

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

**CR NO: 515/2012**

**POLICE**

v

**JAMES LIONEL RANGI ESTALL**

Date: 21 March 2014  
Counsel: Ms C King and Ms Henry for the Crown  
Mr N George for the Defendant  
Sentence: 21 March 2014

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[1] Mr Estall, you appear today for sentence, having pleaded guilty during your trial on a more serious charge to one count of driving with excess breath alcohol.

[2] The plea of guilty was entered on 13 March 2014 and the driving took place on 16 June 2012. Your reading was 590 micrograms per litre of breath and the legal limit is 400 micrograms.

[3] The Court needs to take into account that, in 2007, the maximum sentence for this offence was significantly increased from a maximum of three months imprisonment or a fine of \$200.00 to now, a maximum of 12 months imprisonment or a fine of \$1,000.00 or both.

[4] What happened as shown during the inconclusive trial earlier in these sessions was that you and your friends got together on a Friday night and drank a large amount of gin, mixed with fruit juice. You left your friend's premises at Nikao close to midnight, driving your motorcycle with the intention of meeting up with your friends in Avarua and carrying on drinking. After a near collision or a possible collision at the corner of the Main Road and the Nikao Corner Store, you then drove on for two and a half kilometres at speeds of up to 100 kilometres an hour.

[5] You admitted in your Police interview, that you were travelling up to that speed although it may not have been consistent throughout the journey.

[6] There was certainly an occasion of disagreement with another motorcycle rider, during which there was some swearing and gesturing, and it does seem that during part of your two and a half kilometre journey, you were driving one handed and gesturing to the other driver as part of a disagreement with her.

[7] As you approached the airport entrance, still driving at over the legal speed limit, you were confronted with a situation where there was one car in the left hand lane in front of you, another car turning into the airport in the right hand lane, and after attempting to pass the vehicles on the right you swung to the left, clipped the vehicle in the left hand lane, lost control of your vehicle and crashed into the fence.

[8] As a result of that incident, not only were you injured - in a relatively modest way - but your pillion passenger was thrown from the motorcycle into the fence and suffered serious injuries, from which he subsequently died.

[9] Now it is important in terms of sentencing to draw a distinction between your driving with excess breath alcohol and the accident, and the manner of your driving and the fact that it caused your friend's death. The jury was unable to agree on verdict on the latter charge and it remains for a retrial at some stage in the future.

[10] In her submissions, Ms King draws attention to the fact that the Ministry of Justice's annual report shows that drink driving was the most common offence dealt with by this Court in the 2012 financial year. There were more than twice the number of drink driving offences

coming before the Court, as compared with any other category of offence. And the authorities to which the Crown referred show that the starting point for sentencing those who come before the Court on drink driving offences, should be a short term of imprisonment. That of course, is affected by the circumstances of the offence and particularly the amount of alcohol taken, but, in this case, you were nearly fifty percent over the legal limit, and your driving as a consequence of that drinking, was very bad indeed.

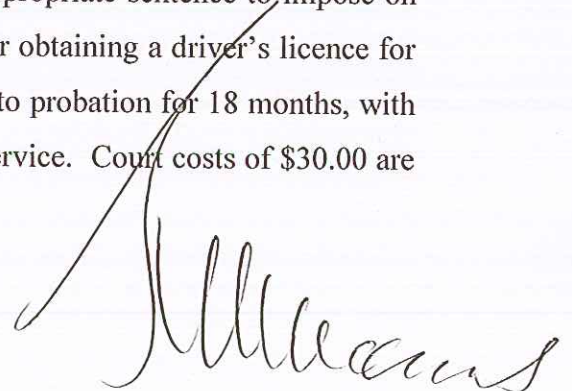
[11] So you need to consider that a short term of imprisonment might well be imposed on you, at least as a starting point before considering the appropriate final outcome. In deciding on that outcome, I need to take into account the increase in the maximum sentence and the fact that your driving was bad, and that you were well over the legal limit. I will also need to take account of the prevalence of offences of this nature coming before the Court.

[12] On the other hand, you are entitled to a consideration of the fact that you did plead guilty, although belatedly, and that there were three witnesses called at your trial who testified to your previous good character. I also need to take into account that this is your first offence. Balancing those matters one against the other, in my view, the appropriate sentence is one in which you narrow escape a jail term of some duration.

[13] I also need to acknowledge that the monetary penalty which can be imposed on persons in your situation, is comparatively low, only \$1,000.00. With the increase in penalties in 2007, it might have been expected that the monetary penalty would have been set at a higher limit than that.

[14] However, against that maximum, in my view, the appropriate sentence to impose on you is to fine you \$750.00, to disqualify you from holding or obtaining a driver's licence for a period of 18 months starting from today and to admit you to probation for 18 months, with the first nine of those months to be served on Community Service. Court costs of \$30.00 are also imposed.

[15] You may stand down.



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**Hugh Williams J**