

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

**CR NO's 287/19, 578/19  
586-587/19  
607/19, 120/2020**

**POLICE**

v

**LUCAS KAMANA**

Date: 1 September 2020  
Appearances: Snr Sgt F Tararo for prosecution  
Mr K Ahsin for defendant  
Sentence: 1 September 2020

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

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[11:54:47]

[1] Lucas Kamana, you appear for a series of offences. On 3 May 2019 you drove carelessly and caused bodily injury. On 3 October 2019 you unlawfully converted a motorcycle. On 11 October 2019 you were found without lawful excuse on a property and failed to report to the police. On 14 October 2019 you were found without lawful excuse on a second property.

**Offences**

[2] On 3 May 2019 you were travelling on a motorcycle in Tupapa and failed to signal before turning into a driveway. The motorcycle behind you ran into you. The rider suffered an injury to his knee for which he had to go to hospital, and damage to his motorcycle, and was unable to work for three weeks.

[3] On 3 October 2019 you borrowed a motorcycle from an uncle to go to Raro Fried Chicken to buy a cigarette after agreeing to return to the Mauke Hostel within five minutes. You went instead to the home of a friend, and then another, after which you spent the night at the home of the first friend. In the early hours you appear to have visited somebody else.

[4] On 11 October 2019, between 5 – 6pm, you are at an uncle's home sitting in his car in your underwear. He asked you why you were doing that. You replied provocatively. He told you to leave his house and began to call the police. You grabbed his phone hid behind a water tank, after which you were apprehended.

[5] The day before you had been remanded on bail on a charge for an offence for which you are not for sentence, requiring you to report to the police on Fridays between 5 – 6pm. You were at your uncle's place when you were meant to be reporting to the police.

[6] On 14 October 2019, at 2.05pm, you were found at the address of an apparent friend of yours, whose mother confronted you, and you said that you had been dropped there by her son while he went to the market, and that you were to wait for him in his room.

[7] On 18 February 2020, you were seen riding a motorcycle on the back road at Rangiuira. On 19 September 2019, you had been disqualified for 12 months for an excess breath alcohol offence, and you were in breach of that order.

### **Probation report**

[8] Your probation report does not assist you. Your assessing officer having spoken to members of your family and to your apparent employer has found that nearly everything you say about yourself is unsupported. You do not, in the opinion of your assessing officer, have a stable home and you do not have work.

[9] Unusually for a person of your age (you are 19), and your limited previous convictions, your report recommends a sentence of imprisonment followed by 12 months supervision on probation.

**Submissions**

[10] The police do not seek imprisonment. They seek a sentence of 18 months supervision on probation, coupled with counselling, and an order requiring you to make reparation to the victim of your careless driving offence of \$1,686 for loss of wages. Also that you be further disqualified as from 19 September 2020.

[11] Your counsel has given me your account of each of your offences, which I need not set out in detail. Essentially, in each instance you say your offence was not as serious as it may appear. In each instance, you say, you acted more responsibly than you are given credit for.

[12] In his written submission, your counsel agrees with the police as to supervision on probation, to include reparation. You have told him that you are able to make reparation with the help of your family. He does not, I see, support the police submission as to further disqualification.

[13] In his submission to me today he confirms that your circumstances have changed. You have lived for the last month with another uncle and his family. You and his sons are supporting each other from casual work. He confirms that you do not have the means to meet an order for reparation.

[14] Your counsel has letters, he tells, from one or more of your uncles, who are complainants, seeking withdrawal of the related charges. He relies on them as mitigating. I put to him that community service might be more realistic than reparation. After speaking to you he agreed.

**Conclusions**

[15] Your 2019 spate of offending, mostly in October, does not warrant imprisonment, even a short sharp sentence. Nor do your previous convictions tip the balance. On the face of it, furthermore, and I speak only from the record I have, you have not further offended.

[16] The larger difficulty is that you do not have fully stable circumstances or any plausible basis for offering to pay reparation. You have said that you have a job, but you do not. You have said that your family will support you, but there is no evidence that they will. You appear estranged from your primary family.

[17] I must sentence you on the basis that reparation, a mitigating possibility, is simply unreal. I must impose on you a more deterrent sentence than that supported by the Police and your counsel, a sentence holding you more accountable than supervision on probation alone.

[18] First, I sentence you to 18 months supervision on probation, subject to the following conditions:

- (a) You are not to leave the Cook Islands without the approval of the High Court;
- (b) You are not to leave Rarotonga without the approval of the Probation Service;
- (c) You are to attend counselling or workshops as directed by the Probation Service.

[19] Secondly, I sentence you, concurrently, to 9 months community service to begin immediately.

[20] Thirdly, on the careless driving offence I disqualify you from holding or obtaining a driver's licence for 12 months, to begin when your present disqualification expires on 19 September 2020.



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**Patrick Keane J**