

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR NO: 274, 275, 276, 277, 278/09

POLICE

V

ELI CUMMING

Defendant

Counsel: Ms M Henry for Police
N. George for Defendant

Date: 10 July 2009

SENTENCE OF GRICE J

1. Mr Cumming, you have pleaded guilty and been convicted of five offences. The first two, failing to stop and ascertain whether someone is injured and to get help in relation to first Mr Wu and secondly Mr Chu carry maximum periods of imprisonment of five years each. The next two, careless driving causing injury to Mr Wu and Mr Chu also carry terms of imprisonment maximum of five years. Finally the offence of driving while disqualified has a maximum period of imprisonment of one year. These are serious offences.
 2. I have a probation report in front of me as well as submissions by the Crown and by Mr George to assist me in sentencing. The Probation Service also provided me with
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a list of offences for various driving charges which I am going to hand to the Registrar to show Mr George and Ms Henry.

3. The charges relate to a traffic accident that resulted in injury. It could have been much worse. The accident occurred at Nikao on Sunday afternoon. It seems that you drove past a group of people and the side of your car or the wing mirror hit them. It does not really matter. The essence is that they were walking on the side of the road. You hit two pedestrians and you did not stop. I will comment on Mr George's submissions in a moment. You told the Police that you stopped a 100 meters after to get your wing mirror sorted out and then drove quickly to your girlfriend's place because you were scared of what was going to happen.
 4. When the Police caught up with you and questioned you, finally you admitted it was you and that you had been drinking homebrew all morning. You were very wasted, very drunk and you should not have been driving. Another witness saw you speeding before the accident and he estimates you going about 80-90 kilometres an hour and went into a drift.
 5. Although you expressed sorrow for what happened, you clearly were not going to come forward until the Police questioned you.
 6. One of the serious aspects is that you were a disqualified driver, you only had just been disqualified from driving for an excess breath alcohol and disqualified for the minimum of 12 months in November of 2008. That is only a few months before this happened.
 7. You had been granted a limited licence. This is a privilege to allow you to keep going to work. It was operative from Monday to Saturday. This incident was on a Sunday afternoon, and outside the terms of your licence.
 8. The victims were visitors to the Cook Islands on work permits. Mr Wu was knocked to the ground when your car struck his right leg, he was injured and received medical treatment. He lost eight days income and as we have heard because of that lost \$300.00 in wages. Mr George has indicated that you would agree that this amount needs to be paid to Mr Wu. Mr Chu was also a visitor on a work permit. He was hit on the leg and suffered bruising and swelling. He was not as seriously injured as Mr Wu but as I said this could have been much worse.
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9. Mr George in making his submissions on your behalf has put forward a submission which put a certain amount of blame on the victims for the way they were walking along the road. He says you did not know you hit anyone. This is exactly in contradiction to what you told the Police. As for saying that the victims in effect asked for it because of the way they were walking along the road and the side they were walking on the road, does not mitigate at all. They were pedestrians, you were speeding, you were drunk and you did not stop.
 10. Those issues were brought up earlier by Mr George in an application to vacate the plea. The plea was not vacated. These submissions should not be taken into account in mitigation here.
 11. However you must be getting some benefit for the guilty plea, despite the application to vacate the plea.
 12. The Probation Report indicates that you are presently aged 21 years. This is your second appearance. Unfortunately the excess breath alcohol for which you were disqualified was quite recent. To your credit you are in full time employment with your father as a surveyor. You are earning about \$300.00 a week and you pay \$175.00 towards a car. You live with your parents and you are in a steady relationship. Your parents have indicated through the Probation Report that you should be spared a prison sentence but suggest that you need some help with alcohol.
 13. I move on to the sentencing on the five charges. As I have said the charges are serious. They could have been far more serious if these people had been injured more seriously. They involve driving while you were, on your own admission, very drunk, speeding and driving while disqualified from an earlier alcohol offence. You did not stop to check the pedestrians or see if anyone was injured. You must have known something had happened.
 14. As I said, to your credit you have pleaded guilty, you have expressed remorse and I must take that into account. The starting point in my view for this offence would be about 18 months probation together with disqualification, reparation and community service which I propose to impose. Taking into account mitigating factors including
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your age, the fact that you have got a steady job and provide support for your partner and some credit for a plea of guilty.

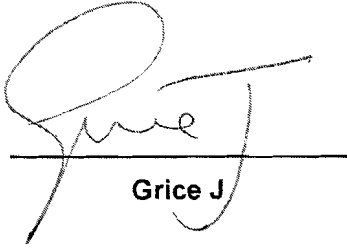
15. You are sentenced on each of the charges:

- i. CR No. 275/09 the failing to stop and ascertain in relation to Mr Wu and CR No. 276/09 in relation to Mr Chu as well as the careless driving causing injury charges in relation to each of Mr Wu and Mr Chu, you are sentenced to 12 months probationary supervision with a condition that you receive such alcohol related assistance or programme as the Probation Service are able to arrange and that you abstain from the consumption and/or purchase of alcohol and that you not enter any licensed premises.
- ii. The first six months are to be served as community service.
- iii. You are disqualified from holding or obtaining a motor vehicle licence for a further period of 12 months commencing on the expiration of your present term of disqualification.
- iv. Additionally in relation to CR No. 276/09 and CR No. 278/09 which are the offences in relation to Mr Wu who had eight days off work, I order reparation on each of those of \$150.00, a total sum of \$300.00. Reparation to be payable to the victim in such manner as agreed with the Probation Service.

16. In relation to the charge of driving while disqualified, you are sentenced to a further period of disqualification of 12 months immediately on the expiration of the present terms of disqualification. This is concurrent with the 12 months disqualification on the earlier offence or to the probation community service and disqualification are concurrent.

17. I now turn to the application for limited work licence application made by your Counsel, Mr George. In my view it is not appropriate to deal with it at this sentencing. If an application is to be made, an application fully setting the reasons should be made at an appropriate time. A limited licence to enable you to drive is a

privilege as I have said not to be used lightly. If Mr George is making an application at the present time it is dismissed.



Grice J

A handwritten signature in cursive script, appearing to read 'Grice J', is written above a horizontal line. Below the line, the name 'Grice J' is printed in a bold, sans-serif font.