

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

**CR NO: 357/15, 518-519/15,
550/15, 574/15, 623/15, 651/15,
1/16, 19/16, 128-129/16, 611/15 &
616/15**

POLICE

v

NGATOKOTORU NICHOLAS

Date: 03 June 2016

Counsel: Ms A Mills for the Police
Mr N George for Defendant

SENTENCING NOTES OF HUGH WILLIAMS J

[1] Ngatokotoru Nicholas, you are only 17, but you are already no stranger to being in the dock in the Court, and today you appear for sentence on a whole raft of charges committed over a short period of nine months. There are three charges of driving with excess blood alcohol and an extra charge when you refused to undergo a blood alcohol test, three dangerous drivings and six charges of breach of probation, contempt of court, breach of conditions and similar sorts of things.

[2] As far as today is concerned, the recital begins on 18 April last year when you were stopped driving, tested for blood alcohol and the reading was 220 over 100. That is nearly three times the legal limit of 80 milligrams of alcohol per 100 millilitres of blood. On that occasion you were driving along, stopped by police, drove off, crashed and injured yourself.

[3] Then about six months later, on 17 October last year, you refused to take a blood alcohol test but you were charged with dangerous driving and also for breach of a condition of your probation that you did not drink alcohol. On that occasion you were caught speeding on your bike and overtaking dangerously, going through a stop sign and when you were finally stopped, smelling strongly of alcohol. No doubt that is why you refused to take the breath test.

[4] The breach of probation on that and later occasions arose because on 3 March 2015 you were charged with two burglaries. Your sentence was that you be placed on probation for 12 months on

various conditions including that you did not drink alcohol. So you were on probation right through the period for which I am sentencing you. The 12 months would not have finished until March this year but in addition, on 29 September last year, you were again convicted of burglary, you were again put on probation for 12 months including community service conditions and a condition not to drink alcohol. Therefore, you are still on probation until 28 September this year. So everything you did for which you are being sentenced occurred while you were actually on probation subject to community service and subject to a condition that you did not drink alcohol.

[5] Coming back to today's charges, on 10 November 2015, you were found doing "wheelies" with a pillion passenger on your bike and convicted of dangerous driving. On 21 November, just a couple of weeks later, you failed to report for community service. Again, on 5 December, you failed to report for community service. A couple of days later, 7 December, again you were doing what is described as "stunting" on your motorbike which amounts to dangerous driving. Just a couple of weeks later, on 21 December, again you were found drinking alcohol in breach of your probationary conditions. Ten days later, on 31 December, again you were found driving, again you smelled of alcohol, and the evidential breath test reading was 940 on that occasion. So you had again been drinking, plus you had been smoking cannabis as well, so you told the police on that occasion. So again you were in breach of the condition of your probation that you did not drink alcohol.

[6] There was then a bit of a gap, of about six weeks, until 11 February this year. Again you were in breach of your condition: you were found drinking alcohol on that occasion. You actually went to the police station to lay a complaint about some theft or other offence. You smelled of alcohol but you denied having had anything to drink and it was you who insisted on being tested. When you were tested the reading was 65 milligrams of alcohol per 100 millilitres of blood. Now that is below the legal limit for driving but was in clear breach of the condition of your probation that you did not drink alcohol.

[7] And then finally, on 13 February, just a couple of days later, you were again found driving and smelling of alcohol. The reading on that occasion was 198 milligrams of 100 millilitres of blood. So you were two and half times over the legal limit.

[8] And probably the only reason that I am not sentencing you today for offences committed after 13 February this year is that you have been in custody for nearly all of that time.

[9] That is truly an appalling record for somebody as young as you and, as I said to your brother yesterday, it occurred when I am told by probation that after your mother was killed in a road accident in February last year, just 15 months ago, the family was overcome by sadness and grief. That is understandable enough. But did it not ever cross your mind when you were driving in the way I have

described and driving drunk, that the family might well have had another death to grieve over, yours, or yesterday, your brothers? Did it not ever cross your mind that you were risking your own life, risking the life of your pillion passengers, risking death or injury to other road users where in the Cook Islands death and injury by bad driving, especially alcohol related, is really frequent. It comes before the courts day after day, and people are starting to go to jail more frequently as a result.

[10] The probation service prepared a report for the Justices of the Peace first before you were remanded here for sentence. They stressed that in 22 February last year, just 15 months ago, your mother was killed in a road accident and that event caused, as one would expect it would cause, great grief and sadness in your family. And yet you and your brother have continued to behave like larrikins on your motorbikes ever since.

[11] Your father says that you are stubborn and that you have always been intent on doing your own thing and in your own way. But your father, and the family, now need help from you and your brother and others in your big family just to survive by tending the taro patches and helping the family get by.

[12] I can understand that you and your dad may not have been close. Yours is a big family I think of 13 children, and your parents, particularly when your mum was alive, had a real struggle to bring you up. And I can also understand that you were close to your mother. But the sort of driving, the sort of behaviour that brought your brother before this court yesterday and you today, meant that your family had every chance of having to grieve because one of them had been killed, or they have killed somebody else in a motor accident.

[13] You told the probation service that you do not like being in prison, that it is not the place for you. That is what prisons are for. They are for people who regularly break the law and the only way to stop them breaking the law is to put them in jail so the community is protected from them. And that is where you are going, back to jail today.

[14] Ms Mills for the Crown in her submissions pointed out to your background including – this should perhaps have been mentioned before – that you have never had a driver's license. So all the driving you have done has been when you have been unlicensed. That in itself is an offence. The Crown relies on the facts of your repeated offending over nine or ten months, the nature of the charges, the fact that you were on probation throughout and were an unlicensed driver, and of course the risk to road users for the kind of driving which is found all too frequently in the Cook Islands.

[15] Now you are entitled to a reduction from what would otherwise be your sentence by your guilty pleas. The fact that, even now, as I said, you are only 17 and you have been in custody since 17

February this year. The Crown suggests that you certainly have to have a jail sentence and they direct me to some New Zealand cases which are helpful in that regard.

[16] I heard from Mr George, appearing for you for no fee. Your family should be grateful to Mr George for what he has been trying to do to help you. You ought to listen to him. He has been trying to assist your family to stop people like you and your brother, stop members of the family like you and your brother just behaving like larrikins, like hoons. It is not often Mr George will suggest that the only way for somebody to be treated by the Courts is for them to go to jail so that they are no longer a risk to themselves or the community.

[17] Coming to the sentences to be imposed, I have to try and find a sentence that will make you accountable for what you have done, combat the risk that you pose to yourself and the community, try and promote some sort of sense of responsibility in you, denounce what you have done and try to persuade other people in the community not to follow your lead.

[18] The circumstances that make this offending overall worse are of course the number of charges, the repeated charges for excess breath alcohol and dangerous driving and the fact that you have never had a license in your life. They all make it worse coupled with the fact that you were on probation right through this period.

[19] The circumstances that make your offending less are your pleas of guilty and the fact that you are still only 17 years of age.

[20] In my view the leading offences this morning are the three excess breath alcohols and the refusal to undergo a breath test. Because of the numbers and the circumstances I have just been discussing, you are sentenced to 2 months' imprisonment on each one of those four charges, with those sentences being what lawyers call cumulative. That means that they are added on top of each other. So that is 8 months subject to something that I will be coming to you in a moment. Cumulative sentences are appropriate where there is repeated offending of the same nature but over a period, or on different days or different months, or where the offending is of a different type.

[21] And that brings me to the dangerous drivings which come close behind the excess blood alcohols in terms of seriousness. All of those charges betray no thought on your part, for yourself, for your passengers or for others. So you are sentenced to 2 months' imprisonment on each of those three, again cumulative, that is to say it is all added up. So at that point, if that were to be the end sentence you would be going to jail for 14 months.

[22] On all the other six charges – the breach of community service, breach of probation, contempt of court, all those six – you are sentenced to 1 month's imprisonment on each but those sentences will be what lawyers call concurrent, that is to say those sentences will not be added onto the rest, they run alongside them. They will not extend the amount of time you spend in prison. So at that point, if that were the end sentence, you would continue to go to jail for 14 months.

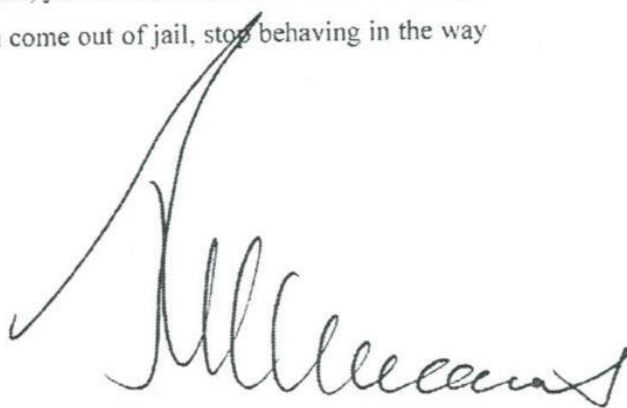
[23] However what I am prepared to do to acknowledge your youth and to acknowledge the overall offending in which you are involved, and also to acknowledge the fact that you have been in custody for about 3 months, is that I will knock 2 months off the sentence. The practical way of doing that is – I am sure you do not really understand this, but this is the way Judges have to deal with cases like this – I will knock 2 months off the sentence. To do that, instead of sending you to jail for 2 months for the refusal to undergo the evidential breath test, you will be convicted and discharged on that.

[24] The end result is that you will go to jail for 12 months.

[25] On your release you are to be on probation for 24 months, 2 years, and you will be disqualified from driving for 24 months, 2 years. So that means that when you get out of jail you are under the care of the probation service for 2 years and you must not drive for 2 years. In addition to the usual conditions of probation there will be a condition that you do not consume or purchase alcohol - so no "grog" - you attend any workshops or counselling the probation officer directs and you do not leave the Cook Islands without the approval of the High Court.

[26] Well you have 12 months now to learn your lesson even better, you and your brother. And it is to be hoped, as Mr George says, that during your time in jail, you have a chance to think about things, become a bit more mature in your attitudes and, when you come out of jail, stop behaving in the way that brings you to this position today.

[27] Stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams, J.', written in a cursive style. The signature is positioned above a horizontal line.

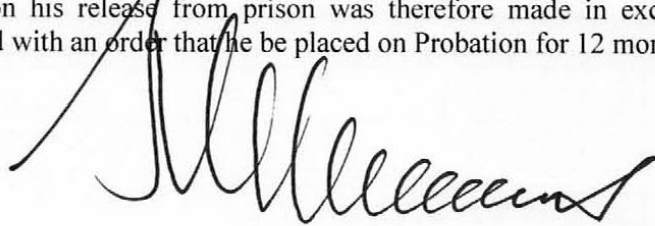
Hugh Williams, J

ADDENDUM TO SENTENCING NOTES

Date of Minute: 31 August 2016 (11am NZ time)

[1]: When the typescript of the above sentencing notes was circulated to the Chief Probation Officer on 29 August 2016 he, very properly, pointed out that under s22(1) of the Criminal Justice Act 1967 the maximum period for which a person sentenced to imprisonment for 1 year or more can be placed on probation on his or her release from prison is 12 months from their release date.

[2]: The order set out in paragraph [25] of the above sentencing notes for Ngatokotoru Nicholas to be placed on Probation for 24 months on his release from prison was therefore made in excess of jurisdiction and is quashed and replaced with an order that he be placed on Probation for 12 months on his release.

A handwritten signature in black ink, appearing to read 'Hugh Williams', is written over the text of paragraph [2]. The signature is fluid and cursive, with a long horizontal stroke at the end.

Hugh Williams, J.