

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

CR NOS. 1492–1498/24

R

v

VAIANA MARGARET DANCE

Hearing: 11 April 2025 (via Zoom)
Appearances: Ms T Scott for Crown
Ms J Crawford for Defendant
Sentence: 11 April 2025

SENTENCING NOTES OF KEANE CJ

[1] Vaiana Dance, you appear for sentence for three offences on Sunday, 1 September 2024, two offences of dangerous driving causing injury, and one of failing to stop to ascertain injury.

[2] You accepted responsibility for these offences after receiving a sentence indication from Grice J, dated 19 December 2024, resting on the agreed statement of facts and victim impact statements. On 3 February 2025, I convicted you, and directed a pre-sentence and, if need be, a reparation report.

[3] Reparation has been resolved and I now sentence you on the basis of Grice J's indicated sentence starting point, the material she did not have, and your probation report and personal references. I begin with the facts agreed.

Agreed facts

[4] On Sunday, 1 September 2024, just after midnight, you were driving your Toyota Hilux home, and at the Apii Nikao School road intersection turned left on to Back Road.

[5] As you did so you crossed into the right-hand lane. You pulled back into your own lane, but crossed again into the right-hand lane, this time directly in the path of two motorbikes, each carrying two people.

[6] The first bike rider tried to pull to her right, into the lane you should have been in, but was too late. In the collision she and her pillion passenger were thrown off, she to the road, her passenger to a hedge. Both were knocked unconscious. Both suffered injuries. Her motorbike was beyond repair.

[7] The second bike rider closed her eyes and lost control, and her bike slid out from underneath her and her passenger. Very luckily they appear not to have suffered injury.

[8] You stopped outside the Be Fruitful Café. You opened the driver's door, but did not get out. You drove home and returned on foot. You spoke to bystanders, without disclosing you were the driver.

[9] Later that day you went to the Police. You said that, when you drove home and returned on foot, you were in shock, scared, and did not know what to do. You disclosed drinking less than two glasses of wine at dinner.

Victim impact statements

[10] The first rider and her passenger, both 18 in their final year at college, suffered injuries. She suffered a left leg fracture and wounds to that leg and her left hand, her passenger a left foot wound and dislocated toe. Neither fortunately has suffered lasting injury.

[11] Her motorbike, registered in the name of her mother, was so extensively damaged it was beyond repair. Its pre-accident value was \$3,900.

Sentence indication

[12] In her sentence indication Grice J was only able to indicate to you a starting point for your sentence for your two primary offences, dangerous driving causing injury, a sentence of imprisonment.

[13] Assuming the agreed facts, she said, you did drive dangerously and cause relatively serious injury, and substantial damage. You did not stop to find out if anyone was injured. You had been drinking earlier, and that may have affected your ability to drive, but because you did not stop that could not be assessed.

[14] For your two primary offences she took an 18 month starting point, which she uplifted by three months for failing to stop, a global starting point of 21 months' imprisonment.

[15] She did not uplift that further on account of your 2019 convictions for driving carelessly and with an excess breath alcohol level. They were more relevant, she considered, to the period for which you should be disqualified.

[16] She said that if you accepted her sentence indication and pleaded guilty, you would be entitled to a 33% discount. Also a discount for the effect on your young children of a sentence of imprisonment. That is as much as she was then able to say.

Probation report

[17] Your probation report says that at interview you were honest and cooperative, calm and composed but, as a result of trauma you suffered while studying in New Zealand, still decidedly vulnerable.

[18] Your report assesses you as a highly responsible single mother of three children under 10, and an active businesswoman running a demanding business requiring long hours. Striking a balance has been hard.

[19] Your report attaches many positive references from friends, most of whom have known you most of your life. Also from those with whom you have worked in community organisations and in business. All say you are honest, reliable, and generous.

[20] Your report confirms you are deeply remorseful and that you intended to compensate the motorbike owner, as you since have. You understand how grave your offences are. You have made arrangements for your children's care, if you are imprisoned. If your sentence is in the community you have plans, with counselling, to rebalance your life.

[21] Your report recommends a community based sentence: 24 months' supervision, the first 12 months to be served on community service, subject to the following additional conditions:

- (a) You not purchase or consume alcohol.
- (b) You not enter to licensed premises, including bars or nightclubs.
- (c) You pay \$3,900 reparation for the damage to the motorbike.
- (d) You attend any counselling or workshop you are directed to attend.
- (e) You not leave the Cook Islands without the approval of the High Court.

Submissions

[22] Counsel support that recommendation for essentially the same reasons. Your offences are serious and warrant Grice J's 21 month starting point; but, as she held, you are entitled to 33% discount for plea and others, not least to recognise the impact of imprisonment on your children.

[23] Both counsel point to the factors since identified in your probation report: the ongoing traumatic effect of the New Zealand incident; how essential you are to your

children as their main source of support and care; and your reparation payments as a tangible expression of remorse.

[24] Crown counsel submits you are thus entitled to a further 30% discount, reducing any imprisonment to 8 months; and submits that the sentence recommended is right in principle. It is the least restrictive sentence appropriate for your offences. You should be disqualified, she submits, for 12–18 months.

[25] Your counsel, in her consistent submission, submits that the recommended sentence, while within the community, is still significant itself and fully proportionate to the gravity of your offences and what your victims suffered. It is, furthermore, a positive and rehabilitative sentence, without cost to your children. You should be disqualified, she submits, for 12 months.

[26] Both counsel are concerned about the condition that you not enter licenced premises. You own such a business. They submit that condition should be deleted; and that concern must also attach to the condition that you not purchase alcohol, as you must to conduct your business.

Conclusion

[27] In now sentencing you for all three of your offences I take, as I must and with which I agree, Grice J's starting point for your two primary offences, dangerous driving causing injury, 21 months' imprisonment.

[28] I allow you, as Grice J also indicated, a 33% discount for your guilty plea, and for the mitigating factors identified by her and by counsel a further 30% discount, reducing any sentence of imprisonment for your primary offences to 8 months.

[29] On the principle that the sentence I impose on you must be the least restrictive appropriate, I sentence you for all three offences, as recommended in your pre-sentence report, to probation for 24 months, the first 12 months on community service, on the additional conditions recommended with two exceptions.

[30] I excise from those conditions those prohibiting you from entering licensed premises, and from purchasing alcohol. They do not recognise that you own and operate such premises. You will remain prohibited from consuming alcohol.

[31] Your two primary offences require me to disqualify you from holding or obtaining a driver's licence for at least 12 months, and I disqualify you for that period with immediate effect. .



P J Keane, CJ