

CROWN

v

IMOGEN INGRAM

Sentence: 28 November 2017

Counsel: Ms A Mills & Ms A Herman for the Crown
Mr D McNair for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[09:40:33]

[1] Ms Ingram, you appear on one charge of careless driving causing injury. This carries a maximum term of imprisonment of 5 years and a \$5,000 fine under s 26 of the Transport Act. A term of disqualification from holding or obtaining a driver's licence for up to 3 years may also be imposed.

[2] This charge rose out of an incident on 25 May when you were driving your motor vehicle onto the roadway. Mr Aperau was driving his motor vehicle along the road and collided with your exiting car. He flipped over your bonnet and suffered serious injuries including broken ribs and fractures to his left foot. He had surgery and required a hospital stay in order to recover.

[3] Ms Ingram, you accept responsibility and say that you did not see him, it was an inadvertent moment.

[4] The victim provided a victim impact report which indicates that he suffered reasonably serious injuries. These included four broken ribs, a fractured shoulder blade, a displaced

collarbone, three fractured toes – one in which a ligament was severed and had to be sutured back – and a deep gash on his leg which required stitches. This has left him with lasting problems including having to sleep with an elevated leg, being unable to walk properly and not being able to stand for long periods. He gets pins and needles regularly. He spent a week in hospital and remains under medical supervision.

[5] The bike was repaired at a cost of \$1,290 and medical costs were incurred of \$20.

[6] Mr Aperau now cannot work to support his family. It is not clear how long this is going to last. He was self-employed as a planter at the time of the accident. He cannot now provide for his family which is frustrating him. Nor can he do his home chores and he is dependent on his family to help him.

[7] The penalty for this offence was raised from 3 months imprisonment and a \$100 fine in 2007. Comment has regularly been made in the High Court that driving related offences continue to be a major concern in the Cook Islands and that a custodial sentence may be warranted especially in cases with aggravating circumstances.

[8] I am advised by the Crown that there are six cases of this type of offence in this fortnight's list. Recently the Court of Appeal in *Police v Boyle*¹ noted that the Courts have become increasingly concerned about this offending.

[9] In *Boyle* the Court of Appeal noted the range of circumstances giving rise to in this type of offence. This is demonstrated in recent cases which have been referred to by counsel. In *Police v Reichardt*² which involved alcohol, a term of imprisonment was imposed of six months and reparation of \$1,600 together with \$1,000 for emotional harm to the victim. A disqualification period from holding or obtaining a driver's licence of two years was imposed. In that case the offender had also earlier been convicted and fined on an alcohol charge related to this offence.

¹ *Charles Boyle v Crown*, CA 5/17, 24 November 2017, Fisher White Grice JJ; *R v Charles Boyle*, CR 423/16, 27 July 2017, Doherty J

² *Police v Kevin Reichardt*, CR 257/17, 26 July 2017, Doherty J

[10] In *Police v Bartley*³ a motorcycle driven by the offender made a u-turn causing the motorcycle to collide with it. The injuries of the two victims were serious. In that case the offender entered an early guilty plea and showed remorse as well as making an ex-gratia payment to the victim of \$10,000. In that case a fine of \$750 together with disqualification of 12 months was imposed by way of penalty.

[11] In Mr Boyle's case, which was an accident caused by inadvertence when Mr Boyle turned into his driveway, Mr Boyle was sentenced to 12 months probation with the first 3 months on community service and a condition that he not leave Rarotonga without approval of the Court. He was also ordered to pay reparation in the vicinity of \$5,000 which included medical costs and reparation for emotional harm of \$2,000 as well as costs of repair of the motorcycle. He was disqualified for holding or obtaining a drivers licence for nine months.

[12] The Court of Appeal had no difficulty finding that Mr Boyle's sentence was well within the range of sentences available for this type of offending.

[13] A feature of those sentences has been the voluntary payment or orders for reparation beyond costs for medical and motorcycle repairs. As Mr McNair carefully pointed out reparation for other than direct costs for repairs and medical bills is not available, under the legislation in general terms. He pointed out that there are rights entrenched in the Constitution which entitle a defendant to a fair trial and if there is to be a full compensation claim the evidence should be tested in the civil courts where evidence can be given and tested by cross examination.

[14] Those points are well made. He did accept however that there were options for orders for payment toward compensation of the victim available as a term of probation under s 8(1)(c) of the Criminal Justice Act. He correctly pointed out that civil proceedings are the way to enforce full compensation, as there is no accident compensation scheme in the Cook Islands. However, I note in passing that the costs of pursuing civil claims for compensation through the Court are probably beyond the means of a plaintiff in any but the most substantial claims for civil damages.

³ *Police v Katrina Bartley*, CR 463/2015, 11 March 2016, Potter J

[15] So it is unrealistic to suppose that in cases of this nature a plaintiff is likely to pursue them through the civil courts for the full amount of compensation. Nevertheless the points were well made and I bear them in mind.

[16] *Police v Timoti*⁴, a case in which Chief Justice Hugh Williams presided, was a dangerous driving case. It was much more serious than this case and involved alcohol related offending, His Honour noted the availability of payments of instalments of compensation under s 8(1)(c) of the Criminal Justice Act as a condition of probation.⁵ In that case the offender had offered \$10,000 to the victim for compensation which had not been accepted at the time of the hearing.

[17] Mr McNair also pointed out in his submissions the principles of sentencing that should guide the Court and that imprisonment is the last resort unless circumstances are so egregious that no reasonable option remains. He pointed to lesser more appropriate sentences in this case such as probation, fines, community services, restitution and compensation. He pointed to the absence of aggravating factors. While this accident was one of inadvertence I do note that the standard of driving fell below what is required and the injuries caused were serious. They have had a severe impact on the victim and his family, his ability to earn and his quality of life.

[18] Mr McNair further submitted that this is a first offence, that there was a change of plea from not guilty to one of guilty, that Mrs Ingram has showed remorse over the incident and for the victim. She has paid, through the Probation Service, the cost of the motorbike repairs as well as the medical costs.

[19] Mr McNair carefully pointed out your personal position, your work, your involvement in a number of environmental organisations requiring regular international travel and also provided some personal references which I take account of. He noted that at the age of 65 years it was your first offence.

[20] Mr McNair suggested a fine of \$600 to \$800 and suggested that in this case probation was not appropriate.

⁴ *R v Timoti*, CR 477/2016, 1 June 2016, Hugh Williams J

⁵ *R v Timoti*, supra at [41]-[42]

[21] The Crown submitted that I needed to recognise the sentencing principles of accountability, promotion of responsibility of the offender and acknowledgment of harm as well as reparation and deterrence, both in the present case and for the community generally. The least restrictive outcome should be imposed. I accept those submissions.

[22] The Crown did point out that you had failed to check the way was clear before pulling out and this was your obligation as a reasonable prudent driver. It also says the injuries were serious but suggests a non-custodial sentence in this case. It notes that the victim before the accident was earning about \$500 to \$600 per week for his planting activities including selling vegetables.

[23] It seeks reparation or compensation for the victim recognising that such an order is only available in the context of a condition of probation. It suggests 12 months probation and seeks a fine as well as 6 months disqualification and Court costs together with reparation for the motor bike repairs.

[24] I gave Mr McNair the opportunity to confer with counsel and Mrs Ingram about the level of possible payment of compensation. I note the sum of \$2,000 has been agreed as amount of compensation. This appears in line with similar reparation orders in recent cases.

[25] In the circumstance I accept that this offending does not call for imprisonment despite the comments of the High Court in a number of cases on this type of offending. Nevertheless I note the increasing incidence of these offences before the Court. Application of the sentencing principles calls for something less restrictive than imprisonment but nevertheless it needs to send a message both to the offender and the community.

[26] The Court of Appeal in *Boyle* set out a wide range of circumstances in these types of offences – at the lower end those of inadvertence and at the higher end those involving alcohol or drugs or speed. It also said the consequences are an important factor and they range from minor injuries to more serious injuries or death. Of course the Court recognised the other factors that a sentencing Judge takes into account.

[27] In the end I must stand back taking all the factors into account and come to a sentence that is appropriate in the circumstances.

[28] I take into account the circumstances of the offence, that there were no substantial aggravating factors, that it is your first offence in an otherwise blameless career. However the injuries of the victim are significant and that needs to be factored in.

[29] So taking into account the factors put forward by Mr McNair and while there was not an early guilty plea there was a change of plea before a defended hearing so the victim was not put through a defended hearing. I consider that disqualification is appropriate in the circumstances. I also consider that a term of probation is appropriate in the circumstances. This is consistent with the earlier cases and also given the continuing trend we are seeing with this offending.

[30] Therefore I impose the following sentence:

- a) 12 months of probation with a special condition that Mrs Ingram pay the sum of \$2,000 by way of damages for injury or compensation for loss suffered by the victim with such instalments as directed by the Probation Officer. That is under s 8(1)(c) of the Criminal Justice Act;
- b) a fine of \$700;
- c) disqualification from holding or obtaining a drivers licence for 6 months;
- d) medical costs of \$20;
- e) the cost of the repairs to the motor vehicle of \$1,290;
- f) court costs of \$50.

[31] I do not propose imposing a special condition here that you must stay in Rarotonga. I have not heard counsel on that but I note no objection by the Crown.

A handwritten signature in black ink, appearing to read 'Grice J', written over a horizontal line.

Grice J