

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

CR NO. 526/19

POLICE

v

ALEXANDRIA MARIAH ANTONINA KIRYCHENKO

Date: 21 November 2019

Appearances: Snr Sergeant F Tararo for prosecution
Ms A Kirychenko, in person as defendant

Sentence: 21 November 2019

SENTENCING NOTES OF WOODHOUSE J

[1:15:22]

[1] Ms Kirychenko you have pleaded guilty to a charge of careless driving causing injury to Paul Knight.

[2] As I have said to you, the maximum penalty for this offence is either 5 years imprisonment or a fine of \$5,000 and the Court can also impose disqualification of up to 3 years.

[3] I need to record my conclusions about the gravity of the offence itself, the quality for your driving, firstly. And then consider personal factors relating to you which might have an impact on what the final decision is. So I will do it in that order.

[4] In relation to the offence, on 10 September in 2019 you were in a car in a vacant section or on a piece of land intending to turn right onto the main road. On entering the main road you failed to see Mr Paul Knight who was riding a scooter on the main road coming from your right.

[5] As you acknowledged at the time, you should have given way to Mr Knight but you failed to do so, and you say because you did not see him. But you acknowledge your carelessness. Mr Knight could not avoid your car as you pulled out and he hit the front bonnet.

[6] Mr Knight's injuries were abrasions to both knees and abrasions and bruises to his left arm.

[7] His scooter was damaged and repairs cost \$2,078. The cost of repairs have been met effectively on your behalf by your mother. So there is no loss to Mr Knight in that regard and no reparation needs to be paid.

[8] Some blood alcohol expenses were incurred for samples taken from both you and Mr Knight and the total cost in that regard including a small fee is \$320.

[9] As I have just explained, I will first assess the gravity of the offence. The element of careless driving in this charge of careless driving causing injury, covers a very wide range of deficiencies in driving. And that is recorded in many sentencing decisions.

[10] Your offence was at a reasonably low level of seriousness and Senior Sergeant Tararo has acknowledged that in my discussion with him.

[11] It is a case of inattention on your part. You have suggested that this may have arisen, at least in part, because you were distracted by a large truck that was parked on the side of your road to your right. And that is to say, in the direction from which Mr Knight was coming.

[12] No issue is taken by the Senior Sergeant in that regard.

[13] And it has some relevance in terms of the gravity of the offence because we are talking about a relatively smaller object, a scooter and a large truck. Anyway, I can accept that there may have been some element of distraction. On the other hand, because there was that large truck there, you should have taken extra care.

[14] I should add, having referred to that, that you do not, in referring to that matter in any way seek to diminish the very early acknowledgment you made that you had been careless. And an acknowledgment which you have plainly maintained up to the present time.

[15] The only other thing I might add in relation to the gravity of the seriousness of the driving is that fortunately the injuries to Mr Knight were minor. Quite often that can just be very good luck notwithstanding very bad driving. But I take it into account in an overall assessment as indicative of what I call the low level of seriousness of the careless driving.

[16] Senior Sergeant helpfully referred me to three other cases. I will just note the names but I am not going to go into much detail on this. They are *Police v Tansley*¹, *Police v Paterson*² and *Police v Page*³.

[17] I am quite satisfied that the gravity of the driving in those three cases was substantially worse than in your case. I think it is unnecessary for me to explain my reasons as they will be apparent from reading the summaries of the facts describing the driving in those other cases.

[18] Senior Sergeant Tararo has submitted that there are no aggravating factors in relation to your driving – that is to say the offence.

[19] I now come to personal considerations which diminish the penalty that might otherwise be imposed.

[20] You are aged 18. Your youth is a factor to be taken into account in your favour, with caution.

¹ *Police v Tansley* [2016] CKHC; CR 260.2015 (19 March 2016).

² *Police v Paterson* [2017] CKHC; CR 81.2017 (4 May 2017).

³ *Police v Page* [2017] CKHC; CR 299.2017 (24 July 2017).

[21] The prosecutor's submissions acknowledge that there are a number of mitigating factors as follows:

- (a) You pleaded guilty at the earliest opportunity.
- (b) You have shown genuine remorse to the complainant. You have in open Court acknowledged these things to me and apologised for your conduct, not just to Mr Knight, but to the community as a whole, recognising that this is an offence that you have committed.
- (c) On your behalf the damage to the scooter has been paid.
- (d) You were cooperative and apologetic to the police.
- (e) This is your first appearance before the Court.

[22] There is a comprehensive pre-sentence report which I have taken into account. You have done well academically in spite of difficulties in your family circumstances and the adverse effect of those on you.

[23] You are now at Macquarie University in Sydney. As a result you are unemployed, other than employment in your University studies. You have no income apart from a youth allowance of between \$250 and \$300 a fortnight.

[24] Careless driving is a serious problem in the Cook Islands. This will often, I acknowledge, require imposition of a reasonably substantial penalty. But for reasons mentioned in relation to the range of offending in cases like this, sentencing does not require substantial fines as a minimum in all cases. This is acknowledged, or this is further indicated, in the wide range of sentences imposed in many sentencing decisions. Senior Sergeant Tararo has also acknowledged that this is not a case requiring imposition of a substantial fine.

[25] I am bound to take into account an offenders financial circumstances when considering whether to impose a fine. You have candidly acknowledged to me that you have been saving money in order to meet some further cost including a fine. And you have managed – and I commend you – to save about \$1000. I take that into account in deciding that there will be a fine, but also that it should not be a substantial one.

[26] Taking account of all of those factors, you are convicted and you are fined \$250.

[27] There is a further order that you pay the blood alcohol expenses totalling \$320.

[28] I asked Senior Sergeant Tararo whether there was any submission that you be disqualified from driving – a disqualification that would apply in the Cook Islands only. He said that the matter had been given consideration and a decision reached that there should be no application for disqualification. I am satisfied that that is a proper decision, which I need to reach independently. Accordingly, the result is the fine I have indicated and the payment of the further reparation.

[29] You will need to arrange the payment before you leave the country. Thank you.



Peter Woodhouse, J