

POLICE

v

RICHARD NGATUAINA TUAPUTA

Date: 8 October 2021 (via Zoom)
Counsel: Mr T Manavaroa for prosecution
Ms M Tangimama for defendant
Sentence: 8 October 2021

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER (via ZOOM)**

[11:42:17]

[1] The defendant appears on a charge of careless driving causing injury under s 26 of the Transport Act 1966. He pleaded guilty to that offence which is accepted to be at an early opportunity.

[2] The maximum penalty for this offending is a term of imprisonment of up to five years or a fine not exceeding \$5,000. The Court further has a discretion to disqualify the offender from holding or obtaining a drivers licence for a period not exceeding three years.

[3] The facts relating to this offending are that at 12.26 pm on Thursday, 1st April of this year, there was a motor vehicle crash on the main road at Vaimaanga. Three vehicles were involved.

[4] The defendant was driving a green Proton truck, registration number 6848. There were two other vehicles involved.

[5] Witnesses in the other vehicles said they saw the truck coming onto the seaside lane and tried to avoid a collision by turning into the inland lane but it was too late and the truck crashed onto the left back passenger door of the following car and then into a motorcycle that was behind the car.

[6] The victims in the car received minor injuries. There were three – two of them being children – and the motorcyclist also suffered injury, fortunately only a mild head injury and soft tissue injuries to her face and foot and both hands. It is very fortunate that the injuries suffered by these people were not much more serious.

[7] When approached by the police at the scene, the defendant admitted he was the driver of the truck but said he could not recall what had happened. He was taken to the police station and breathalysed and the result was that there was no alcohol ascertained.

[8] In a subsequent interview the defendant said he remembered stopping at Wigmore shop to get some lunch for him and his colleagues. But he could not remember the collision that subsequently happened.

[9] It seems he had a seizure while he was driving.

[10] He has a history of epilepsy which is confirmed in a doctor's report attached to the pre-sentence report.

[11] Considerable damage was incurred in respect of the other two vehicles – \$1,647 in respect of the Daihatsu car and \$2,455 in respect of the Honda motorcycle.

[12] There are also the costs of medical reports \$60 in respect of the occupants of the car and \$20 in respect of the motorcycle driver.

[13] The defendant is 31 years of age. He is employed as a labourer earning \$350 per week. He is in a de facto relationship which is of long-standing, 11 years, and he has accepted his obligation to make reparation to those who suffered material damage in this accident or collision.

[14] This is his fourth appearance before the Court. He was convicted in 2015 on an excess breath alcohol charge, of driving while disqualified in 2016, and of theft in 2020.

[15] It is with concern I note that he was, at the time of this collision, driving without a current driving licence.

[16] Victim impact statements were provided and as I have mentioned none of the victims suffered serious personal injury.

[17] The police and counsel for the defendant have provided me with comprehensive submissions, which I have read.

[18] There is also the usual very helpful probation report. The recommendation for sentence in the probation report is 12 months' probation supervision with the first four months to be served on community service.

[19] I have discussed the appropriate sentence with both counsel and indicated to them that in the circumstances of this case, where normally a sentence of imprisonment would have to be seriously considered, given the medical condition of the defendant – his condition of epilepsy – his reasonably early guilty plea, his remorse, and the apologies he has offered to the victims, I am not minded to impose a custodial sentence.

[20] But the conditions I will impose in respect of the sentence of probation supervision are very important, and I will detail those carefully so the defendant takes considerable notice of them.

[21] I will also be making an order for reparation.

[22] So Mr Tuaputa, the sentence I impose on you is:

- a) 12 months' probation service with the first four months to be served on community service;
- b) You will be disqualified from driving for 12 months.

[23] The following conditions apply to your sentence. Conditions of a sentence like this are rules and if you break the rules during the period of your sentence you can expect that serious consequences will follow:


- a) You are to attend counselling as directed by the Probation Service;
- b) You are to take advice from a registered medical practitioner for your diagnosed condition of adult onset epilepsy and you are to obtain and take medication as prescribed from time to time by a registered medical practitioner. In that respect, and before I move on to the next condition, I note that in Doctor Saweri's report dated the 13th April 2021, he says you had not refilled your prescriptions since 29 July 2020. That is a very serious matter and is why I have imposed the condition that I have just set out, that you are to take medical advice and you are to obtain and take the prescribed medication from time to time as recommended by the doctor.
- c) The third condition is that you are to comply with directions from the Probation Service as to taking medical advice and prescription medicine for your diagnosed condition of adult onset epilepsy. I impose that condition because I wish the Probation Service to have some supervision of your attention to your medical needs.
- d) The fourth condition is that you are not to leave the Cook Islands without the approval of the High Court.

[24] There will be an order for reparation as follows:

- a) You are immediately to pay \$80 for the medical expenses.
- b) And starting one fortnight from now, on your pay day, whatever that day happens to be, you are to pay reparation by weekly instalments of \$50, amounting to \$1,647 in respect of the first victim by the name of Rongo; and \$2,455 in respect of the second victim by the name of M/s Lewaqona.

[25] Now it may assist if I can put an actual date on the first of those instalments, though I know Probation Service will attend to it. Perhaps I will leave it with Probation Service to settle that date to coincide with a pay date, is that convenient?

[26] So \$80 to be paid forthwith. And then commencing a fortnight from now on the pay day a fortnight from now, \$50 every pay day, that is weekly.

A handwritten signature in blue ink that reads "Potter, J." with a horizontal line underneath.

Judith Potter, J