

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

CR NO 374/12

POLICE

v

JOHN JUNIOR TAEVAO TEITI

Hearing: 29 June 2012
Counsel: Mr Manavaroa for the Crown
Mr Rasmussen for the Defendant
Sentence: 29 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] John Junior Teavao Teiti, at the age of 17 and still being a college student, you appear here for sentence today having pleaded guilty on 31 May 2012 to a charge of careless driving causing injury which took place about 10.15 pm on the evening of 3 March 2012.

[2] As I will detail a little later on you are one of a number of offenders coming before the Court during the current sessions facing charges of careless driving causing injury, dangerous driving causing injury, careless causing death, reckless causing death or injury and like charges. All of you pose a real problem when it comes to sentencing, not just because of the circumstances of each offence, but

because two or three years ago, Parliament increased the maximum penalty for these offences from 3 months imprisonment and a fine or both to 5 years imprisonment or a fine or both. And they did that, as Mr Manavaroa for the Crown has said, because accidents of this sort - often unfortunately resulting in death - are all too common in the Cook Islands.

[3] Madam Solicitor-General told me in relation to another case last week that it is recognised that on a per head basis, the Cook Islands has one of the worst records in the world for road deaths from a careless or reckless or dangerous driving.

[4] And the fact is that the Courts have to recognise that people such as yourself now face a maximum penalty 2000 percent more severe than a year or two ago.

[5] In your case, as I said, on the Saturday night on 3 March at about 10.15pm, you were riding your bike at about the legal limit, about 50 kilometres per hour, and you crashed into a bike going in the other direction. Both of you were two up on the bikes. You said you fell asleep, you were tired. You veered to the opposite side of the road and there was a head-on crash.

[6] As a result the rider of the other bike suffered a fractured thigh and a fracture of both bones in the calf, plus of course, cuts and bruises. He is going to be disabled for 3 to 6 months. His victim impact statement says, naturally enough, that he is worried about whether he will be able to keep down a job or obtain a job when he gets back to a position in which he can work.

[7] His pillion passenger was also injured, although fortunately relatively minor, and you yourself suffered quite serious injuries in the accident. The victim's bike is going to cost something over \$3,500 to repair.

[8] The Probation Service in the usual helpful report says you have spent most of your life in Australia having been brought up by your grandparents and returned to Rarotonga only about 6 months ago in December last year. You are in Form 6 at Tereora College. You are apologetic for what happened that evening, you were co-

operative with the Police. They suggest the direction be that you come up for sentence if called upon within 6 months.

[9] But against that, Mr Manavaroa for the Crown draws my attention to a number of earlier cases where people were sentenced for the same or similar offences and suggests that those cases have been too lenient and the time has now arrived when a reconsideration of the appropriate penalty for this kind of accident, and this kind of offence, should be undertaken by the Court.

[10] The Crown suggests that you be sentenced in community service plus a fine, plus a disqualification, plus reparation of the sizeable sum of money needed to repair the other bike.

[11] Mr Rasmussen stresses your age, your early plea of guilty, and the fact that your family is prepared to provide a second-hand bike for the victim to ride when he is able to do so instead of repairing his own bike.

[12] The Crown suggests that you be ordered to pay compensation or reparation of the hospital fees of \$20, the Motor Centre's estimate of repair costs at \$50, and repairs of \$3,496.29.

[13] Your family's offer to make transport available to the victim and to stand behind you in this matter is commendable but as a matter of law I can see no reason why I should impose reparation on you at this stage when you have no means of income, certainly not of that amount, and I would be simply sentencing your family; they would have to find the money.

[14] So the best I can do is adjourn the question of reparation for 12 months and if you or your family can find the money to pay back the victim's cost of repairing the bike or come to some arrangement with him, then so be it.

[15] In the case I had last week, *Police v Castillo*, I said that "had you come up for sentence when the maximum which could be imposed was 3 months imprisonment, a short sentence perhaps of a few weeks or a month or two or

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.”

[16] Now I am not going to send you to prison, you are far too young. This is your first offence, and there is certainly no warrant for that. But with the massive increase in penalty and the number of charges arising from accidents such as this, people in the Cook Islands need to understand that if they are convicted of this charge or others like it, the Courts must start from a standpoint of considering a lengthy term of imprisonment. Whether that turns out to be the ultimate result depends on all circumstances of the offence and the offender. Those are the factors which weigh in the balance. But, as I said in Mr Castillo’s case, the Courts need to start by looking at a possible sentence of maybe half the maximum: 2 ½ years in jail, maybe a quarter of the maximum, 1 ¼ years in jail. But the Courts will need to start from the assumption that people convicted of these offences will go to jail for quite a long time unless there are substantial circumstances to indicate to the contrary.

[17] In your case the aggravating circumstances, those that make it worse than the standard kind of case, are that you were out driving at 10.15 pm on a Saturday night and you went to sleep. Clearly you did not have enough driver competence to realise, as all drivers do, how dangerous it is to go on a road when you are tired.

[18] The mitigating factors, those that make it less serious, are of course your age, the fact that you are still at school, the injuries you yourself have suffered, your very early plea of guilty to the charge - that substantially helps you - the remorse you suffered and the responsibility you and your family are prepared to take for what happened.

[19] But as I said, the options are limited for people such as you, and you are not a typical one of those who come before the Courts on these charges.

[20] A Court can impose jail and it will start by looking at jail in these charges. In many cases, and yours is one of them, imposing a fine or reparation is not a realistic

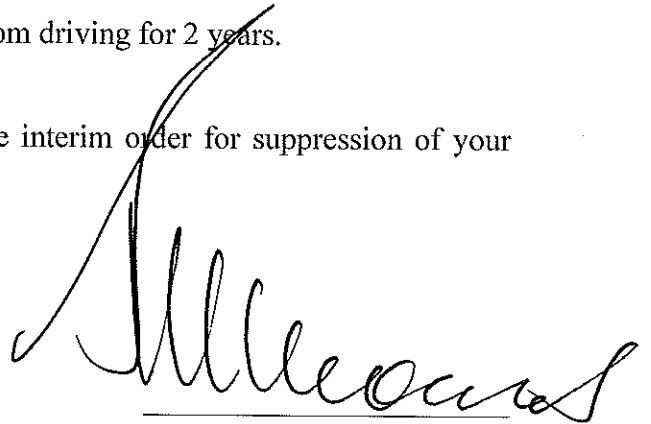
option. People such as yourself have no resources, no income of any magnitude, no means of paying a fine or reparation. All the Court is doing, as I said, is sentencing the family to have to meet the costs or the consequences of the accident. The Court cannot even make an order requiring people such as yourselves to come up for sentence if called on in 6 months, 12 months, or thereabouts, because s 113 of the Criminal Procedure Act says that a Court can only order to be sentenced if such an order is "instead of passing sentence", and so that is not appropriate either. And, if I were minded to postpone the sentencing and order you to come up in 12 months or thereabouts I cannot even impose a disqualification, and that, it seems to me, is the most important aspect in sentencing you. You showed on the night of 3 March that you are not competent as a driver. You do not fully understand a driver's obligations and responsibilities. You need to be taken off the road. But I cannot do that. There is no power for me to do that if I simply postpone sentencing. So the range of sentences available are very limited.

[21] What I have decided to do is put you on probation for 2 years. You will get some benefit of course from the assistance and guidance of the Probation officer but I am quite candid about it, the principal reason for putting you on probation is so I can impose not only the statutory conditions but I can disqualify you from holding or obtaining a drivers licence for a 24 month period. So that will operate as from today.

[22] That is the sentence. I acknowledge it is certainly artificial but it is a sentence which is put together so as to keep you, an incompetent driver, off the road for a lengthy period until you have a better appreciation of a driver's responsibilities.

[23] The upshot? The reparation claim is adjourned. You are on probation for 2 years in order that you can be disqualified from driving for 2 years.

[24] There will be no order extending the interim order for suppression of your name. So it expires today.



Hugh Williams, J