

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

CR NO. 416-417/19

POLICE

v

JOHN DEAN MARSTERS

Date: 28 November 2019
Appearances: Mr T Manavaroa Snr for prosecution
Mr M Ioane for defendant
Sentence: 28 November 2019

SENTENCING NOTES OF WOODHOUSE, J

[2:15:08]

[1] Mr Marsters, as you know you pleaded guilty to charges of careless driving causing injury. An offence which has a maximum penalty of 5 years imprisonment or a fine of \$5,000. You also pleaded guilty to a charge of driving with excess breath alcohol which has a maximum penalty of \$1,000 or 12 months imprisonment and mandatory disqualification from driving of 12 months.

[2] You drove a car from a side road into the main road and you collided with a motorbike being driven by a young woman, Ms Simpson. You were found to have 700mcg per litre of breath in your breath. The limit is 400mcg. So you were getting close to 100 percent over the limit.

[3] Ms Simpson cannot remember what happened but there was no apparent head injury as a consequence of the accident. She suffered lacerations and abrasions to the right leg and foot. Her motorbike was written off.

[4] There are, I consider, a substantial number of mitigating factors. You are aged 70. My understanding is that you have no previous convictions. You entered an early guilty plea and were fully cooperative with the police. Of your own volition you bought a new bike for Ms Simpson at a cost of \$3,990. Her old bike was written off but its pre-accident value was \$1,800. So substantial additional compensation has been made to the victim.

[5] You are on a New Zealand old age pension of \$700 a fortnight although at this point, because of an extended absence out of New Zealand, \$20 a fortnight is being deducted.

[6] Further in relation to mitigation Ms Simpson told the probation officer, and I quote from the pre-sentence report: "She stated that she did show frustration towards the defendant at the start however does not wish for this matter to go any further. She feels that the defendant have [sic] suffered enough and having a pensioner compensate her with a brand new motorcycle has been ridiculous. On that note she humbly asked for the charge of careless driving causing injury held against the defendant dropped."

[7] The attitude of the victim is a matter to take into account but it cannot be ultimately determinative on a charge of this nature. More significantly, I read her remark as being directed at the careless driving which injured her and caused her bike to be written off although she is now substantially better off in relation to her bike. Her remarks cannot be directed to your driving with excess breath alcohol because that is an act which obviously endangers the community generally.

[8] Having regard to those considerations, and also taking fully into account the helpful written submissions for the prosecution, and for you, and the other matters recorded in the pre-sentence report, the penalties or the result is as follows:

- (a) On the charge of careless driving causing injury you are convicted and discharged;
- (b) On the excess breath alcohol charge you are convicted and fined \$500 and you are disqualified from holding a drivers licence for a period of 12 months.

[9] I note, and perhaps should have noted earlier, that I have discussed with your counsel and to an extent with you, whether you have the financial ability to pay a fine given the fact that you are a pensioner. I was advised that you have savings remaining of around \$4,000 after paying the substantial sum for the new bike. The consequence is that I am satisfied that this outcome does involve a substantial penalty imposed on you given your financial circumstances. And that that penalty fully meets the principles and purposes of sentencing that need to be met in cases of this sort.

A handwritten signature in blue ink, appearing to read "Peter Woodhouse, J.", with a small flourish at the end.

Peter Woodhouse, J