

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

**CR NO's 326-327/2020**

**POLICE**

v

**DARAN SABASTIAN VIRIAERE**

Date: 30 November 2020  
Appearances: Ms L William for the Crown  
Mr K Ahsin for the defendant  
Sentence: 30 November 2020

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**SENTENCING NOTES OF WOODHOUSE J**

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[9:40:23]

[1] Mr Viriaere, you are for sentence as you know on a charge of dangerous driving causing injury, and a second offence of failing to stop, ascertain whether there was any injury and if so to render any assistance.

[2] The facts in summary are as follows. On 23 July 2020, over about four hours you drank, and you admitted you drank, 12 stubbies of beer. You then set off, in a rented car, down the main road. Almost immediately, it appears, you began driving dangerously, crossing a double yellow line on a bend and constantly driving on the wrong side. The victim was on a motorcycle coming towards you. You immediately slowed and pulled to the left. The right side mirror on your car clipped her handle bar. She was thrown off. The small finger on her right hand was broken. She was also off work for three weeks losing \$960 of income and she incurred a small medical expense. She also had to move to live with friends so they could help her over the period.

[3] The Crown, through Ms William, submits, in agreement with the probation officer, that you should be sentenced to 12 months' probation with community service, and that you pay reparations for the victim's income loss and expenses, and for the losses of the rental car company.

[4] Mr Ahsin submits that the sentence should be 12 months' probation and reparations of \$715 to the rental car company and Court costs, reparations already having being paid to the victim.

[5] Mr Viriaere, this was a very bad incident of dangerous driving which appears to have been the result of the amount of beer you drank. In a sense you are very lucky not to be facing an additional charge of driving with excess alcohol. But of course you were unable to be tested for that because you had driven off.

[6] The maximum penalty for dangerous driving is 10 years in prison, and I think you should reflect on that in relation to future conduct.

[7] There is the separate offence of failing to stop and there is the fact that you were clearly badly intoxicated. But prison could not be justified in your case. I agree with Mr Ahsin's submissions.

[8] The reasons for my conclusion can be summarised with the following points in your favour:

- (a) You are 21;
- (b) You have no previous convictions;
- (c) You are in a stable de facto relationship, you have a young child and you are working hard to support them;
- (d) You are in steady employment; and
- (e) You are truly remorseful. I am satisfied on that and it is an important consideration. This is shown by, amongst other things: your visit to the victim to apologise within two days of the incident; her sympathetic

response; and your guilty pleas on your very first appearance, and when you declined an invitation from the Court to adjourn the matter so that you could get a lawyer to get advice before you decided whether to plead guilty or not.

[9] Another point is that you say you did not stop because you did not realise your car's mirror had hit her handle bar. That is not an implausible proposition, although of course your intoxication may have contributed to the fact that you did not know that.

[10] You were cooperative with the police and of course it was your admission that led to the evidence that you drank at least 12 stubbies of beer.

[11] You have already paid the reparation sought by the victim totalling \$970. In my view that is reasonably significant in my decision as to the sentence. It is not a small sum for you to have paid.

[12] In addition, you say that you can immediately pay \$20 for her medical fee and you accept an obligation also to pay the \$715 sought by the rental car company, although you are wanting some time to pay that.

[13] My sentence Mr Viriaere is as follows:

- (a) You are convicted on both charges.
- (b) You are to pay the \$20 medical fee and that should be paid within two weeks, if not earlier.
- (c) You are to pay \$750 to Kiani Rentals by instalments and I will come back to that.
- (d) You are placed on probation for 12 months, with probation to be served on Mitiaro.

[14] There are two special conditions relating to probation:

- (a) The probation officer is to supervise the payments to Kiani Rentals and may suspend payments for short periods for any proven and reasonable financial need.
- (b) Secondly, you are not to drive any vehicle if you have consumed any alcohol, no matter how little.
- (c) Finally, you are disqualified from holding or obtaining a drivers licence for a period of three months. In other words, you are not to drive any sort of vehicle for a period of three months.

[15] You may come out of the dock now.



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**Peter Woodhouse, J**