

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

CR NO. 208/13

POLICE

v

BENJAMIN PEKEPO

Hearing: 11 September 2013

Appearances: Mr Manavaroa for the Crown
Mr C Petero for the Defendant

Sentence: 11 September 2013

SENTENCING NOTES OF WESTON CJ

[1] Mr Pekepo, you are here today for sentencing having pleaded guilty to a charge that you caused injury while driving under the influence of alcohol. This is a breach of Section 25 of the Transport Act as been amended in 2007. The maximum fine to which you can be subjected is \$10,000 and the maximum term of imprisonment is 10 years. These very large penalties reflect the considerable concern in this country with the type of offending that occurred in this case.

[2] I note that you have already been convicted and fined in relation to having excess blood alcohol limits which was the underlying cause of this accident. I have been told that you were sentenced on the 1st August 2013 to a fine of \$300 plus Court costs of \$30. You have paid this fine and the costs. You were also disqualified for a term of 12 months, so that period of disqualification is still current.

[3] I have been told that you were one and a half times over the legal limit. It seems to me the fine may have been a somewhat lenient one. Nevertheless I need to

take it into account in sentencing you today because it is the totality of the relevant offending that I must take into account.

[4] The Police Summary of Facts is attached to the Probation report. I understand you largely agree with those. The Summary of Facts shows that early in the morning of 27 April you were driving your motorbike together with your partner as pillion passenger. You crashed into the victim. You caused quite substantial damage to him – his right leg was fractured and he was off work for a number of months.

[5] Your circumstances have been explained both in the Probation report and in Mr Petero's submissions. These refer to the current relationship with your partner who supports you in your current circumstances today. She says you have a good relationship. She says you are a good person and you put your family first. Your employer speaks highly of you, you are said to be an excellent, honest and productive member of the company. You are also said to be an outstanding member of the team with outstanding work ethic.

[6] The Probation report also sets out the extent of the damage to your victim. He lost three months income and is seeking reimbursement in the sum of \$7200 for those lost earnings. There is no doubt that he was very significantly affected by your selfish actions and in my view that is a significant aggravating factor in this offending.

[7] The Police submissions helpfully set out the sentencing principles and purposes. There is the need to hold you accountable for what you have done and to promote in you a sense of responsibility. The recent cases dealing with drink driving causing injury are summarised. Two of these are decisions of mine, another two are decisions of Hugh Williams J and the fifth one is a very recent decision of Potter J. Only one of these has resulted in a term of imprisonment although all speak of the seriousness of this type of offending and the likelihood that someone such as yourself will be sentenced to a term of imprisonment.

[8] Mr Manavaroa submits that the Court needs to send a clear signal as a general deterrent to the community but then he responsibly accepts that the circumstances in your case militate in favour of a non-custodial sentence. He

suggests there should be 24 months probation with the first 9 months on community service.

[9] Mr Petero made his usual helpful submissions. He noted that this is your first appearance before the Court on any charge. He says that you entered a plea of guilty at the first available opportunity. He emphasises that you have taken on the role of father to your younger brother and sister.

[10] During the course of the sentencing I learned that you had borrowed money to assist your mother and sister to go to New Zealand for her to have her baby there. I understand the loan is \$4000 and you are currently repaying that. As a result of that obligation your net wages of \$280 a week return you approximately \$100 after interest and capital repayments.

[11] I understand that your partner is also earning but she is to an extent reliant upon you because most of her earnings go to support her family. It may be that she needs to rethink how she allocates her monies while she helps you get through the current difficulties that you are facing.

[12] I understand that you are living in the family home and that there are no rental payments.

[13] As I have said, the significant aggravating factors here are the excess blood alcohol and the damage to the victim. You would certainly be at risk of a term of imprisonment if it were not for the other mitigating factors which are that it is your first offence, your rapid acknowledgement of liability and the responsible actions you have taken in looking after your family. I am always impressed by a defendant who holds down a job and has the respect of his or her employer. The Court will always try and work to assist such a person effect their own rehabilitation.

[14] During the course of the hearing today you expressed your apologies to the victim. You said that this will not happen again.

[15] Taking all of these factors into account I believe that the Police recommendation of a term of 24 months probation is appropriate. The terms of that probation shall be as set out in the Probation report and they are as follows:

1. to abstain from the purchase or consumption of any intoxicating liquor or drug.
2. not to enter any licensed premises without the approval of the Chief Probation Officer.

[16] For the avoidance of doubt these terms will not prevent the defendant from working at the CITC Liquor Store. He may also attend Edgewater Resort and the Staircase Restaurant for cultural performances but he is not to be present at either place more than 15 minutes before the performance of the show and 15 minutes thereafter.

[17] The first 9 months of the 24 months of probation shall be served by you on community service.

[18] You are to pay reparations of \$850 being your medical bill, the analyst costs and the medical report.

[19] In addition you are to pay to the victim the sum of \$1000 by way of instalments. I appreciate that the loss suffered by him is far greater than this and in a perfect world I would like to order full reparation. However, I am conscious of your limited financial circumstances and I believe it more important that some payment is made rather than attempting the impossible which would be to achieve full reparation. That lies behind my decision to order reparation to the victim of \$1000 which is to be paid by instalments as agreed with the Probation Service.

[20] There is a compulsory 3 year period of disqualification. This is to run from the 1st August and is to be concurrent with your existing 12 months disqualification.

[21] You are to pay \$30 Court costs.

[22] Stand down.

A handwritten signature in blue ink, consisting of a large, rounded arch over a smaller, wavy line, with a small 'CS' or similar mark to the right.

Tom Weston
Chief Justice