

POLICE

v

AREKE TAITAI

Counsel: Senior Sergeant P Tararo for prosecution
Mr M Ioane for defendant

Oral Sentence: 24 November 2023

SENTENCING NOTES OF GRICE J

[9:29:0]

[1] Mr Taitai, you come before the Court for sentencing on one charge of careless driving causing bodily injuries to two victims. The charge is under s 26 of the Transport Act 1966. It carries a maximum fine of \$5,000 and a term of imprisonment not exceeding 5 years. In addition, the Court may disqualify you from holding or obtaining a driver's license for a period not exceeding 3 years.

[2] The charges arose out of an incident at about 7.50 pm on 5 August, you were involved in a motor vehicle crash. You were driving a van and approached a Give Way sign at the roundabout and failed to check if the road was clear before moving off.

[3] You drove onto the road and crashed into an oncoming motorcycle. You continued but stopped at the side of the road at the CITC store and walked back to the victim's motorcycle to check if they were okay. The victim and her passenger sustained minor injuries, scratches and bruising but required hospital attention. The motorcycle was damaged.

[4] You openly admitted the facts when you were interviewed by the police. Reparation is sought for the damage to the motorcycle as well as compensation for the victims who were away from full-time employment on sick leave for three days.

[5] When sentencing I must take into account the principles of sentencing which include the gravity of the offending in the particular case and the blameworthiness of the offender, the seriousness of the type of offence in relation to other types of offences, and I must take into account the desirability and consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences.

[6] In addition I must take into account the views of the victims which have been provided to the Court and I must also take into account the least restrictive outcome appropriate in the circumstances. As well, I take into account your particular circumstances in relation to your personal situation, your family, whanau, community, and background, which I have heard about from Mr Ioane today.

[7] In relation to sentencing there are a number of purposes which I must bear in mind and particularly relevant here are to hold you accountable for the harm done to the victims and the community by the offending, to promote a sense of responsibility and acknowledgment for that harm, and to provide for the interests of the victim including reparation for harm done, to denounce the conduct, deter you and other people in the community from committing the same or similar offences, and to protect the community.

[8] I have heard submissions from the police today. The prosecutor gave me references to previous decisions where fines and reparation as well as disqualification were imposed. These range in relation to the offending and for instance, in *Phillips*¹ where a fine of \$2,000 and court costs of \$50 were imposed, together with payments of medical expenses and lost wage compensation of \$3,000 in circumstances relating to drug offending similar to the present.

¹ *Police v Phillips* [2017] CKHC 30, CR 349.2017 (25 July 2017).

[9] In this case the police pointed out that you had admitted the facts and did not try to escape blame and you were very apologetic. The Senior Sergeant submits that imprisonment is usually a starting point for this type of offending however the combination of the mitigating factors in this matter is sufficient to constitute justification of a sentence less than imprisonment.

[10] Reparation, as I have noted, is sought as well as compensation for emotional harm. The victims provided a report outlining the extent of their injuries and the need to stay at home for to recover but it was unfortunate that the employers paid for that sick leave time and did not stop their wages.

[11] For you, Mr Taitai, Mr Ioane has submitted that you accept and acknowledge that it is a very serious offence. Breaches of road rules in the Cook Islands can have significant effects and the community wants to see them denounced.

[12] Mr Ioane submitted that you were very cooperative, you frankly admitted the charges, and you entered an early guilty plea.

[13] You are supporting your family financially back in Kiribati, having come to work here for better opportunities. You are employed and work hard and your wife works hard. You owe amounts on a family motor vehicle and you have a number of outgoings, so any fine will be a substantial imposition on your family budget.

[14] Mr Ioane also produced a number of references including from your wife who said you were very supportive and honest and reliable man. In addition, I received a reference from the Kiribati community president indicating that you are well-regarded in the community and continue to give back to your local and larger communities. In addition, this morning Mr Ioane handed me up a reference from your employer, Polynesian Rental Cars and Bikes, who indicated that you show a lot of potential, you are an invaluable contributor to the operations department and to the smooth running of the company, and a valued employer. So it is a very strong recommendation or reference on your behalf.

[15] In those circumstances, while the offending is regarded as serious in the Cook Islands and indeed involved injury to two victims, I consider this is not an appropriate case for imprisonment or a supervisory sentence and I accept that a fine will have the effect of sending a message both of deterrence and denunciation in relation to this type of offending. The important points were you stopped and went back to the scene of the accident, you readily admitted your involvement and entered guilty pleas at the earliest opportunity. There is no suggestion of alcohol or drugs being involved and the accident seems to have occurred due to lack of attention at the time.

[16] In sentencing, I consider the most important principles are those of denunciation, deterrence, and accountability but I also recognise the circumstances of the offending and your personal circumstance. I take into account those to ensure that the sentence I impose has the least restrictive outcome but at the same time reflects the seriousness of the offending and takes into account the views of the victims.

[17] In those circumstances I will impose a fine.

[18] You are convicted and a fine of \$2,000 is imposed, of which \$1,000 is payable to the victims by way of compensation. Of that, two-thirds is to go to the first victim who had claimed \$300 for emotional harm, and one-third of that \$1,000 to the other victim.

[19] A further sum of \$1,355 is payable for the damage to the motor vehicle.

[20] In addition I direct that \$40 for medical report costs be paid.

[21] The police have indicated they are not seeking disqualification and Mr Ioane strongly submitted that disqualification would be very restrictive for you given your job, which you need. In the circumstances of the offending I do not consider that disqualification is appropriate so I will not disqualify you from holding or obtaining a driver's license.

[22] Thank you Mr Taitai, you may stand down.



Grice J