



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 28/17

THE REPUBLIC OF NAURU

Complainant

AND

PAUL TEUTENBERG

Defendant

Mr. Filimoni Lacanivalu for the Republic

Mr. V. Clodumar for Defendant

Date of Hearing: 11 May 2017

Date of Sentence: 11 May 2017

SENTENCE

1. You pleaded guilty on 11 May 2017 to one count of Dangerous Driving contrary to section 67(1) (a) of the Motor Traffic Act 2014. The summary of facts which you agreed to are that between 7:00 and 8:00 a.m. on the 7th of April 2017, you were driving a grey hilux motor vehicle up the road at Aiwo District towards the intersection to RPC 1 at Buada District. A witness who was working at the side of the road said you were driving very fast up the hill. At the intersection, you turned your indicator to turn right onto the graveled road to RPC 1 but without checking to see if the oncoming lane was clear, you turned right and collided with a motor bike driven by one Speedy Raini, with his 10 year old son as

- passenger. As a result of the accident, Speedy Raini was thrown off his motor bike and landed on the road. His son was thrown off and left unconscious on the side of the road. The motor bike ended up underneath your van.
2. You got out of your car and tried to attend to Speedy Raini and then you gave first aid to his son.
 3. The Police were called and ambulances took the victims to hospital where Mr. Raini was found to have suffered head injuries and multiple soft tissue injuries causing tenderness and pain in the lower back, gluteal region and right thigh.
 4. Mr. Raini's 10 year old son suffered concussion and a closed fracture of the right femur and was hospitalised.
 5. You agreed with the summary of facts tendered and I convicted you as charged.
 6. Mr. Clodumar on your behalf explained that you were driving up the hill heading directly east and at that time of the morning, the sun was directly in your eyes blinded you. You therefore could not see the motor bike before you turned right and collided with it. You accepted full responsibility for the offence and your record of interview tendered by the Prosecution showed you co-operated with the Police. You pleaded guilty at the first opportunity and this must go to your credit.

The Law

7. Section 67(1) of the Motor Traffic Act 2014 provides:-

67 Dangerous driving

- (1) *Any person who drives a motor vehicle upon a public highway negligently, furiously, recklessly, or at a speed or in a manner dangerous to the public commits an offence and is liable upon conviction to the suspension of his or her driver's licence for a period of one year and is subject also to any of the following:*

- (a) *a fine of \$1000; or*
- (b) *imprisonment for six months; or*
- (c) *both a fine and imprisonment.*

- (2) *In considering whether an offence has been committed under this section, the Court shall have regard to all the circumstances of the case, including:*
- (a) the nature, condition, and use of the public highway upon which the offence is alleged to have been committed, and*
 - (b) to the amount of traffic which was, or might reasonably have been expected to have been, upon that public highway at the time.*

Seriousness

8. The maximum sentence for this offence is imprisonment of 6 months. In considering whether to impose a sentence of imprisonment, the Court should consider the seriousness of the offending which is determined by two factors, namely your culpability (blameworthiness) and the harm caused, intended or might foreseeably have been caused by your actions.
9. Culpability starts with negligence at the lowest level, followed by recklessness, then knowledge, with intentional acts at the highest level.

Culpability

10. You said that you were blinded by the sun and could not see any incoming traffic but the summary of facts said you failed to stop at the junction. If you knew you could not see because the sun was in your eye and did not stop at the junction to ensure no vehicles were coming before turning right, then you were reckless. A prudent person in that situation would have slowed down, stopped or taken other steps to overcome the handicap to his vision. Recklessness is the second lowest on the culpability scale.

Harm

11. The harm caused is evidenced by the medical report which was tendered by the prosecution and whose contents have been set out above. The 10 year old victim suffered concussion, abrasions to the chin and a fracture of the femur or thigh bone. He was hospitalised and is still in hospital. Speedy Raidi suffered head injuries and multiple soft tissue injuries causing tenderness and pain in the lower back, gluteal region and right thigh. These are serious injuries and for the younger victim, there could be complications later in life. The harm you caused was therefore at the high end of the scale

12. From what I have said already about culpability and harm, I find that this is a serious offending at the mid to high end of the scale for this particular offence and this will determine your sentence

Aggravating factors

13. The aggravating factors which have been taken by the courts into account for the offence of dangerous driving include avoiding detection or apprehension, competitive driving, racing, showing off, disregard of warnings, e.g. from passengers or others in vicinity, evidence of alcohol or drugs, excessive speed, Police pursuit, prolonged, persistent, deliberate bad driving, serious risk and using a mobile telephone. This list is by no means exhaustive.

14. The prosecutor invited me to consider the speed at which the accused was driving and the injuries suffered as aggravating factors of this offending but I have taken the injuries into account in the assessment of the seriousness of the offending above and to do so again would be wrong in law. The speed is part of the definition of the offence and cannot be an aggravating factor.

Mitigating factors

15. The mitigating factors are those factors that mitigates or reduces your sentence. I take the following as mitigating factors in your offending:

- a. a first offender;
- b. you are 55 years old and this being your first offence means you have been a good citizen for a very long time;
- c. you have shown remorse by visiting the young victim at the hospital daily and taking him fresh fruits and other goods;
- d. you admitted the offence to the Police and co-operated with them;
- e. you pleaded guilty at the earliest opportunity, saving the time for a trial and saving the victim from having to relieve his trauma; and
- f. you have paid reparation of \$1,500.00 to the victims.

Personal Circumstances.

16. You are now 55 years old and an Australian citizen working in Nauru. You are single. You work with Jacobs Ltd and you intend to leave for Australia at the end

of your tour of duty this weekend depending of course on the sentence imposed by the Court.

17. Your company is involved in defence contracts worldwide. You said that for defence work, you will need to apply for an Australian security clearance soon and that a conviction will not help you. You therefore ask the Court that a conviction be not recorded.

The Conviction

18. I had convicted you immediately after you admitted the summary of facts and before submissions were made by Mr. Clodumar regarding whether a conviction should be entered. On this issue, the prosecutor said that once I had pronounced a conviction, I cannot undo it. I must beg to differ because I have not finished the process of sentencing the accused and therefore I am not functus. Section 277 of the Crimes Act 2016 provides:-

277 Kinds of sentences

If a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this Act, do any of the following:

- (a) record a conviction and order that the offender serve a term of imprisonment;*
- (b) with or without recording a conviction, order the offender to pay a fine; or*
- (c) record a conviction and order the discharge of the offender;*
- (d) without recording a conviction, order the dismissal of the charge for the offence;*
- (e) impose any other sentence or make any order that is authorised by this or any other law of Nauru.*

19. The section gives the court the discretion as to which sentence is to be given and the exercise of the discretion must take into account the circumstances of the offending and the circumstances of the accused. Section 277 is a two-step process, the first to decide on conviction and the second to decide the fine, for

example. The process is not complete until both are done and the court is *functus officio* when the whole sentencing process is completed. Until then, the court is still seized of the matter and can correct its mistakes. However, Dangerous driving is a serious offence and this offending is on my analysis above, at the mid to higher end of the seriousness scale for this offence. The serious injuries suffered by the younger victim, are likely to affect him for the rest of his life. You should consider yourself lucky that the prosecutor has reduced the charge. I find that I do have the power to change the conviction I recorded because I am still seized of the matter but because of the seriousness of the offending and in order to deter other drivers, including expatriate drivers, I will not remove the conviction I entered earlier.

20. You submitted that your licence should not be suspended as it is an essential requirement for your work here in Nauru but this is contrary to your stated intention to leave Nauru this weekend on re-assignment.
21. I have taken account of the all the matters above and find that a custodial sentence is not appropriate but a severe sentence is warranted.

Orders

22. I therefore convict you as charged and:-
 - a. fine you in the sum of \$1,000.00; and
 - b. suspend your Nauruan license to drive for a period of 3 months.

