

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

CR NO'S 56/12 & 150/12

POLICE

v

TEARIKI HERMAN

Hearing: 22 March 2012
Counsel: Mr Manavaroa for the Crown
Mr George for the Defendant
Sentence: 22 March 2012

SENTENCING NOTES OF THE HONOURABLE TOM WESTON CJ

[1] Mr Herman you are here today for sentencing having pleaded guilty to drunken driving causing injury, an offence which carries a maximum of 10 years imprisonment, or a fine not exceeding \$10,000. The second charge is a charge of excess breath alcohol, which carries a one year maximum term of imprisonment, or a \$1,000 fine with a mandatory 12 month disqualification.

[2] I have had referred to me the decision of the Chief Justice in the *Police v Teakatai* case which has been referred to for the purposes of establishing a tariff for

offending involving alcohol and driving, although that case concerned death caused by driving. The Probation Service has not placed before me the usual schedule of sentencing for offences of this sort now under consideration. Mr George has submitted he is not aware of any cases where defendants who have been convicted of driving while under the influence causing injury have been sent to prison.

[3] The difficult decision facing me at the moment is whether or not you should be sent to prison for what you have done. I am conscious that Parliament has signalled that this is a very serious matter and that is reflected in the amendments in 2007. I have also had regard to what are clearly the aggravating features of your previous offending. While none of those relates directly to alcohol, the cannabis charge in 2010 has a degree of overlap with the charges now before the Court.

[4] I am concerned that there is a history on your part of failing to comply with the law and that, coupled with the high penalty for the most serious of these two offences, would suggest I should be sending you to prison. Indeed the Crown has sought a 3 month term of imprisonment, even that might be thought to be quite generous in the circumstances.

[5] The amount of your blood level was 730 micrograms which is double the legal limit of 400 micrograms per 100 millilitres of blood.

[6] You damaged your sister-in-law quite significantly in ways that have been explained to me, and three other people in the car also suffered some minor injuries although of much less significance. I have been advised that your sister-in-law has sought leniency. That is a relevant factor, although, of course, the Court today is sentencing you in relation to your breach of the Crimes Act, and does not place an overwhelming amount of weight on what the victim seeks in a case such as this.

[7] I have been much troubled by this. I have found it a difficult decision to make as to whether I should send you to prison or not. I decided on balance that I will not.

[8] And so I am going to order you to pay a fine of \$1,000.

[9] You are also going to have a term of 24 months probation, the first 12 months of which will be served on Community Service. During the 24 months of your Probation, you will not consume alcohol at all.

[10] You will have a curfew between the hours of 7.00 p.m. and 7.00 a.m. except as is necessary for you to attend work, and the details of that will need to be sorted out with the Probation Service.

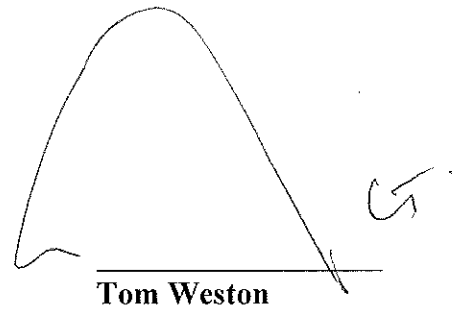
[11] You are to attend any courses directed by the Probation Service, and the Probation Service will also enter into arrangements with you as to where you are to reside during that period.

[12] In order for these various matters to be addressed you are to report to the Probation Service within 24 hours of the sentencing today.

[13] In addition to that you will be disqualified from driving for a period of 12 months.

[14] You will pay Court costs of \$30 on each of the two charges on which you have pleaded and have now been convicted.

[15] Also, as part of the order and in the form of reparation for the passenger, the medical cost of \$180 are to be reimbursed by you. You will continue to repair the Church fence.

A handwritten signature in black ink, appearing to read 'Tom Weston', is written over a horizontal line. To the right of the signature, there is a small, stylized mark that looks like a checkmark or a flourish.

Tom Weston

Chief Justice