

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

CR NO's 193-194/23

POLICE

v

KAIEA ARIU

Counsel: Senior Sgt P Tararo for prosecution
Mr N George for defendant

Sentence: 9 August 2023

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[9:18:59]

[1] Mr Ariu is before the Court for sentencing upon two charges: a charge of careless driving causing injury under s 26 of the Transport Act and a charge of driving with excess breath alcohol under s 28A of the Transport Act.

[2] Mr Ariu was found to have driven with 920mgs of alcohol per litre of breath. The prescribed limit is 400mgs of alcohol per litre of breath. He was more than twice over the limit.

[3] The penalty for careless driving causing injury is a term of imprisonment not exceeding five years or a maximum fine of \$5,000, and for the excess breath alcohol offence a term of imprisonment not exceeding 12 months or a fine not exceeding \$1,000 and there is a mandatory disqualification from driving requirement period of at least 12 months.

Background Facts

[4] On 11 February at 2.39 am there was a motor vehicle crash involving two motor vehicles at the Avarua roundabout. One of those vehicles was driven by Mr Ariu, a white Toyota car, registration 5148. The other was a black Honda motorbike, driven by Ms Temata with a pillion passenger. The defendant had been drinking prior to the collision. He started drinking at home and continued to the Luna Bar. He then drove to Atupa to drop off some friends and was on his way home along the back road towards the Avarua roundabout. He failed to stop and check if the road was clear or if there were oncoming vehicles to his right. He crashed into the motorbike.

[5] Both the driver of the motorbike and the pillion passenger received injuries to their legs. They were uplifted by ambulance and taken to hospital for treatment but, very fortunately, their injuries were not serious. I have to observe that Mr Ariu is very fortunate, as were his victims, that the outcome of this collision was not much more serious than proved to be the case.

Victim Impact Statements / Probation Report

[6] I have read victim impact statements and a helpful Probation report. The Probation report records that Mr Ariu is 32 years of age. He has a not insignificant offending history, having appeared 11 times before the Court. This is his fourth excess alcohol offence.

[7] He has previous careless driving offences. Senior Sergeant Tararo informs me that this is the first offence of careless driving causing injury. Nonetheless, it is a chequered history, especially in relation to drunk driving.

[8] The Probation report recommends 12 months' Probation supervision with the first three months on community service with special conditions. Mr George, counsel for the defendant, endorses this approach and suggests to the Court that perhaps a significant fine rather than imprisonment could be the most appropriate way of dealing with this offending.

Submissions

[9] The Police, in constructive submissions, recommend a short term of imprisonment, this being the fourth drink driving charge for which Mr Ariu has been convicted. The Police seek \$20 by way of reparation for a medical fee. There was mention of lost wages by the driver of the motorcycle, but no evidence has been provided to the Court.

[10] Drunk driving is a curse in our community and the Courts have regularly condemned and warned about this type of offending. In relation to Mr Ariu I note that in 2018 he was sentenced to two months imprisonment with a release on Probation supervision for 12 months following his custodial sentence. I note also that in 2010 when he was convicted for driving with excess blood alcohol, he was recorded as driving with 267.7mgs of blood when the limit is 80. As Mr George recognised, Mr Ariu has a serious problem with drinking, and more so with drinking and driving.

[11] The Probation report refers to a statement by his partner that he has given up drinking after the incident. She says he is a good father, hardworking, helpful and supportive with a good attitude at home and that he enjoys spending time with his children.

[12] I take those matters into account. I sincerely hope, Mr Ariu, that you have made some very firm decisions about your drinking habits. But given your history of offending I do not feel it is open to the Court to resist a term of imprisonment.

Sentence

[13] On the charge of careless driving causing injury you are fined \$100.

[14] On the charge of driving with excess breath alcohol you are sentenced to a term of imprisonment of three months, to be followed by 12 months' Probation supervision on release, subject to the following conditions:

- (a) You are not to purchase or consume alcohol;
- (b) You are not to enter liquor licensed premises such as bars and nightclubs;

- (c) You are not to leave the Cook Islands without the approval of the High Court and you are to surrender your passport to the Court, if you have one; and
- (d) You are to attend any workshop or counselling directed by the Probation Service particularly in relation to your alcohol issue.

[15] There will be mandatory disqualification from driving or holding or obtaining a driver's licence for 12 months.

[16] You are to surrender your driver's licence to the Court today.

[17] There will be a reparation order for \$20.

[18] You may stand down.



Judith Potter, J