

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

**CR NO. 78/19**

**POLICE**

v

**MARIANNA CATHERINE BRYSON**

Date: 20 September 2019

Appearances: Snr Sgt. F Tararo for Prosecution  
Mr M Short for Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE**

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[10:20:07]

[1] Marianna Bryson, you appear for sentence for a single offence on 11 February 2019 at Avatiu. You drove carelessly on the main road and caused bodily injuries to a Nikao resident.

[2] At 9.10am on that Monday morning you were reported to have been involved in an accident heading towards Avarua from Arorangi. When you approached the Avatiu roundabout you slowed down but continued driving and you failed to give way.

[3] You crashed into the victim who was riding a motorcycle from the Avatiu inland side heading towards the Avatiu wharf. He received injuries to his left leg and his motorcycle suffered damage.

[4] When you were spoken to you said that you slowed down as you approached the roundabout. But you did not stop to give way to a vehicle passing in front of you. You did not see the motorcycle. You were very remorseful.

[5] A medical report confirms that the motorcyclist was hit on his left side. He suffered an open fracture to his right ankle. The break and the related lacerations required surgical intervention. And there was the prospect in February that he would require further surgery. He remained in hospital.

### **Pre-sentence report**

[6] Your pre-sentence report confirms that this was a very unfortunate incident entirely inconsistent with the whole tenor of your life. You are a finance officer with significant responsibility.

[7] When you were interviewed you said that everything happened very quickly. You did not completely stop at the roundabout before checking to see if it was safe to continue. But you did slow down and glanced quickly to both sides before driving through.

[8] You then explained that you were worried about the injury the motorcyclist suffered and that you had been visiting him once a week before his discharge. You were willing to pay for any damage to his motorcycle, and any medical costs and to assist him financially if you could. You had apologised to him and you understood he forgave you.

[9] Your pre-sentence report is highly favourable to you and considers that a conviction should be entered to hold you accountable and mark the seriousness of the offence but that you should be ordered to come up for sentence if called on in six months.

### **Police submissions**

[10] The submission for the police is, for the reasons identified in your pre-sentence report, that you should be treated as a person appearing before the Court for the first time, who has pleaded guilty early, shown genuine remorse and been co-operative and very apologetic.

[11] The police identified however, four similar cases to yours; decisions taken in this Court in 2016 – 2017 all involving first offenders. All resulted in fines being imposed, ranging between \$1500 and \$3000, as well as reparation.

[12] In three, 12 months disqualification was imposed. In one, involving a 74 year old man, that did not happen. Alcohol short of an offence had been an aggravating factor in the three. There was none in his case.

[13] The police submit that you should be fined and pay restitution if that remains necessary, and as they accept it is not. The police do not support a disqualification.

#### **Defence submissions**

[14] Your counsel has emphasized to me how responsibly you set out to assist the motorcyclist by visiting him in hospital, by liaising with his employer to ensure he had work and compassionate leave, and by paying for repair to his motorcycle.

[15] He has invited me to discharge you without conviction under s 112 of the Criminal Procedures Act 1980-81 because of the commitment you made to the motorcyclist. And this morning he has also put that to me on a different basis.

[16] You travel internationally in your work and your ability to obtain rental cars might be inhibited. He cannot put the detriment higher than that. In the event that I do not accept that submission, he invites me to convict you and order you to come up for sentence.

#### **Conclusion**

[17] The sentence I impose on you must be consistent with that imposed in comparable cases. And there is one especially to my mind. It is the 74 year old man who was fined as a first offender but not disqualified.

[18] The fine I impose on you on conviction must be comparable. But I take into account a one further factor and that is the state of the roundabout at the time of this offence.

[19] It was a new roundabout and may not, I am told by the police, have been as clearly marked as it is now. There were accidents at the roundabout until quite recently. That may have been a contributing factor.

[20] There are two ways to look at that. One of them is that this could have led to confusion rather than carelessness. The other is that a new roundabout calls for particular care. The carelessness you admitted suggests that more care was called for. But I will give you some benefit for the possibility of confusion.

[21] You are convicted of this offence. You are fined \$1000. You are not required to make reparation because you have already done so. You will pay costs of \$50.

  
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**Patrick Keane, J**