

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

CR NO 909/12

POLICE

v

SHARIANA IRENE VANO

Hearing: 22 March 2013
Counsel: Mr Manavaroa for the Crown
Mr Rasmussen for the Defendant
Sentence: 22 March 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 11:16:10]

[1] Shariana Irene Vano, you pleaded guilty on 21 December 2012 to one count of unlawfully taking a motor vehicle worth \$12,000 on the 20th December.

[2] The facts are that you were drinking with friends on the night before, you went on a pub crawl, continued to drink until apparently about midnight. You were at an address and thought that some of your friends may not have returned from the pub crawl and in what was probably a befuddled state you took the car and went to look for them.

[3] Mr Rasmussen makes the point that you had driven the car before because it belonged to your employer and that you may have asked a workmate's husband for

permission to take the car, he had no authority to give permission. You did not ask your workmate, but you got into the car, drove away and next thing anyone knows, including you, was an accident at Matavera. The car went into a ditch landing on its roof and was written-off.

[4] It seems you have little if any recall of what happened between the time you got into the car and what happened after the accident.

[5] It is important to keep in mind that what you are actually charged with is an offence of dishonesty, the unlawful taking of a motor car. Probably, if the authorities had caught up with you early enough after the accident, you may well have been open to a charge of drunken driving and possibly of some other traffic offence.

[6] So you are to be sentenced for a dishonesty offence when probably the real offence that you committed is drunken driving or something of the sort. And in your drunken disorderly fashion you may somehow have thought that it was okay for you to drive the car. It was not okay of course because you were drunk.

[7] The Probation Service and Mr Rasmussen have said that you had a good job and you are now unemployed because of the accident. They tell me that about four years ago you were charged with another offence involving dishonesty, theft or theft as a servant. You were discharged without conviction on that occasion because you were a student.

[8] The Crown however suggests that I should start by thinking of a short term of 2 to 4 months jail for you. And for a person who committed an offence of dishonesty a person who converted a motor car without any reason for doing so, that may very well have been the appropriate sentence. But as I have explained you pleaded guilty to an offence which probably does not accurately reflect what you did and the way in which you offended on this night but undeniably, as Mr Manavaroa says, whether you recall any of your driving or not you must have been a danger to any other road user who happened to be around at the time of your driving which looks as though went around at least half the island, 15k or thereabouts.

[9] So what is to be done? You need to be sentenced just for the offence to which you pleaded guilty. You probably were guilty of drunken driving, but that cannot be proved. You have to be sentenced for your dishonesty offence and against you in that account is that you were already called before the Court for dishonesty offences some 3 or 4 years ago.

[10] Fortunately you were not greatly injured in the accident. Fortunately no other road user was injured in the accident. The undeniable loser was the Turama Group who owned the motor vehicle.

[11] So what I think is the appropriate result is not to send you to jail but to admit you to Probation for 2 years on conditions:

- (a) That you do not purchase or consume alcohol or enter licensed premises. If you have a problem with alcohol that should stop that.
- (b) Secondly that you attend any training or workshop that the Probation Service directs.
- (c) But principally you are to pay the reparation of \$12,000 for the value of the motor car to the Turama Group in such a manner and by such instalments as the Probation Service directs you.

[12] If you comply with all those conditions the real nub of your criminal offending on this night will have been met and the real loser, apart from you, your employer, will be fully compensated. Stand down.

A handwritten signature in dark ink, appearing to read 'H Williams', with a long, sweeping flourish extending upwards and to the left.

Hugh Williams, J