

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

CR NO 33/13

POLICE

v

TUNGANE ATUEI RAEINA

Hearing: 15 March 2013

Counsel: Ms C King for the Crown
Mr W Rasmussen for the Defendant

Sentence: 15 March 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 12:04:13]

[1] Tungane Atuei Raeina, you have pleaded guilty to a charge of driving with excess blood alcohol on Christmas Eve last year.

[2] The charge against you differs from the charge in the previous accused's case only because there was a lack of injury.

[3] On Christmas Eve, with some fellow workers, you decided to go and have some drinks. It appears that in the end you drank about eight cans of Woodstock. It also appears that when you were about half way through the drinking session your

partner came and remonstrated or tried to get you to go home. You refused and carried on drinking.

[4] You finally got on your bike to go home at the end of the drinking session and lost control, unsurprisingly. You probably came off the bike when it was going at high speed, and it continued on after you had fallen off. It veered left towards a couple of chaps who were sitting on their bikes with their bikes leaning against the approaches to a bridge. Fortunately, they were quick-witted enough to throw themselves over the railings leading to the bridge and escaped serious injury. They had a few minor cuts and bruises but nothing more.

[5] You were quite seriously injured in the accident particularly by way of a facial injury which persists today.

[6] You were tested and the breathalyzer reading was that your alcohol level was 261.4 milligrams per 100 millilitres of blood against the legal limit of 80, that is to say you were about three and a half times over the legal limit.

[7] The Probation Service says that you have been in a long term relationship with your current partner and have a couple of children. Understandably enough there was some tension between you and your partner since this accident. You accepted that for a period you were "quite difficult to live with" but it looks as though that has been patched up.

[8] You have a good job which you have held for a couple of years. Your employer speaks highly of you and particularly asks that the sentence tries to ensure that you are still available for weekend work for which the employer is short staffed. You earn about \$280 a week and have about \$100 a week left over after expenses.

[9] You are of course apologetic for what you did on this highly foolish occasion. Both Probation Service and the Crown suggests that a non-custodial sentence is available in your case, but the Crown then properly draws my attention to previous cases in which it has been said that in cases such as this, the proper starting point for assessing an appropriate sentence is a short term in jail and whether jail

results depends then on factors that make the offending better or worse as the case may be.

[10] Like the last case, Mrs Raeina, this too was very serious and very stupid driving. You should have gone home with your husband when you were only half way through the drinking session, but you refused, carried on drinking, and finally went on your way on your bike with over three times the legal limit of alcohol in your blood.

[11] You yourself suffered serious injuries and it was only by good fortune and quick thinking on the part of the two chaps with their bikes that they were not much more seriously injured.

[12] You are entitled to a reduction in the sentence for an early plea of guilty and taking responsibility. But as I have said, in the assessing the appropriate sentence for you I have to start by looking at a jail term of something in the order of 3 months.

[13] That term is increased, potentially, by the level of alcohol in your blood and the manner of your driving, but it is reduced by your early plea of guilty and by the other factors that I have mentioned, in particular the serious injury that you yourself have suffered.

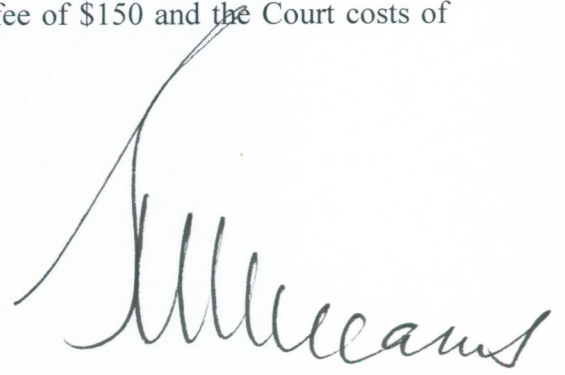
[14] However, at the end of that consideration, in my view, a short term of imprisonment is still indicated and you are sentenced to 1 month imprisonment. On your release in order to cover the period of reparation you are sentenced to Probation for 12 months on the standard conditions.

[15] You are disqualified from holding or obtain a drivers licence for 24 months. That can have some impact on your job but that is the consequence of what you did on this occasion.

[16] You are ordered to pay reparation of \$2,074 to Mr Remuera and \$1,575 to Mr Tepai, a total of \$3,799 or such a lesser sum as the Probation Service might certify.

Mr Rasmussen has made the point that you might be entitled to some slight reduction in those figures.

[17] You are also ordered to pay the analysts fee of \$150 and the Court costs of \$30. Stand down.

A handwritten signature in black ink, appearing to read "H Williams", written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J