

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

**CR NO's 563/16, 567/16,  
108/17 & 109/17**

**POLICE**

**v**

**TUTAI JUNIOR AMIRI**

Date: 17 March 2017  
Counsel: Ms A Herman for the Crown  
Mr N George for the Defendant

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**SENTENCING NOTES OF HUGH WILLIAMS, CJ**

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[11:49:58]

- [1] Tutai Junior Amiri, also apparently known as Teokotai Tutai, you appear here today for sentence on two pairs of offences – driving with excess breath alcohol on 24 June last year and breach of probation because you were on probation at the time and one of the conditions was that you should not drink. Those are informations 563/16 and 567/16 and then again the same pair of offences just last weekend, 11 March 2017, driving with EBA and breach of probation for drinking (Informations 108/17 and 109/17).
- [2] On each of the EBA you could go to jail for 12 months or be fined \$1,000 and there is a mandatory 12 month disqualification. There were other offences including a careless driving causing injury but they have been withdrawn by leave.
- [3] In relation to the earlier pair of offences, on 24 June last year, you were driving a car which hit a pedestrian and your breath test was about 1000 micrograms against the limit of 400. You were on probation at the time and were clearly in breach.
- [4] That recital of events could just about be repeated for the offending last weekend. You were found driving a motorcycle without a headlight. You were tested, your

breath test again returned about 1000 micrograms of alcohol against a 400 limit. And there was the breach of probation.

- [5] You have got a terrible record for somebody who is only 26, including three previous EBA's – you now have five – on which you were fined and sentenced to probation, at least four driving while disqualifieds, at least two breaches of probation and a number of other charges including assaults.
- [6] You have been sentenced to jail of up to 5 months imprisonment in 2013.
- [7] To the Probation Service you acknowledge that on the earlier occasion you had drunk a whole carton of beer with some friends and then you drove your sister to buy some more and the accident occurred.
- [8] You acknowledge to the Probation Service that your breach of the law must be seen as deliberate.
- [9] Ms Herman for the Crown, draws my attention to the principles of sentencing that I will recount shortly, and says that the circumstances making your offending worse are of course the earlier EBA and the earlier driving while disqualifieds. This is the fourth and fifth in about six years you have been up for EBA and there are very high readings on the occasions we are dealing with today.
- [10] Ms Herman draws my attention to the increase in the maximum sentence in 2007 which does not seem to have done much to stop drunk driving in the Cook Islands. She also referred to cases such as *Pouao*<sup>1</sup>, *Raeina*<sup>2</sup> and *Nicholas*<sup>3</sup> where probation was imposed in *Pouao* for two careless causing injury so it is a different kind of case. *Raeina* says that Judges should look at a jail sentence as a starting point for EBA particularly if the offender is well over the limit.
- [11] Mr George candidly acknowledged that there is not a great deal that he can say on your behalf because it was clear that on both occasions you were flouting the law. You had been drinking, you were on probation at the time and you should not have been doing any of that. But he urges me not to impose a custodial sentence, not to

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<sup>1</sup> Police v Pouao, CR 512-514/10, Grice J, 10 October 2010

<sup>2</sup> Police v Raeina, CR 33/13, Hugh Williams J, 15 March 2013

<sup>3</sup> Police v Ngatokotoru Nicholas, CR 357/15 et al, Hugh Williams J, 3 June 2016

send you to jail because your partner and two children – one of whom is in poor health – totally rely on you. You should have thought of that before you got on your motor vehicle and bought the alcohol.

[12] It seems, according to your employer, that you are a good employee and they support you, but this is serious offending.

[13] One of the major things I have to try and do is fashion a sentence which will promote a sense of responsibility in you. You seem to have no responsibility at all when it comes to alcohol and flouting the terms of your probation.

[14] Sentences should deter people from re-offending. There is no evidence of that in this case.

[15] This, as I mentioned, was serious offending. Mr George urges me not to impose a jail term but in the circumstances facing us today that is unrealistic. Drinking and driving is of considerable prevalence in the Cook Islands and Courts need to take account of the fact that Parliament ten years ago massively increased the maximum penalties. In this case it is your fourth and fifth EBA, both committed when you were on probation, so you had no intention of complying with the law either in the amount you drank or in the terms of probation.

[16] Both these EBA's were about two and a half times over the limit which is a very high reading.

[17] In mitigation you have pleaded guilty but frankly there was not much you could do to defend the case. So the starting point must be a jail term of about 3 to 6 months. The aggravating offences are towards the top of the range. There is very little mitigation.

[18] On 563/16, the excess breath alcohol on 24 June 2016 I will sentence you to 3 months jail.

[19] On the excess breath alcohol last weekend I will sentence you to 9 months jail.

[20] The two terms will run together so that you will do a maximum of 9 months.

[21] On the breaches of probation you are sentenced to 1 month's jail on each. Again the terms will run concurrently.

- [22] So overall you will do 9 months in jail.
- [23] On release you will be placed on probation for a year. One of the conditions will be that you do not drink because you plainly have a problem with alcohol and you ought to pay considerable attention to the Probation Service when they try to stop you from drinking.
- [24] On your release from jail you will be disqualified from holding or obtaining a driver's license for 3 years.
- [25] Stand down.

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

**Hugh Williams, CJ**