

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

CR NO. 123/18

POLICE

v

RONALD BECKINGSALE

Date: 29 May 2018

Counsel: Mr T Manavaroa for Crown
Mr M Mitchell (on behalf of Mr W Rasmussen) for Defendant

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[9:51:00]

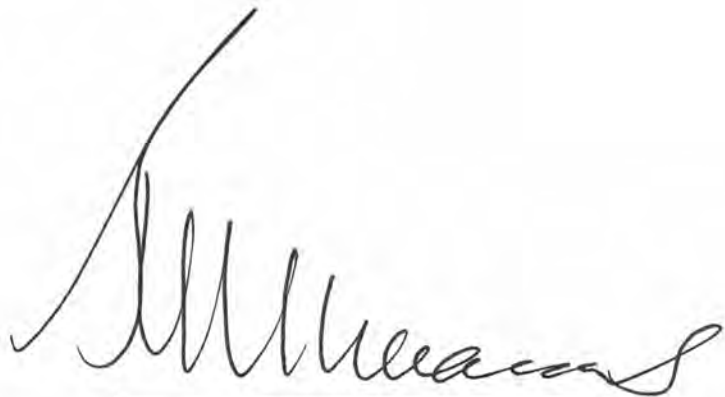
- [1] Ronald Ernest Beckingsale, at the age of 84 you appear here today in Court for the first time in your life having pleaded guilty on 19 April 2018 to a charge that on 13 February 2018 you drove your vehicle carelessly and caused injury. As Mr Mitchell says on your behalf, the maximum penalty of 5 years imprisonment or a \$5000 fine may be disproportionate to the clutch of offences such as careless driving causing injury but nonetheless that is what Parliament has prescribed and the penalty to be imposed on you needs to reflect that fact.
- [2] It appears that at about 11am on 13 February you were driving your truck on the Main Road, did a U-turn after some vehicles had passed you, failed to ensure the road was clear and a person riding a motorbike crashed into your vehicle. In the accident he suffered a cut to his left arm and of course there was significant damage to his motorbike.
- [3] The Probation Service gives me details of your family history – one of lifelong hard work – and your marital history, you are now a widower and you live alone in the Avatiu valley here on Rarotonga occupying your time with helping your stepdaughter

in her café here in town on a daily basis. The report says that you are financially secure so you presumably have some savings and your income is a monthly pension of \$1200.

- [4] You are very remorseful as a result of this accident, pleaded guilty at the first opportunity, and have done what you can for the victim.
- [5] The Probation Service suggests that a conviction and a fine plus disqualification from driving would be appropriate in this matter.
- [6] In a helpful and comprehensive submission Senior Sergeant Manavaroa for the Crown acknowledges your early plea and your cooperation with the Police throughout this matter and of course notes that, after a very lengthy driving history, this is your first time to appear in Court.
- [7] The Crown draws attention to a number of cases dealing with similar offending.
- [8] The first of this is *Police v Tansley* (CR 260/15) a decision of Justice Potter where the 74 year old person who had been involved in a motor accident and who was like you, a first offender and very remorseful, had imposed on him a fine of \$1700 and reparation of \$1300 of which \$1100 was to be paid to the owner and the balance to a pillion passenger.
- [9] There is also a decision, again of Justice Potter, in *Police v Paterson* (CR 81/17) on 4 May 2017. Again it is somewhat similar in terms of the facts and a case where, as in this case, counsel for Mr Paterson was contemplating a suit by the victim civilly to recover lost expenses and damages. The Judge in that case fined Mr Paterson \$3000 and disqualified him from driving for 12 months, plus imposing reparation.
- [10] The other cases to which the Crown referred are *Police v Page* (CR 299/17), a decision of Justice Doherty delivered on 24 July 2017, where the fine was \$1500 and reparation of \$170 plus disqualification for 12 months, and another decision of the same Judge, *Police v Philips* (CR 349/17), 25 July 2017, where the outcome was similar.

- [11] Mr Mitchell on your behalf stresses the disparity between the maximum sentence which might be imposed for conviction on this offence and the relatively modest degree of careless driving which led to the accident and to your being present today.
- [12] This was an instance of careless driving though, by comparison with many another which comes before the Court, a relatively modest example of careless driving. Clearly in performing your U-turn you should have taken extra care. You did not and as a result the victim and his motorcycle were both damaged. But this is not a case for the denunciation and deterrence which is so often a feature of sentencing. It is a case where the interests of the victim must assume greater prominence.
- [13] This is your first offence, you did plead guilty early, you are remorseful, you accepted responsibility for the issue and it would plainly be pointless to admit you on probation. So the question is what the penalty should be.
- [14] The Police have provided information concerning the repairs to the motorcycle totalling \$896 and you have indicated you are prepared to meet those expenses in full and the cost of the medical report of \$20.
- [15] What is more contentious is a claim for a fare of \$1248.36 for the victim to fly from Rarotonga to Tahiti and return for medical treatment and \$231.42 for treatment at that venue. The medical reports from both Rarotonga and Tahiti evidence the fact that this man's arm was cut and had to be stitched but by comparison with the outcome of any motor accidents, again it was relatively modest and it seems to have been the victim's choice to travel to Tahiti for treatment as he would not have been referred to New Zealand under the scheme operating locally.
- [16] It is perhaps a little unfortunate that the victim is not present today so he could not be questioned as to any other motivation which might have led him to incur the fare and the treatment cost. But in the circumstances it seems that it was the victim's choice rather than surgical or medical necessity which led to the trip and in those circumstances it does not seem appropriate to order you to repay the victim those amounts.
- [17] The question then is whether a disqualification should be imposed and if so for how long. And also whether a fine should be imposed.

- [18] Mr Mitchell vigorously submitted that a disqualification would be disproportionate in this case, particularly given your circumstances. There is a certain force in that but in my view a disqualification does need to be imposed but, in the unusual circumstances, for a modest period. I am conscious of the fact that you use your licence daily to occupy your time in your stepdaughter's café and that for you to continue to do that if you are disqualified from driving will cause her some inconvenience in that she will have to ferry you backwards and forwards. But even so I think that a certain period of disqualification is inevitable to mark the fact that you were careless in what you did and the Court's order will therefore be that you are disqualified from holding or obtaining a motor drivers licence for a period of 6 months commencing tomorrow.
- [19] It should be added that the Cook Islands has a regime requiring annual medical reports for drivers 80 years of age and over to retain their drivers licence and it may be that you need to consider the wisdom of your continuing to drive when the annual test is due.
- [20] As to the fine, again a fine needs to be imposed but it should reflect your many years of accident-free driving and the relatively momentary and minimal carelessness that led to your being in Court today.
- [21] In the circumstances, in my view the appropriate level of fine is \$2000 and I direct that half of that be paid to the victim and that in addition you meet the repairs to the motorbike of \$896 and the medical report cost of \$20.
- [22] Thank you, that completes that matter Mr Beckingsale.

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

Hugh Williams, CJ