

POLICE

v

BENJIMEN NGAMETUA

Sentence: 4 December 2017

Counsel: Ms A Herman for the Crown
Mr W Rasmussen for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[10:05:23]

[1] Mr Ngametua, you appear today on one charge of careless driving causing injury. It is a serious charge. It carries a maximum term of imprisonment meaning you could go to jail for up to 5 years and a maximum fine of \$5,000 as well as a term of disqualification from holding a driver's license for a period of up to 3 years. I see that you realise how serious this is.

[2] The Crown outlined the facts and Mr Rasmussen explained these from your point of view. On 6 September 2017 you were driving your motorbike with a pillion passenger along the main road in front of CITC. You moved into another lane to pass a car that was slowing down to park at CITC. You were travelling about 40 to 50 kilometres an hour in a 30 kilometre per hour zone through the town. Ms Woulfe was crossing the road. You did not see her and collided with her. You tried to avoid her by braking when you saw her at the last minute but you could not. She broke her leg badly as a result of the collision. In fact she broke her right leg femur, which is the thigh bone. It required her to stay at hospital and later go to New Zealand to have a steel plate put in it.

[3] Mr Ngametua, to your credit you accepted full responsibility. You pleaded guilty. You say you did not see her. Of course that is to be expected because your view was blocked by the car that was slowing in front of you by the looks of things.

[4] The victim, Ms Woulfe, has provided a victim impact statement. That tells us what the injuries have meant to her and the ongoing problems she has. She had to go to New Zealand for surgery to put that steel plate in her leg. She spent nearly a week in hospital in New Zealand. Ms Woulfe had to fly across there and she had to pay for the airfares herself. She had her husband and a friend go as well to help her. She had various other costs in New Zealand that she had to pay out of her own pocket. Fortunately Accident Compensation paid for all the medical costs, for the operation in New Zealand.

[5] She has claimed from you by way of reparation a sum of \$5,000 for the refund of the airfares. That does not include the cost to her of losing her income because she could not do her job. But more than that she has had to make substantial changes to her life because she cannot drive, she is stuck at home, she cannot walk without crutches, so her activities are limited and it is affecting her work. She suffers pain and is reliant on her husband to help her with a lot of things. Three months after the accident her leg is still causing her pain.

[6] The penalty for this offence was raised from what was 3 month's imprisonment maximum and a \$100 fine in 2007. This Court has had a lot of these types of offences in front of it. In fact in this 2 weeks period I have seven of these types of cases before me. The Court has said that because of the major impact these cases are having that a custodial sentence or a prison sentence should be considered especially in cases where there are aggravating or serious circumstances.

[7] The Court of Appeal has recently had a look at the issues of these driving charges in *Police v Boyle*¹. The Court said that there were a whole range of circumstances that I have to consider when I am looking at sentencing on these types of offences. There have been recent cases which have had alcohol involved and the Courts have said they needed to be treated much more seriously. For instance the *Police v Reichardt*² which did involve alcohol and the offender

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

was imprisoned for a term of 6 months, ordered to reparation of \$1,600 plus another \$1,000 for emotional harm. He was disqualified for 2 years. In that case alcohol was involved so that takes it into a different, more serious category.

[8] In another case, *Bartley*³, a motorcycle driven by the offender did a U-turn causing a motorcycle following to collide with it. The injuries of the two victims were very serious. In that case the offender did plead guilty and accept responsibility and made a payment to the victim of \$10,000. In that case a fine of \$750 together with disqualification was imposed and the payment of \$10,000 had been made.

[9] Mr Boyle had been inadvertent. He turned into his driveway at night and did not look properly and a motorcycle going the other way hit his side. He was sentenced to 12 months probation with 3 months on community service and a condition he not leave Rarotonga without approval. He also had to pay reparation of \$5,000 and a payment for emotional harm of \$2,000 as well as the costs of the repair of the motorcycle. He was disqualified for 9 months.

[10] Mr Rasmussen has made some careful submissions on your behalf. He candidly accepted the facts. He noted that Ms Woulfe was not crossing on the pedestrian crossing. He candidly noted that this seems to happen a lot in Rarotonga. That does not mean it is right but at least that gives us some understanding of why the accident happened.

[11] Mr Rasmussen also said you were remorseful but realistically you are not employed and there is very little possibility of you being able to pay any money reparation. Your family supports you financially and are indeed here today.

[12] In another case, *Police v Timoti*⁴, the Chief Justice Hugh Williams made some comments in relation to a dangerous driving charge. That was more serious than your charge but the judge said that because of all these motor accident cases and the increasing incidents of these cases the Courts need to be considering terms of imprisonment particularly where serious factors or aggravating factors are involved.

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

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

[13] Mr Rasmussen urged me to take into account your age, that you are only 18 years. But he also said that he accepted that I must consider the principles of sentencing which include the fact that there should be some deterrence signal sent both to you and other people to stop them committing these motor vehicle offences. He also pointed out that imprisonment is the last resort. He pointed me to cases where there had been less serious penalties such as probation, fines, community service, restitution and compensation. He said this case does not involve alcohol but accepted that there was some speed involved and that you made a very ill-advised manoeuvre by overtaking a slowing car when you could not see what was in front. While it was an accident of inadvertence I note, as the Crown has put it, that the driving fell below the standard of care that would be expected.

[14] Also in this case I take into account the fact that the injuries were serious.

[15] Mr Rasmussen carefully pointed out your personal position. In particular, as I said your youth, and otherwise you are in good standing. The comments of your family are very supportive, they indicate you have taken this seriously and they are concerned for you. That is confirmed by your family being here today, your sister in particular. You are very, very fortunate to have such a caring family.

[16] The Crown submitted that I needed to recognise all the principles of sentencing, accountability, you must pay for what you have done, promoting responsibility in you and the public, and an acknowledgment of harm. It must be a lesson to you but also the community.

[17] The Crown submitted that while the injuries were serious because of the factors that Mr Rasmussen has outlined, a non-custodial (which means not going to jail) sentence is appropriate. I do note also the fact that I have heard that the pedestrian was crossing at a non-pedestrian crossing, so that slightly alters the facts although it is not a defence.

[18] In the circumstances, and primarily because of your young age, that it is a first offence and you pleaded guilty early, I accept that this offending does not call for imprisonment. The facts are not as serious as some of the cases that I have sighted in the last week and did not involve alcohol. But I do note the increasing number of these incidents before the Courts does require me to take heed of Parliament's concern about this offending shown by its increasing the maximum penalties.

[19] The Court of Appeal in *Boyle* as I said set out a range of circumstances. At the lower end there are those accidents caused by inadvertence. At the higher end those of alcohol or drugs or speed. And the consequences ie. whether there was injury – serious or not – must be taken into account.

[20] The Crown pointed to some cases where there were young people involved. In *Teiti*⁵ the offender faced a charged of careless driving, he fell asleep on his motorbike and caused a serious accident. He had no income or resources, much like you. He pleaded guilty early. It was a first offence. And in that case the judge noted that prison may well be looked at in these cases but because of the circumstances he was not going to impose that. He imposed 2 years probation and 24 months (or 2 years) disqualification from holding or obtaining a drivers license. In that case the judge said that the offender should not have gone out driving when he was so tired as to fall asleep.

[21] I now take into account all the circumstances Mr Ngametua. The fact that there were not substantial aggravating factors but nevertheless a manoeuvre taken without care. The fact that it is your first offence, you pleaded guilty and you are only 18. Also, that the injuries caused were serious. I have come to the conclusion that a non-custodial sentence is appropriate, that is not jail. Nevertheless I must send a message of deterrence so that you and the community take this seriously.

[22] I do not consider reparation is appropriate here. That is, I do not consider I should be making an order making you pay money because it will not be you paying it will just be your sister. She probably cannot afford it, or she clearly cannot afford it, so that will only hurt her and will not be a penalty for you.

[23] I am giving you a warning here Mr Ngametua. If you have another driving offence and are before this Court you will be looking at the serious possibility of going to jail. In this case I am going to impose a sentence of 18 months probation with a special condition that the first 6 months be on community service and the following special conditions:

- a) that you attend any workshops or training as directed by the Probation Service;

⁵ *Police v Teiti*, CRN 374/12, Williams J, 29 June 2012

b) that you not leave the country without the approval of this Court;

[24] I disqualify you from holding or obtaining a drivers license for 18 months, starting today. You are going to have to make arrangements to get in to report for your probation which do not involve you driving.

[25] That is the sentence and I hope you take that warning Mr Ngametua and you do not come back here.

[26] You may stand down, thank you.



Grice J