

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

CR NO. 65/2020

POLICE

v

SOTIA BOGIDRAU SOKO

Hearing date: 18 August 2020

Counsel: Ms M Okotai for the Crown
Ms L Rokoika for the Defendant

Sentence: 18 August 2020

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[11:56:22]

[1] Sotia Bogidrau Soko, you appear here for sentence today having pleaded guilty on 27 July this year to one charge of dangerous driving causing injury, that occurring on 30 January 2020.

[2] The charge to which you pleaded guilty is a very serious charge as is evidenced by the fact that in 2007 Parliament massively increased the maximum penalties for conviction of that offence. The maximum now is a possible 10 years imprisonment or a \$10,000 fine and a possible disqualification for three years.

[3] The charge is brought under s 25(1) of the Transport Act 1966 and of the dozen or so offences in that section, dangerous driving in a manner dangerous to the public is one of the more serious of the options available under that section.

[4] The facts were that you were driving your employer's truck, a Safari Tours vehicle, with a couple of passengers. You saw a school bus ahead of you which drew

up to the side of the road, with children getting off, and you either passed it or overtook it – depends which term one wants to use – at about 40km per hour, certainly in excess of 30km per hour, which was the maximum speed in that zone.

[5] A six year old came around the front of the bus and ran into the left hand front of your vehicle. He was quite seriously injured and had a deep cut to his forehead which needed stitching and a fractured skull, as a result of which he was referred to New Zealand for additional treatment.

[6] In addition to the fact that you were exceeding the speed limit in the Muri zone where you were driving, Ms Okotai for the Crown today referred me to s 64 of the Transport Act 1966 which reads:

The driver of any motor vehicle upon meeting or over taking any stationary school bus discharging or embarking school children shall drive with due care for the safety of the children, and in no case shall while passing any part of the school bus, drive at a speed in excess of 20km per hour.

[7] So s 64 makes it clear that not only were you exceeding the speed limit in Muri when you were driving the Raro Tours vehicle, but you were significantly exceeding the allowable maximum for passing a stationary school bus.

[8] The Probation Service have provided their usual helpful report describing your family background and the difficulties that you had during your upbringing, mainly accomplished by your uncle. You have had a reasonably good education and came from Fiji to Rarotonga in November 2013 for work purposes.

[9] To the Probation Service you expressed your remorse and the Probation Service notes that the victim's mother suggests that you do not be imprisoned as a result of what happened, which leads the Probation Service to recommend a sentence of 18 months' probation. But, as I remarked earlier today in another case, that is without reference to the authorities on sentence for conviction of this serious offence.

[10] Ms Okotai for the Crown also supports a non-custodial outcome and says that your offending on this occasion was at the lower end of the spectrum for convictions of this sort. She maintained that view even after she had drawn my attention to s 64.

[11] Ms Okotai does acknowledge that the aggravating factors were that you exceeded 40km per hour or thereabouts in a 30km per hour zone, and that there were serious injuries to the young boy.

[12] But she notes that you have no previous convictions and pleaded guilty at an early stage of the matter.

[13] Ms Rokoika on your behalf submits that the appropriate charge should have been one of careless driving causing injury, but you have pleaded guilty to dangerous driving causing injury. And, as I have said, that is one of the more serious variants in s 25.

[14] She drew attention to your long term employment as a mechanic and as a tour driver for Raro Tours, the early entry of the guilty plea and suggests that the six year old “ran into” your vehicle, which is consistent with the fact that at some stage you blamed the victim for what occurred.

[15] Ms Rokoika drew my attention to the 2006 decision in *Teokotai* and analysed your situation in terms of the criteria set out in that case. She submitted that the appropriate sentence would be for you to be ordered to come up for sentence if called upon, but, as I remarked to her, that seriously understates what I see as the circumstances of this offence.

[16] In terms of the starting point for an appropriate sentence, I need to look at the seriousness of your offending on this occasion, the effect on the victim, try to promote a sense of responsibility in you, denounce your conduct and deter others.

[17] As you heard me remark to counsel, in my view the Probation Service’s recommendation and the Crown’s acceptance of that recommendation are significantly too lenient in terms of choosing a starting point.

[18] I need to take account of the significant increase in sentences that Parliament effected in 2007, and as I said earlier the benchmark judgment in *Timoti*¹ needs to be

¹ *R v Timoti* CR 477/2016; 1 June 2016; Hugh Williams, J.

given full effect. I am not sure you were in Court when I cited from that, but that judgement says that on conviction for a serious driving offence, particularly those under ss 25 and 26 where excess blood alcohol well in excess of the allowable maximum of 18mg of alcohol per 100ml blood is involved, and where those offences result in serious death or injury to persons other than the driver, the Court should as a first step adopting a starting point of at least one year's imprisonment.

[19] Now that does not of course fully apply to your situation as there was no alcohol involved in your driving, but you have nonetheless pleaded guilty to one of the more serious offences in s 25. So the starting point must be that I need to look at a term of imprisonment for you.

[20] Aggravating your offending on this occasion was that you were speeding: you were driving well over the limit for vehicles in the Muri area, and, in particular, as we now know, you were significantly speeding in terms of s 64 which imposes a maximum of 20km per hour while passing any part of the stationary school bus disembarking children.

[21] The very reason that there are restrictions and limitations on drivers driving near schools and school buses is because children are unpredictable. They have very little road sense and with a six year old it is to be expected that they will do things which are unexpected and become a significant traffic hazard instantaneously.

[22] Here you were operating a public service, with passengers, driving at a speed significantly in excess of the allowable limit both generally and around a school bus. Now it may well be that the young boy ran out from the front of the bus and collided with your vehicle but the restrictions are for the protection of children, and you disregarded them on this occasion and caused serious injuries to him.

[23] Against the seriousness of your offence are of course your plea of guilty to the s 25 offending and the fact that you have no previous convictions. It is clear that there will be some financial hardship as a result.

[24] But, in my view, while the reduction in sentence from the *Timoti* starting point needs to be significant because there is no alcohol involved; and the imposition of a significant lengthy period of disqualification on you can be set off to reduce the length of the jail term further, particularly because of the impact it will have on your employment, ultimately I have come to the view that a period of imprisonment is the only appropriate sentence to be imposed and I sentence you to one month in jail for your conviction on this offence.

[25] There will be 12 months' probation to follow on your release on the standard conditions.

[26] Stand down.

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

Hugh Williams, CJ