

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

CR NO. 304/18

POLICE

v

RHETT HENRY

Date: 10 September 2019

Appearances: Ms M Okotai for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[10:18:36]

[1] Rhett Henry, you appear for sentence for driving with a excess breath alcohol on 31 May 2018.

[2] That Sunday evening you were driving in the fishing club area and you became involved in an accident. You, it seems, were driving as you should have been. A car came out of the fishing club and collided with you. You then, as your counsel has told me acted responsibly and did what you could to minimise any risk to others.

[3] You co-operated with the police. But because you were involved in the accident they had you undergo a breath test and you were found to have 510 micrograms of alcohol per 100ml of breath. That obviously exceeded the 400 microgram maximum and you thereby committed an offence as you now accept.

[4] You were to be sentenced later in May but not long before, you became involved in a violent incident with which I will be concerned with later this morning

and you suffered a severe injury to your eye. You have been in New Zealand since receiving treatment.

[5] It remains to mention that you have one previous related conviction. On 17 November 2016, for driving with an excess breath alcohol you were convicted, and disqualified for the statutory minimum period, and required to make reparation. That, however does not have a bearing on the sentence I impose on you today.

[6] The Crown's position is that the injury you sustained has proved so significant as a personal circumstance that, quite exceptionally, that should be the governing consideration on sentence.

[7] Despite your previous conviction, the Crown submits, I should convict you, if you have not already been convicted, and I should disqualify you for the statutory minimum, 12 months, as from today.

[8] Your counsel has emphasised to me how responsibly you acted on the night of your offence and how unfortunate you were then, compounded by the injury you have suffered since. He endorses the Crown's submission. Ideally, he would wish you disqualified as from the date on which you were to appear originally or even earlier. He has not, however been able, as he accepts, to identify any express power on my part to do so.

[9] Accordingly, I convict you of this offence and I disqualify you for the statutory minimum 12 month period as from today. That will of course apply as to the balance of its term when you return to the Cook Islands.



Patrick Keane, J