

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

CR NO'S 813-814/16

POLICE

v

TUPUPUA KITA

Date: 14 March 2017
Counsel: M T Manavaroa for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[9:25:20]

- [1] Tupupua Kita, at the age of 41 you appear here for sentence today having pleaded guilty at the first opportunity to one charge of careless driving causing injury to two visitors and one charge of driving with excess blood alcohol (“EBA”). The maximum sentence on the former is 2 ½ years in jail or a \$5,000 fine and on the latter 12 months jail or a \$1,000 fine with a mandatory 12 month disqualification.
- [2] I can tell you at the outset you are not going to jail today but given that this is your second EBA you would be well-advised to take the help of the Mou Piri Incorporated to deal with your consumption of alcohol.
- [3] The facts of these matters are that in the early evening of 6 November 2016 you had been drinking. Mr Short tells me how much you had been drinking, it was quite a considerable amount. You got on your bike, drove out onto the Main Road at Nikao, failed to check for other road users and collided with two other people who were visitors. You simply said that you did not see them.
- [4] Fortunately they both had only very minor injuries and the hospital, once it had examined them, was able to discharge them. But the blood alcohol reading was 260

milligrams per 100 millilitres against an allowable maximum of 80. So you were more than three times over the limit and that reinforces what I said a little earlier that you need to get some assistance to do with your drinking of alcohol.

- [5] The Probation Service has filed the usual helpful report. They detail your upbringing and your basic education on Pukapuka where you come from, the fact that you had been married for a long time, but that a couple of years ago your wife went back to Pukapuka to look after her mother and you have had a difficult situation to deal with ever since in sending food and money back to them when you can. You are still here in Rarotonga and your wife and family are a long way away.
- [6] You have a previous conviction for excess blood alcohol and there was a charge against you in 2013 of male assaults a female but that was withdrawn so it does not feature in the sentence for today.
- [7] You have worked for the Convenience Store for six or seven years and your boss has provided me with a testimonial saying that you are good worker, reliable and hardworking and they say and I quote “they think they are fortunate to have such an employee”.
- [8] You need your driver’s licence for work and the disqualification you are going to receive is going to affect your job but there is nothing that can be done about that at this stage. The disqualification is compulsory.
- [9] The Probation Service records and Mr Short reinforces, that you have been very apologetic about this to everyone involved – the victims and to the Court – and you are obviously remorseful for what happened. But these sorts of accidents and charges are all too common here in Rarotonga and, as I have said, you need to get some assistance to moderate your drinking when you are driving.
- [10] Senior Sergeant Manavaroa for the Police draws attention to some other cases where the facts are somewhat similar and where probation for various terms and reparation orders for repayment were imposed and suggests that here there should be a significant fine, reparation for the medical expenses and, of course, the mandatory disqualification.

- [11] This offending is serious particularly given there are a lot of these sorts of offences in Rarotonga and this is your second EBA. You need to be sentenced in a way which will denounce what you did and try to deter others from also getting drunk and then driving.
- [12] You are actually – although you probably do not feel it today – pretty lucky to be charged only with careless driving causing injury. With that blood alcohol reading you could easily have been charged with driving under the influence and causing injury, and, if that was the case, you would have been looking at a jail term. So you are fortunate that the Police did not charge you with that more serious offence but instead divided the two and charged you with excess blood alcohol and with careless driving causing injury.
- [13] The factors that make this less serious than it might otherwise have been are the charges which have been brought, your early plea, and what could also be taken into account is that the victims were tourists who probably would not come back to the island to give evidence if you had defended the charge. But you have been apologetic to them, you pleaded guilty at the earliest opportunity and, as I have said at the outset, this is not a case for a jail term. But given it is your second EBA, given the reading of 260 over 100, there has to be a substantial fine.
- [14] On the careless driving causing injury you will be fined \$1,500.
- [15] On the excess blood alcohol you will simply be convicted and discharged but the mandatory 12 months disqualification is imposed on you from holding or obtaining a drivers licence. The disqualification will start tomorrow and run for 12 months.
- [16] You will be ordered to pay reparation of \$190.
- [17] I will put you on probation for 12 months and direct that you pay the fine and the reparation by such instalments as the Probation Service directs.
- [18] You are not to drink alcohol during the period of your probation.
- [19] I do not intend to make any part of the probation served on community service because that will probably only make the problems with your job more difficult.

[20] You can stand down Mr Kita.

A handwritten signature in black ink, appearing to read 'Hugh Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ