

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

X
CR NO. 17/17

CROWN

v

RUTH TEPAANO

Sentence: 29 November 2017

Counsel: Mr T Manavaroa for the Crown
Mr W Rasmussen for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[09:20:12]

[1] Ms Tapaano, you face one charge of careless driving causing injury. This carries a maximum term of imprisonment not exceeding 5 years or a fine not exceeding \$5,000.

[2] In addition the Court may impose a term of disqualification from holding or obtaining a drivers licence for a period not exceeding 3 years.

[3] This incident arose out of a collision which occurred on the 31st December 2016. You were driving with your young children in the car along Marine Drive. You were on the left hand side and made a turn. Mr Paitai was riding his motorcycle with a pillion passenger, Ms Moeau, on the back. They were travelling in the same direction in the right hand lane. You were approaching a parking space when you made the manoeuvre and swerved into the lane across the motorcycle. You collided with the rear left hand side of Mr Paitai's motorcycle. Fortunately neither the rider nor the pillion passenger fell off although the bike wobbled.

[4] You live in New Zealand as do the motorcycle rider and the pillion passenger. I have a victim impact report and in this case the pillion passenger did suffer a gash to her leg requiring

some stitches. The nature of the injury was clarified this morning. However as the report indicates the injury appears not to have been significant, there being no ongoing issues and this differs from recent cases where serious injuries have resulted from the accident.

[5] Mr Rasmussen on your behalf urges me to impose a fine in this matter and submits that it is on the lower end of the scale of these types of offences. He went through the sentencing principles that when considering a sentence I must consider protecting the community, promoting a sense of responsibility, consider reparation and denounce the conduct of the defendant, both in relation to a personal message of denouncement but also and particularly in these offences to send a message to the community that this type of offending must cease.

[6] In this case as we have heard this morning there is an increasing number of these offences on the road so a public message is particularly important and Mr Rasmussen did emphasize that is a sentencing principle.

[7] I note that it is your first offence, you entered an early guilty plea and have been very co-operative. You are entitled to credit for that. You have expressed remorse, you tried to follow up with the victims and express your apologies and see what they needed. Unfortunately you were unable to locate them. Apparently there was no damage to the motor vehicle.

[8] You live in New Zealand and have returned especially to deal with this matter. Mr Rasmussen also carefully outlined your personal history and your present circumstances with a young family living in New Zealand and working.

[9] I accept that in this offence, the facts are in the lower range of the scale of offending that comes before the Courts and luckily the injuries were not severe.

[10] The police in its submission referred me to a number of decisions including *Police v Tansley*¹ where a 74 year old offender was sentenced on his first offence. He was apologetic and convicted and fined \$1,700 and ordered to pay reparation of \$1,300 and Court costs of \$30. And also to *Phillips*² where a fine was also imposed of \$2,000 with reparation for emotional

¹ *Police v Tansley*, CRN 260/15, 18 March 2016, Potter J

² *Police v Phillips*, CRN 349/17, 25 July 2017, Doherty J

harm of \$3,000 payable to the victim and \$20 costs. A term in that case of 12 months disqualification from holding or obtaining a drivers licence was imposed.

[11] The penalty for this offence was raised by Parliament from 3 months imprisonment and \$1,000 fine in 2007 and comment has regularly been made in this Court that driving related offences are on the rise and that a custodial sentence may be imposed where the circumstances are warranted.

[12] I am advised by the Crown that there are six cases in the nature of this type of offending in this fortnight's list alone and most recently last week the Court of Appeal in *Police v Boyle*³ noted that the Courts have been increasingly concerned about the offending.

[13] The Courts will be monitoring the situation and adjusting the sentences as appropriate if it continues.

[14] In *Boyle* the Court did note that there are a range of circumstances giving rise to this type of offence and this has been demonstrated in two recent cases. The first, *Police v Reichardt*⁴ involved alcohol and a term of imprisonment of 6 months was imposed together with reparation and disqualification of 2 years. And in *Police v Bartley*⁵ a motorcycle driven by the offender made a U-turn. In that case the victim's injuries were serious. The offender entered an early guilty plea and showed remorse as well as making an ex-gratia payment of \$10,000 to the victim, and in that case a fine of \$750 together with disqualification of 12 months was imposed.

[15] Mr Boyle's case was an accident caused by inadvertence when turning into a driveway, but it did occur in the dark and called for more reasonable attention. Mr Boyle was sentenced to 12 months probation with the first 3 months on community service and a condition that he not leave Rarotonga without approval of the Court. He was also ordered to pay reparation in the vicinity of \$5,000 which included medical costs and for emotional harm of \$2,000 as well

³ *Charles Boyle v Crown*, CA 5/17, 24 November 2017, Fisher White Grice JJ; *R v Charles Boyle*, CR 423/16, 27 July 2017, Doherty J

⁴ *Police v Kevin Reichardt*, CR 257/17, 26 July 2017, Doherty J

⁵ *Police v Katrina Bartley*, CR 463/2015, 11 March 2016, Potter J

as repair costs. He was disqualified from holding or obtaining a drivers licence for 9 months. As I said the injuries in that case were relatively serious.

[16] Yesterday in *Ingram*⁶, also a case arising from a moment's inadvertence where the injuries to the victim were serious, a fine of \$700 was imposed together with a sentence of 12 months probation with reparation of \$2,000 to be payable as a condition of probation and disqualification for 6 months. In that case, while it was a case of an inadvertence, the injuries involved to the victim were very serious and ongoing and the victim had been unable to work and was seriously suffering from the injuries. So that is a significant difference to this case.

[17] In the circumstances I accept that this offending as Mr Rasmussen said is at the lower end and does not call for imprisonment however, the application of the sentencing principles call for a message to be sent. They also call for something less restrictive than imprisonment.

[18] The Court of Appeal in *Boyle* set out a wide range of circumstances as it said at the lower end are those of inadvertence and the high are those of alcohol, drugs or speed involved. But the consequences are also important – they range from minor injuries to more serious injuries or death. In the end this offence arose from a moment's inadvertence and in that respect it has similarities with *Boyle* and *Ingram*.

[19] However, in both those cases serious injuries resulted. This case is different and while of course the offender is not able to dictate the injury involved, often the injury reflects the amount of inadvertence or the cause of the accident. This indicates here it was minor collision, luckily. Your vehicle was apparently travelling very slowly and it appears to be a misjudgement made in turning rather than a serious piece of misjudgement.

[20] In the end I must stand back and look at all the factors and take them into account and come to a sentence that is appropriate in the circumstances.

[21] I take account the matters raised by Mr Rasmussen in his submissions, the early guilty plea and that it is a first offence.


⁶ *Crown v Imogen Ingram*, CRN 322/17, 28 November 2017, Grice J

[22] Nevertheless I must send a message to others that arising incidents of these types of cases must be stemmed.

[23] Accordingly, I am prepared to deal with the matter by way of a fine. This needs to send a signal. There is no application being made for reparation. We simply do not know whether there was any ongoing costs but apparently not and the victim impact report certainly indicates that there are no ongoing difficulties.

[24] Therefore I impose a fine of \$1,500.

[25] Probation is clearly inappropriate, you need to go back to New Zealand, however, a term of disqualification is appropriate in the circumstances and I disqualify you from holding or obtaining a driver's licence in the Cook Islands for 6 months. And I also award Courts costs of \$50.



Grice J