suggestion that you are habitually are careless driver. There's no sense in which any of this can be said to be of a pattern that you are a careless driver.

[14] I believe that despite the conclusion by the jury, that this offending really only can be described as slightly more than "one of those things." That is, the degree of carelessness was quite minimal. I am conscious that the outcome for the Complainant was very serious and no doubt that was a factor in why there was a Prosecution. But, in some respects, and just looking at this for the purposes of sentencing, that was very much bad luck because the outcome was not necessarily proportionate to the low level of your offending.

[15] In my opinion, the gravity of your offending is right at the bottom end. The various cases that have been submitted to me by the Crown, and in which imprisonment was discussed and in some cases ordered, are a very considerable distance from your circumstances. I do not think that anything remotely approaching imprisonment is applicable in your case.

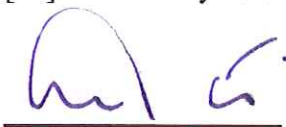
[16] In terms of my duty under s.112 I have to look at the extent of the gravity of offending and, for the reasons I have set out, I do not believe it is high. The Act then directs that I need to balance the consequences of a conviction against the gravity of the offence. As I have said therefore, I believe that the gravity is low. So I need to think carefully about what would be the consequences of a conviction. I have already addressed the employment consequences and I do believe them to be real and they need to be brought to account. I am also conscious that you have made a considerable contribution to the community. You continue to do so. There's a real risk that that contribution will be lost if you are convicted. That, it seems to me also needs to be weighed in the equation.

[17] The Crown has sought reparation of \$1200.00 representing the loss of the motorbike. No further reparation has been sought. I now get to the point of imposing a sentence.

[18] I do not accept the Crown's submission that a sentence of discharge without conviction would be manifestly inadequate in this case. Having sat through the trial, having given a lot of consideration to this since, I believe that you should be discharged without conviction. It would be a term of such a discharge though that you make a payment of reparation to the complainant. That will be in the sum of \$2000.00 which will include the \$1200.00 that has been sought by the Crown and a further sum that he can have for his own account. In addition, you will need to pay Court costs of \$30.00.

[19] Mrs George, that is the extent of my sentence. You are discharged without conviction subject to that payment of \$2000.00 to the complainant plus \$30.00 Court costs.

[20] You may now stand down.



Weston CJ