

POLICE

v

WAYNE PHILLIPS

Date: 25 July 2017

Counsel: Snr Sgt F Tararo for the Police
Mr N George for the Defendant

SENTENCING NOTES OF DOHERTY J

[9:30:16]

[1] Wayne Phillips, you were involved in a collision with a motor scooter. This happened the day you arrived in the Cook Islands when you were leaving the airport late at night. It appears that you veered over the centreline when making a left hand turn out of the airport exit. From what counsel has said it appears that you may have operated the wrong switch, hit the wipers rather than your indicator and that discombobulated you. But whatever, you went over the centreline and collided with the motorcycle coming in the other direction.

[2] The pillion passenger bore the brunt of the collision and as a result suffered a fractured pelvis, a cut to her right knee which required six stitches and also cuts and abrasions to toes and other parts of her body. She is still in some discomfort as I understand it.

[3] You have no previous convictions.

[4] This is viewed as serious offending in the Cook Islands. As counsel has said, and the police, it carries a maximum sentence of 5 years imprisonment. It is viewed in this country as very serious and far more serious than it is in your home country New Zealand.

[5] Yesterday in this Court I sentenced another tourist for similar offending and I made comment that the fact that defendants appearing before the Court for sentence come from another country does not mean they are going to be treated in any other way than local Cook Islanders. Recently, in the last few years, this Court has said that this is such a prevalent problem on this island that Cook Islanders can expect imprisonment as a starting point. The Court said that that is the starting point in every case. And I said yesterday that everyone will be treated the same way.

[6] So the starting point for you today is imprisonment. That does not necessarily mean everyone is going to prison. The purpose of sentencing in this field is for a number of reasons but particularly for deterrence. There has been comment made by your lawyer in this Court as recently as last week, that the Cook Islands apparently has the highest driving injury rate per capita of anywhere in the world, and that is the reason that Parliament has seen fit to make this such a heavy crime. You are not going to jail by the way, but that shows you how serious this is treated in this country.

[7] I have had the benefit of a probation report which tells me that you have led a good and productive life, you contribute to your community, you have never been in trouble before, and coupled with that you pleaded guilty at the very outset, you did not bother taking legal advice, you fronted up. You have been to see the victim and her family, you have paid her \$500 immediate compensation to help. You have got a good reputation, and really you have done everything to try and put this right including coming back here to face this sentencing today at some cost to you I am sure.

[8] Counsel has said that because you are a paragon of virtue and have done all of these things, I should exercise my discretion to discharge you without a conviction even though I could then also make orders for reparation. I am not going to do that. You have pleaded guilty to a serious charge and unfortunately for you that is going to be reflected on your record, at least in this country.

[9] As I have said, the purpose of sentencing is to denounce this sort of conduct, to deter others particularly, and to show that people will be held to account and where possible to help the victim. You have done everything you can really in the sense and that is to your credit and I intend to deal with you in a monetary way as well as with a disqualification.

[10] The maximum fine that I could impose is \$5,000.

[11] One of the issues about the roads in the Cook Islands is that they are relatively narrow. And one of the worst things that can happen is that others drive in the face of oncoming traffic. It is a problem here and that is what happened in your case. A little bit of an advertence caused significant issues.

[12] Taking into account your immediate guilty plea, your remorse and those things you have done, I think the response ought to be one as I have said, of a monetary nature.

[13] You are convicted.

[14] You are fined \$2,000.

[15] You are ordered to pay Court costs of \$50.

[16] You are ordered to pay two lots of reparation – the first is \$20 to the Police for medical expenses, and the second is lost wage compensation and emotional harm compensation of \$3,000 to the victim, taking into account in that figure that you have already paid \$500 to help.

[17] You are also disqualified from holding or obtaining a motor vehicle driver's license of any kind in the Cook Islands for the mandatory minimum period and that is 12 months from now.

[18] There will be an order that the surety be returned.

[19] Thank you.



Colin Doherty, J