

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

CR 50/2012

THE QUEEN

v

AUDREY MICHELE CLARK

Hearing: 28 January 2012 (NZ Date/Time)

Counsel: Mr Tuaine Manavaroa for Crown
Ms Sarah Inder for Defendant
Mr Mike Mitchell for Victim

Sentence: 28 January 2012

SENTENCING NOTES OF HUGH WILLIAMS J

riding her motorcycle in the opposite direction. For what appears to be a relatively brief period, the defendant – who, as mentioned, is an American citizen – drove her car on the right-hand side, that is the incorrect side of the road, and collided with Ms Bryder's motorcycle. There is something of a dispute as to whether the headlights were on full-beam or not, but that is irrelevant for the purposes of sentencing.

[6] It appears to be the case that shortly before the accident Ms Clark's vehicle had suffered a blown tyre, which had to be replaced. That incident, whilst not causing an enormous amount of stress, may have acted as an irritation or a distraction from her driving and caused her to drive as if she was driving in the United States and not as if she was driving in the Cook Islands That may have led her to cross the centre line and drive on the wrong side of the road.

[7] As a result of the impact Ms Bryder was thrown up onto the windscreen of the vehicle and then fell back onto the road. She was injured in the accident. Ms Clark, a nurse, and her passenger, who was also a nurse, immediately attended to the victim, summoned the ambulance and the Police, and arranged for the victim to be taken to hospital. She was found there to have sustained a dislocated hip, an undisplaced fracture of her right wrist and a number of cuts and abrasions. The defendant immediately spoke to the Police at the scene, admitted full responsibility for the accident and has behaved responsibly as far as the victim is concerned and with the Police throughout the matter since.

[8] With the victim's approval Ms Clark has visited the victim in hospital, and Ms Inder advises – in addition to her submissions – that the victim has now just been released from hospital. Ms Clark arranged for the criminal prosecution process to be accelerated and the Police co-operated in that way, laying the Information a day or two ago and, of course, with Ms Clark entering the plea of guilty in the Justices of the Peace Court shortly thereafter.

[9] Ms Clark has been driving for 35 years. This is the first accident she has apparently had; certainly the first time that she has been involved in a prosecution either in the United States or anywhere else.

totalling \$2,774.58 to the trust account of Browne Harvey & Associates, for that firm to disperse the sum to the various payees for:

- (a) \$1,879.58 for the damage to the victim's motorcycle;
- (b) \$100 to whoever paid for the quotes for that damage;
- (c) \$55 to the hospital authorities for the medical expenses; and
- (d) the amount of \$740 to Ms Bryder in reparation for her lost wages.

[16] In view of the sizeable sum imposed for reparation and to acknowledge Ms Clark's thorough responsible attitude to this unfortunate mishap, in the Court's view this is not a case where a fine should be imposed in addition to the conviction.

[17] There will be orders in those terms.

[18] On evidence of the receipt of the \$2,774.58 by Browne Harvey & Associates, Ms Clark may uplift her passport which is currently held by the Cook Islands Police.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal dotted line.

Hon. Justice Hugh Williams