

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

CR NO. 415/12

POLICE

v

CHRISTOPHER CASTILLO

Hearing: 22 June 2012
Counsel: Solicitor-General, Ms K Saunders, for the Crown
Ms L Rokoika for the Defendant
Sentence: 22 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] Mr Castillo, at the age of 39, for the first time in your life, you appear a Court for sentence. You have pleaded guilty to one count of careless driving causing death of Mrs Atera on 27 November 2011. You have accepted responsibility for the death and pleaded guilty at a very early stage in the matter. You face, as Madam Solicitor has said, an increased sentence from a previous maximum of 3 months imprisonment to one now of 5 years imprisonment, plus a fine.

[2] At about 9.30 am on 27 November you were driving your car home from a function with your young son, aged about 6, in the car. Mrs Atera was riding her

bike in the opposite direction. It seems clear that you were extremely fatigued at the time having been up without sleep for something in excess of 24 hours. You went to sleep, veered across the road, hit Mrs Atera and the bicycle head on, she was thrown to the road, suffered very serious injuries and died shortly afterwards.

[3] As I said, you had been up all night after working all day, helping friends prepare for a prayer service, and you participated in that and a mass. You had a couple of drinks during the evening but the information before the Court suggests you are not much of a drinker. The reading of your blood alcohol concentration was tested some five hours after the incident, and the amount of alcohol in your blood was minimum, so that aspect of the matter - so often are part of charges such as these - can be dismissed from consideration.

[4] The plain fact was you got into your car at 9 or 9.30 am, you hadn't been to sleep for over 24 hours, you decided to drive, you put yourself at risk, you put your young son at risk, and you put everybody else on that busy road at risk.

[5] The Probation Service tells me you are Filipino by birth. You came to the Cook Islands about 2003 but went back 2 or 3 years later, then returned to the Cook Islands in November 2010 to take up the job that you and your wife still hold at the resort where you live rent-free at your workplace, in return, it would seem, for good service as an employee and long hard work. Your son goes to a nearby school and you and your wife each earn about \$250 a week. Your employees speak extremely highly of you and the Probation Service on your behalf emphasises the impact on your family and on your employer should you be sent to jail.

[6] You have significant family support and significant community support as the testimonials Ms Rokoika has put in evidence show.

[7] To your significant credit you initiated a meeting with the widower, Mr Atera, who is present in Court with the family. You agreed to pay him \$1200 for the cost of Mrs Atera's bicycle, and Mr Atera, as a result of that meeting, does not want you to be sent to jail. Obviously that meeting was very helpful towards reconciliation and I need to take that into account.

[8] As Madam Solicitor for the Crown emphasises the penalty for this offence has recently been massively increased from an unrealistic 3 month maximum to a much more realistic 5 year maximum in a society where deaths by motor vehicles are all too common. She makes the point that it is necessary to try and reduce the road toll in the Cook Islands, recognise that Parliament has recently played its part in that, and points out that previous cases that have come before the Court of the same charge in somewhat similar facts are now outmoded.

[9] Ms Rokoika, in very helpful submissions, pointed out all the factors that could have been advanced on your behalf, particularly your fatigue, the fact that this is the first time anything like this has happened to you, and that there was no pre-meditation. She stresses your family circumstances, your age, your employment and the support you have from your employer and suggests that despite the increase in maximum penalty this is a case which might be met other than by a jail sentence.

[10] I can tell you that, had come up for sentence when the maximum which could be imposed was 3 months imprisonment as the earlier cases show, and the circumstances of this case show, a short sentence perhaps of a few weeks or a month or two, possibly even a community service sentence might have been open. But the Courts need to acknowledge that Parliament has recently massively increased the maximum to try and combat the unfortunate road toll in the Cook Islands, and the result is that in charges such as these, prison will now rarely be escaped.

[11] That said, the circumstances of this offence are probably as much in your favour as a charge of careless driving causing death could be. It is your first offence, you work hard, you are highly spoken of by your employer, you are highly spoken of by your friends, imprisonment will have a massive effect on your wife and your son. You initiated the meeting with Mr Atera, and that stands you in significant good stead in terms of the sentence to be imposed. You accepted responsibility. You pleaded guilty at early stage. You are obviously deeply remorseful for what happened, but at the end of that you were stupid to drive on this morning. You put your son, yourself and everyone else at risk and unfortunately that risk materialised in Mrs Atera's death.

[12] In light of the significant increase in maximum penalty it would not be unreasonable to say that the starting point for a Court now considering an appropriate punishment would be up to about half the maximum of 5 years as the Court is required to impose a sentence which takes account of the harm done to the victim and to the driving fraternity in the Cook Islands, try to promote a further sense of responsibility for you - you have exhibited a lot - try to denounce what you did on that morning and deter others from being so foolish.

[13] In the circumstances, in my view, the appropriate sentence is to reduce the jail term to be imposed on you by as much as two-thirds from the starting point to a term of 10 months imprisonment. But given the increase in penalty and the need of a Court to reflect that, I can do no better for you. That sentence is now appropriate.

[14] You are sentenced to 10 months imprisonment. On your release you will be sentenced to 12 months probation, and you are to pay under the guidance of the Probation Service \$1200 to Mr Atera in instalments the Probation officer directs. And you will be disqualified from holding or obtaining a driver's licence for a period of 18 months from today.

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

Hugh Williams J