



HIGH COURT OF KIRIBATI

Criminal Case No 2/2017

THE REPUBLIC

v

BWEREATA KAMORIKI

*Kanrooti Aukitino for the Republic
Teetua Tewera for the prisoner*

Date of sentencing: 13 November 2018

SENTENCE

- [1] The prisoner has been convicted following a trial of 1 offence of careless driving causing death, contrary to section 33(1) of the *Traffic Act 2002*. The maximum penalty is imprisonment for 5 years, a fine of \$2000, or both. The facts of this case are set out in my judgment, which was delivered on 6 November 2018.
- [2] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v Republic*.¹ At the same time, I note that determining an appropriate sentence in any case is not a process that lends itself to precise mathematical calculation.
- [3] There are no aggravating features to this case. The prisoner's offending involved no other breaches of the traffic laws – he was not speeding, he was not under the influence of alcohol or kava, and his vehicle was not defective. The prisoner's inattention was little more than momentary, but it had tragic consequences. In mitigation, it is to the prisoner's credit that he has no previous convictions. He has not driven a motor vehicle since the collision, and will likely never drive again.
- [4] In *Rereintetaake Kanooa v The Republic*², the Court of Appeal agreed with a statement from the Chief Justice that a sentence within the range of 1 to 3 years' imprisonment was appropriate for offending of this nature. In that case, the Court refused to interfere with a sentence of 18 months' imprisonment. In that case speed was a factor in the offending and the appellant had pleaded guilty.

¹ Court of Appeal Criminal Appeal 1/2016, at [10].

² Court of Appeal Criminal Appeal 2/2014, at [6]-[7].

- [5] Counsel for the prosecution submits that a sentence of 18 months' imprisonment is appropriate in this case as well.
- [6] Counsel for the prisoner argues that I should instead consider imposing a fine. Even were I minded to do so (which I am not), the prisoner leads a subsistence lifestyle, and is not in a position to pay a fine. In the alternative, counsel for the prisoner submits that any sentence of imprisonment should be suspended, relying on the case of *Republic v Rabuna Kokoria*.³ I reminded counsel that that was a case where the offender had pleaded guilty, the offending was at the lower end of the spectrum, and there was very strong mitigation in the form of a plea for mercy from the parents of the deceased child. It will be a rare case where a person convicted of this offence receives anything other than an immediate sentence of imprisonment.
- [7] The prisoner is widowed and has sole responsibility for his 6 children, aged from 7 to 18 years. A sentence of imprisonment will undoubtedly have a significant impact on his children. This is an unfortunate consequence of his offending, and should not be considered as in any way mitigating the sentence he must receive.
- [8] The prisoner went to trial, as is his right, but, by doing so, he has foregone the reduction in sentence that he would have received had he pleaded guilty.
- [9] The prisoner spent 2 weeks in custody immediately after the incident.
- [10] Taking all of these matters into account, I sentence the prisoner to imprisonment for a period of 1 year. I see no reason to suspend the sentence.
- [11] The only matters remaining to be dealt with are the cancellation of the prisoner's driver licence and the period of disqualification that will apply. As careless driving causing death is a serious traffic offence for the purposes of the Traffic Act, I am obliged by section 56(3) to cancel the prisoner's driver licence (if any). I must also disqualify the prisoner from holding a driver licence for a period of at least 1 year. Under section 56(2)(b), the maximum period of disqualification is 5 years.
- [12] The prisoner does not have a current driver licence. The licence he held at the time of the offence (#51/04, issued on 15 December 2015) has expired, and was not renewed. There is therefore no licence to cancel.
- [13] The prisoner is disqualified from holding a driver licence for 3 years from today. The Highway Authority, as the licensing authority under the Traffic Act, is to be informed of his disqualification.


Lambourne J
 Judge of the High Court



³ High Court Criminal Case 19/2017