

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

**CR NO 921/12**

**POLICE**

v

**SHELENDRA SHAYA BIR**

Hearing: 15 March 2013  
Counsel: Ms C King for the Crown  
Mrs M Tairea for the Defendant  
Sentence: 15 March 2013

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[FTR 10:00:46]

[1] Shelendra Shaya Bir, at the age of 24 you appear in Court for the first time. You pleaded guilty on 24 January this year to one charge of driving a motor vehicle under the influence of drink or drugs and causing injury to Ms Anelmo, occurring on Christmas Day.

[2] Technically you face a maximum imprisonment term of 10 years in jail or a \$10,000 fine, the penalties for this offence having been considerably increased five or six years ago, but I can tell you straight away this offence comes nowhere near the maximum.

[3] On Christmas Day, at about half past four, after you had been drinking alcohol, you were driving towards Nikao tailing Ms Anelmo. According to her, she put on her right turning indicator. According to you, she may not have, but you are prepared to accept that she put her indicator on although you did not see it. You overtook her on the right hand side and there was a crash. She was injured moderately severely – the Crown has furnished a number of photographs attached to their submissions – to her right leg, her forearm, her foot and her hand. You suffered some injuries as well.

[4] As I remarked to Mrs Tairea, whether or not you saw the indicating by Ms Anelmo is largely irrelevant because every driver knows that when they are overtaking another vehicle it is their obligation to stay well clear of the other vehicle, whatever manoeuvre it might be undertaking. So you have correctly pleaded guilty to a charge which is correctly brought.

[5] The Probation Service says that you have been in the Cook Islands since October 2011, that you have had a job throughout the period you have been here, and that you are a humble and helpful person who contributes to your family, to the people you are staying with in the Cook Islands and you have a good work record, as testimonials from your employer show.

[6] Apparently your boss has taken the trouble to tell his employees about the dangers of drinking alcohol and driving. That is well-known in any case, and on this occasion you completely failed to pay any regard to the warnings you had been given.

[7] The Crown makes the point that the sentence to be imposed on you must include promoting a sense of responsibility in you as a driver and denounce the conduct.

[8] This morning there are several people to be sentenced for various driving offences causing injury. Judges have been told repeatedly that the Cook Islands has one of the worst per head rates of death and injury from driving offences in the world and it is part of the job of the Court to try and help overcome those grim statistics

that not only contribute to the cost to the people who are involved in such incidents but, of course, contribute to the cost to the community of people who have accidents while driving. And as a result it has been stated in other cases that people who are convicted of crimes such as that to which you pleaded guilty must be looking at the possibility of a term of imprisonment as a starting point before assessing the appropriate penalty.

[9] Mrs Tairea tells me that you were punched after the incident by a bystander when you went to help the victim. That may be a natural reaction from some third party seeing the results of the stupid action on your part. But to your credit you have apparently not drunk liquor since this occurred and that can be taken into account.

[10] The facts in this case that make it worse than the standard offence include your boss's warning and the well-known dangers of driving when you have been drinking: a moment's thought would have caused you to realise you should not have driven at all.

[11] To reduce the appropriate sentence you have pleaded guilty at a very early stage of this case. You are obviously remorseful for the foolishness in which you engaged on Christmas Day. You yourself were injured in the accident, not in a major way but you were injured. Fortunately the injuries you caused Ms Anelmo were less than often seen in cases of this sort.

[12] You are fortunate, too, that no order is sought against you to pay the costs of fixing up Ms Anelmo's bike or the medical or other expenses.

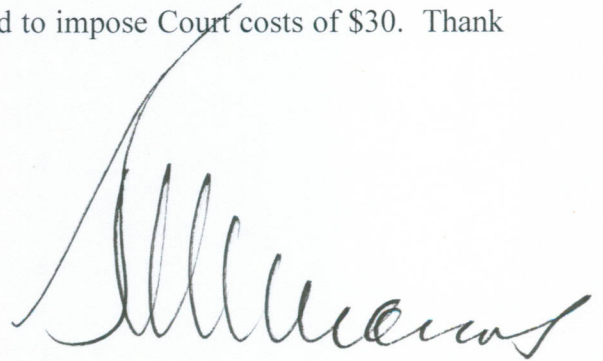
[13] The first aspect of the sentence must be to disqualify you from holding or obtaining a driver's licence for a period of 12 months commencing from today. That is part of the sentence that the law says has to be imposed. It will cause some inconvenience to you in your job and your life but that is part of the sentence that you need to endure.

[14] In my view you should also pay a fine and I will fix that at \$500.

[15] You will be admitted to probation. The appropriate period in my view is 18 months. Despite what Probation and the Crown say, I will not impose a condition that that part of that sentence be served by way of community service. That means that you will not have to work for the community on Saturdays, so you will be able to work at your job on that occasion and that will assist your income and your ability to meet the fine.

[16] Conditions of probation will be that you do not purchase or drink alcohol. I acknowledge that you have been doing that for the last 3 months or so but that is a formal condition of your probation, and that you pay the fine by such instalments as the Probation Officer directs. Thank you.

[17] The Registrar reminds me that we need to impose Court costs of \$30. Thank you. Stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams, J.', written in a cursive style.

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**Hugh Williams, J**