

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CRIMINAL DIVISION)

JP APPEAL NO. 5/07

CR NO. 565/07

IN THE MATTER

of Section 76 of
the Judicature
Act 1980-81

BETWEEN

THE POLICE

Appellant

AND

SAMUEL GREIG

Respondent

Deputy Commissioner Tetava and Senior Sergeant Howard for Police

Mr S Greig – in person

Date: 05 September 2007

ORAL JUDGMENT OF WESTON J

1. I have before me an appeal brought by the Police in relation to the decision of a JP to dismiss the original charge. The original charge was that Mr Greig "on the 27th day of August 2007, at Matavera did dangerously drive a white Honda 200cc motorcycle registration number AL 453 on the main road at Matavera at a speed without an approved safety helmet. "

2. Mr Greig helpfully advised me that he was ready to plead guilty to this charge when it was originally laid against him and, as far as he was concerned, the charge was dismissed by the JP unilaterally rather than at Mr Greig's instigation. Mr Greig pleaded guilty to another two charges and was sentenced by the JP in relation to them. Mr Greig accepted that he was driving a motorcycle at a speed in excess of 40 kilometres per hour and was not wearing any helmet of any sort.
3. The starting point is s. 86A of the Transport Act, which I now set out:

"86A. Safety helmets –

(1) No person shall drive a motor cycle on any road at a speed exceeding 40 kilometres an hour unless the driver and every other person carried are each wearing, and have properly fastened, an approved safety helmet.

(2) For the purposes of subsection (1) of this section an approved safety helmet shall be one of the class, type, or make approved by the Chief of Police under subsection (3) of this section, and which is in a good condition.

(3) The Chief of Police may, by notice in the Gazette, approve any class, type, or make of safety helmet whether by reference to tradename, trademark, or otherwise, and may in like manner at any time revoke such approval.

(4) Every person who acts in contravention of subsection (1) of this section commits an offence and shall be liable to a fine not exceeding fifty dollars."

4. Section 86A requires any person driving a motor cycle in excess of 40 kilometres per hour to wear a safety helmet. In addition, that must be an approved safety helmet. The obvious purpose of s. 86A is to promote safety. In my opinion there is no proper basis in that section to say that the 40 kilometre an hour limit applies only if there are approved helmets available. If there no approved helmets available then, in my opinion, the section clearly means that no one should drive in excess of 40 kilometres on a motorcycle. To find otherwise would undermine the obvious safety purpose of the legislation.
5. I am advised by the Police that, at the time the offence occurred, there were no approved helmets. While that may be a ground to criticize the Chief of Police (for not dealing with that particular issue), the fact of the matter is that the absence of any approvals effectively limited the speed of motorcycles to 40 kilometres an hour. A number of approvals have subsequently been made in terms of s. 86A.
6. For the reasons set out above, and with respect, I believe the JP was wrong to dismiss the information laid against Mr Greig. As I said, Mr Greig was ready to plead guilty to it and it was nothing to do with him that the matter was dismissed. Accordingly, I allow the appeal and I enter a conviction against Mr Greig in relation to the original charge.
7. This was something in the nature of a test case and I do not see that Mr Greig should suffer any further penalty as a result of the

police quite properly endeavouring to clarify the law in this matter.

8. So, although I have entered a conviction against Mr Greig in relation to this third charge, there will be no penalty in addition to those that were imposed in relation to the other two charges which he faced and to which he pleaded guilty.

Judge