

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

CR: 147/10, 178/10, 187/10 & 188/10

BETWEEN

POLICE

AND

DANNY NGAOA COOK

Hearing Date: 28 April 2010

Court: Nicholson J

Appearances: Mrs Saunders for the Crown
Mr T. Arnold for Defendant

ORAL SENTENCE OF NICHOLSON J

- [1] Danny Cook, you have pleaded guilty to and have been convicted of four offences and I now sentence you for those. The offences are: dangerous driving causing death; dangerous driving causing injury; driving with excess blood alcohol; and driving with no driver's licence.
- [2] The maximum penalty for the offence of dangerous driving causing death is ten years imprisonment or a \$10,000 fine. The maximum penalty for the offence of dangerous driving causing injury is the same. The maximum penalty for the offence of driving with excess blood alcohol is 12 months imprisonment and/or a fine of \$1,000 and a minimum mandatory disqualification from driving for 12 months. The maximum penalty for driving without a motor vehicle driver's licence is a \$40 fine.
- [3] The facts of the offending are that at about 9 p.m. on Friday, the 5th of March this year, you were drinking alcohol at a beach at Rutaki with two

friends, one of whom was the person who was to be ultimately the victim, Tamarii Pierre. Another friend joined you at about 10 p.m.

- [4] You and your three friends then left and went into town at about 11 p.m. You travelled in two vehicles. You were driving a Nissan Terrano truck. You did not at the time have a current driver's licence. You had had one but it had expired.
- [5] When you and your friends arrived in town, you went to the Whatever Bar where all of you continued drinking. You then visited other bars in Avarua before travelling back to one of your friend's home in Ruatonga. On the way you were stopped and spoken to at a Police checkpoint at about a quarter-past two in the morning and you were allowed to proceed. Your friend's vehicle bypassed the checkpoint. It wasn't stopped and continued on to Ruatonga.
- [6] You, after leaving the checkpoint, met up with your friends at Ruatonga and then you drove off with Tamarii and another friend, Daniel Metuariki with the intention of driving them to their homes. There was loud music playing in the vehicle and you drove it at speed along the main road heading towards Arorangi.
- [7] When you approached the Blackrock area, you lost control of the vehicle, crashed into a power pole on the seaward side of the road and then the vehicle went to the other side.
- [8] It is estimated that you were travelling at a speed between 60 and 70 kilometres just immediately prior to the crash. The crash caused the power pole to break and your vehicle skidded about 14 metres from the point of impact to the other side of the road.
- [9] Tamarii was seated in the back seat on the left-hand side behind the front seat passenger and unfortunately he received severe head injuries and died shortly after he arrived at the hospital.

- [10] The front seat passenger, Daniel Metuariki received minor facial injuries of swelling and abrasions.
- [11] You were taken to hospital. A blood sample was taken and analysis of this showed that you had 125.6 milligrams of alcohol per 100 millilitres of blood.
- [12] When spoken to by the Police, you admitted consuming some alcohol, driving the vehicle when the crash occurred and not being the holder of a current driver's licence.
- [13] You were apologetic for what had occurred and said that you had fallen asleep just before the crash. Now as a consequence of that crash, your friend, Tamarii Pierre, who was of a similar age – you were 18, he was 19 – died.
- [14] Victim impact statements have been provided to the Court. The impact statement prepared by Sergeant Monga advises that the deceased, Tamarii was living with his parents at Matavera. He was working as a local news presenter on Cook Islands Television and had been for some two years. His parents, of course, are extremely upset about the loss of their son. Also, Tamarii had three siblings and they joined with their parents in suffering his loss.
- [15] Tamarii's father provided a personal statement to the Court describing the impact which the passing of their son had had on their family. He said that his wife and himself felt and witnessed the impact every day because Tamarii had lived with them and rarely stayed away. He described the effects which their brother's loss had had upon his other three children and particularly their 15 year old son, John, who came back from New Zealand to be with the family, thereby severely interrupting his education. They talk of the difficulty that they have had in resuming a normal life and indeed feel that they will never be able to do so.

- [16] Mr Pierre concludes by saying in a very wise way: "It would be extremely foolish of me to expect that our family would ever be the same again for I know that it can never be. Nevertheless, my fervent prayer is that God will help us to find a sense of balance and normalcy in our lives in his time."
- [17] There has been a victim impact statement prepared for the other passenger in your car, Daniel Metuariki. Fortunately, his injuries were relatively minor with minor bruising around his right eye and he was treated at the hospital, given pills and discharged. He told Police that he was saddened by the tragedy and it is always on his mind. He does not go out on weekends now and drink. He stays home more than going out and he finds driving very scary to him. He said that he hopes that he will slowly recover from these emotional feelings and move forward in his life.
- [18] In the pre-sentence report, the Probation Officer describes your age of 18 years. You will turn 19 next month. She describes your family circumstances having spoken with your parents, stating that you grew up in a very good home with parents who are always supportive, caring towards you and your sisters. Your mother describes you as a person who puts others before yourself, saying you have a kind and generous heart and you are very close to all members of your family. Your father says that you are normally a very good person and not a troublemaker. They point out that since the tragic accident you haven't been the same and you have become more reserved and stay at home a lot and obviously the accident still continues to have emotional consequence with you.
- [19] You and your family offer their condolences to Tamarii's family and have expressed this by, with their permission, attending his funeral. They ask that the Court give you a chance, despite awareness that imprisonment was a prospect.

- [20] The Probation Officer describes your education and your employment as a graphic designer for Cook Islands Printing Services Limited and has provided a testimonial from your employer, Mr Burn in which he reports how you have been employed by his Company since January last year and that he got to know you very well and testified as to your good character and your talent and states that you are a valuable employee. He states that a term of imprisonment will affect your employment and may cause him to have to recruit someone else from overseas.
- [21] You told the Probation Officer in detail about the events of the evening and how you and your friends embarked upon drinking, how you were reluctant to do so but, under pressure, agreed to participate. You don't blame them. You accept the responsibility yourself. However, you had a variety of alcohol that night - apparently one bottle of beer, two glasses of bourbon and coke and half a can of ready-mix alcohol.
- [22] The Probation Officer comments that the circumstances of the offences were unpredictable, it happening on the spur of the moment. She said that it was also inevitable that a custodial sentence was deemed appropriate. However, she asked the Court to consider factors which she described, particularly your personal circumstances, and recommended a term of 12 months probation supervision followed by nine months community service.
- [23] For the Crown, Mrs Saunders briefly reviewed the facts of the offending and then referred to the purposes and principles of sentencing, emphasising the factor of deterrence as one of the purposes of sentencing and pointing out that the Cook Islands Parliament had doubled the maximum penalty of imprisonment for the offence of dangerous driving causing death in 2007, increasing it from five years to ten years imprisonment and thereby indicating the concern of Parliament on behalf of the community in respect of such offending and the wish to deter it.

[24] Mrs Saunders referred to leading cases on dangerous driving causing death, both in Cook Islands jurisdiction and in New Zealand. She also made submissions about the aggravating and mitigating factors in this case. She submitted that taking all the factors into account, that an appropriate starting point, including aggravating factors, was five years imprisonment. She submitted that from this there should be a deduction for mitigating factors of youth and absence of previous convictions of six months to make a term of four and a half years and that this could be further reduced by one-third having regard to the early guilty plea and the remorse which you have. So that's 18 months reduction, bringing a net term of imprisonment of three years. She suggested that at the very minimum the term should be two and a half years.

[25] Your lawyer, Mr Arnold, in his submissions on your behalf, said that it was acknowledged that this was serious offending which caused tragic consequences and loss of a human life and loss of a close friend. He referred to the context of the offending where you and the victim and other friends had been drinking and embarked on this venture. You were all of similar age and were close friends.

[26] He said that real concern was given to whether to challenge the charge of dangerous driving causing death. He was suggesting that a more appropriate charge may have been careless driving causing death, the charge that you were initially charged with. He said, however, after consideration and on instructions, you wanted to not prolong the Court process for all concerned, particularly the victim's family, and instructed a plea of Guilty to dangerous driving causing death. Mr Arnold submitted, however, that on the scales of culpability, the nature of the driving put it at the highest end of seriousness for careless driving but at the lowest end of the scale for dangerous driving.

[27] Mr Arnold then made submissions about principles and purposes of sentencing and referred to cases and particularly the Cook Islands case of Loomes in which I was the sentencing Judge; Webb in which Justice Weston was the sentencing Judge; and Teokotai in which the Chief Justice was the sentencing Judge. He also dealt with New Zealand cases, particularly the King (Chisolm J, Christchurch Registry CRI 2007 – 409 – 209, 6 December 2007) and Seyb (French J, Timaru Registry, CRI – 2007 – 003 – 000416, 11 September 2008) cases. He submitted that the culpability for your driving was not as great as that in the Loomes case or the Teokotai case and was perhaps similar to the King and Seyb cases, involving death of people who had been engaged in a joint drinking escapade. He submitted that such recklessness as there was, which he accepted there was, was of a low degree.

[28] Mr Arnold then addressed the aggravating and mitigating factors in this case following the guideline as given by the Chief Justice, Justice Williams in the Teokotai case (Williams C.J. Rarotonga Registry CR 10/05, 339/05, 340/05, 19 May 2006). In that case, the Chief Justice said and I quote, paragraph 51: *“The reason I am taking so much time with this today is that I want to try and provide an indication for the future as to what factors need to be taken into account. So what I now propose to do is to establish what are the relevant aggravating and mitigating factors. These will guide me in deciding the appropriate sentence in this case and provide a framework for sentencing in the future cases.”* He then listed the aggravating and mitigating factors. I will come to these in just a moment but the Chief Justice said in paragraph 52 of that Teokotai Judgment: *“This Court hereby adopts that list, not necessarily as an exhaustive list, although it is very extensive, but one which will be considered in future cases of this Court and to which Counsel will be expected to refer.”* And, of course, in light of that direction, Mr Arnold responsibly referred to that. Although they are rather lengthy, I will go through them now dealing with Mr Arnold’s submissions on them.

First aggravating factors. Highly culpable standard of driving at the time of the offence:

- (a) Consumption of alcohol. That was present in this case.
- (b) Greatly excessive speed, racing, competitive driving, showing off. The only aspect here was excessive speed and Mr Arnold made the point, which I accept, that it was not, one would call, greatly excessive. It was 60-70 kms in a 50 km zone and instances before the Court of much greater speeds are unfortunately quite common.
- (c) Disregard of warnings from fellow passengers. There was none.
- (d) A prolonged, persistent and deliberate course of bad driving. That was not the case here. It was just one very short episode of the car veering off the road.
- (e) Aggressive driving. That was not the case here.
- (f) Driving while the driver's attention was avoidably distracted. That was not the case here. There was loud music. That is probably not a factor.
- (g) Driving when knowingly suffering from a medical condition. Not the case here.
- (h) Driving when knowingly deprived of adequate sleep or rest. Well, certainly, you were tired but you hadn't – say, like a long distance truck driver or people who'd been driving for hours and hours – driven in a situation where you were knowingly deprived of adequate sleep.
- (i) Driving a poorly maintained or dangerously loaded vehicle. That's not relevant.
- (j) Then under the heading of "Driving habitually below acceptable standards - Other offences committed at the same time" such as driving without ever having held a licence, driving while disqualified, etc. That's not relevant except insofar as you hadn't renewed your licence.
- (k) Previous convictions for motoring offences. You had none.

- (l) Then under the heading "Outcome of offence – More than one person killed". That fortunately was not the case here.
- (m) Serious injury to one or more victims in addition to the death. Well, there really wasn't serious injury to the passenger.
- (n) Then under the heading "Irresponsible behaviour at the time of the offence – Behaviour at the time of the offence such as failing to stop, falsely claiming that one of the victims was responsible, etc." That's not relevant.
- (o) Causing death in the course of dangerous driving in an attempt to avoid detection or apprehension. Not relevant and indeed it is to your credit that after the tragic event you gave such assistance as you could and you were fully cooperative with all concerned, including the Police.
- (p) Finally – Offence committed while you were on bail. That's not the case.

[29] Then the list of mitigating factors:

- (a) A good driving record. That is the case. You have a good driving record.
- (b) Absence of previous convictions. That is the case. You had no previous driving or other significant conviction.
- (c) A timely plea of guilty. That is the case. You pleaded guilty at an early stage.
- (d) Genuine shock or remorse which may be greater if the victim is either a relation or a friend. Well I accept that you have genuine shock and remorse, particularly because the victim was a very close friend and particularly because you know the victim's family and feel for them in their loss.
- (e) The offender's age but only in cases where the lack of driving experience has contributed to the commission of the offence. Your

age of 18 wasn't a contributing factor to the commission of the offence but, nevertheless, you were a young person.

(f) The fact that the offender has also been seriously injured as a result of the accident. Well that wasn't the case here.

[30] So those are the aggravating factors and mitigating factors on which I accept Mr Arnold's submissions and which I bear in mind when fixing an appropriate sentence.

[31] Mr Arnold submitted that a term of imprisonment was not appropriate in the circumstances having regard to your age, your good character, your employment, your education record, your remorse. Rehabilitation will be appropriate which he said will not be served if you are imprisoned. He submitted that there is no need for a prison sentence of any order, let alone two and a half years or so.

[32] He endorsed the recommendation of the Probation Service for the granting of probation and community service and asked that that be the sentence. He said that if, however, the Court considered that a sentence of imprisonment was the only appropriate sentence, then he asked that it be kept minimal and be less than two years.


[33] I must emphasise the purposes and principles of sentencing. These have been codified in New Zealand and I follow that. First, to hold the offender accountable for the harm done to the victims and the community; second, to promote in the offender a sense of responsibility for and acknowledgement of that harm; third, to denounce the offender's conduct; and fourth, to deter the offender and other persons from committing similar offending.

[34] It is clear from what has been said in Court cases relating to this type of offence that the important aspect of purpose is deterrence and that a deterrent sentence is an appropriate sentence.

- [35] The principles of sentencing to take into account the gravity of the offending, including the degree of culpability of the offender. In this case I accept Mr Arnold's submission it was low on the scale of culpability, blameworthiness, for dangerous driving.
- [36] I take into account the seriousness of this type of offending in comparison with other types of offences. This is a serious type of offence involving the consequence of death. The desirability of consistency in sentencing that the Courts always seek and then taking into account the effect of the offending upon the victim. In this case, a young man lost his life and his family suffered greatly.
- [37] Mr Cook, taking all the factors which I have canvassed into account in your case, bearing in mind that it is an offence of a serious nature and had tragic consequences but, nevertheless, was low on the scale of blameworthiness and culpability of dangerous driving, and all the aggravating factors and, particularly, the aggravating factor that you had consumed alcohol and, to the extent that you had an excess blood alcohol content. The lead charge for the sentencing must be the dangerous driving causing death charge. I take into account the totality of all the offending. In respect of the major charge, dangerous driving causing death, I consider that a term of imprisonment is the only appropriate sentence that can be imposed. The Court is extremely reluctant to impose a sentence of imprisonment on a young person who is of good character and good prospects, but the deterrent message, the voice of Parliament in representing the people must prevail and the Courts must adopt and impose this. So it is imprisonment. In your case I accept the Crown submissions and consider the appropriate starting point is indeed one of five years imprisonment.

- [38] In respect of the mitigating factors and there are many of them as Mr Arnold has canvassed and which I accept, I consider that there should be a deduction of one year to make a term of four years imprisonment. I consider that there should be a further substantial reduction from that to reflect your early guilty plea and your genuine remorse and concern. That, in my view, should be two years so the end result is a net term of imprisonment of two years.
- [39] So accordingly, for the offence of dangerous driving causing death, I sentence you to two years imprisonment.
- [40] For the offence of dangerous driving causing injury, I will not do an analysis but I come to a net term of imprisonment of one year.
- [41] For the offence of driving with excess blood alcohol, I impose a sentence of one month's imprisonment and a minimum disqualification from driving for a period of 12 months.
- [42] For the fourth offence of driving with no current driver's licence, you are convicted and discharged.
- [43] All the sentences of imprisonment are, of course, to be concurrent so in totality therefore, you will serve a net term of imprisonment of two years.
- [44] As I have said, it is very difficult to have to sentence a young man of your character, good family background and prospects to imprisonment but in light of the law, that is the only option which the Court has and I have done so. I do so upon the basis that it will signal a deterrent message to all people that if you take the risk of drinking and driving and you kill someone, you will go to prison. Hopefully, that will impact with people who will then decide no, I am not going to drink and drive. I'll get a safe driver or I'll arrange to get other transport.

[45] That is the sentence of the Court and it will be carried out accordingly.



Nicholson J