

**IN THE SUPREME COURT OF TONGA
APPELLANT JURISDICTION
NUKU'ALOFA REGISTRY**

Scan file + Upload CROWN LAW
23/08/17
23/08/17

BETWEEN:

R E X

- **Appellant**

AND:

ASHLEY FUA

- **Respondent**

BEFORE THE HON. JUSTICE CATO

Mr Kefu for the Appellant

Mr Fua in person

JUDGMENT ON APPEAL

[1] The Crown appealed the sentencing decision of Magistrate Tu'akalau ordering the Respondent be severely reprimanded after pleading guilty to reckless driving under section 25(2) of the Traffic Act. The Magistrate after considering the nature of the offending, the circumstances of the Respondent, his payment of repairs to the complainant (\$1290) that his loss was \$3000.00, the maximum sentence which was imprisonment up to two years and, or a maximum fine of \$2000 imposed no conviction and simply severely remanded the Respondent. I am satisfied that the sentence was manifestly inappropriate and the sentencing process miscarried. The Respondent did not oppose the Crown appeal and accepted that he should be re-sentenced by this Court. Had there been injury to the occupants of the car, the matter would have been much more serious.

Recd 23/08/17
Jato

[2] The Respondent is a Chief Inspector of the Tonga Police and is currently an acting Superintendent of police. On the night of the 26th December 2016, the complainant and passenger were travelling south on the Tafua'ahau Road at Fanga returning to their residence at Tofoa. They turned to the side of the road and parked in front of a Chinese takeaway and faced south. After they had parked and before they could get out, another vehicle driven by the Respondent collided with the rear of their vehicle. The passenger got out of the vehicle to talk to the Respondent who was driving that vehicle. The Respondent apologized to the complainant and his passenger and told them he would repair their vehicle. The accident was reported to the police. A number of policeman arrived and officers noted that the Respondent's eyes were bloodshot and he smelt of alcohol. Police officer Taufu'ulungaki took the Respondent to the hospital while the other officers took the vehicles and the complainant and his passenger to Central police station. Police officer Taufu'ulungaki informed the Respondent they could not perform an alcohol breath test because their testing equipment was not working. The Respondent accepted that he was at fault and told the police officer that he would fix the complainant's car which was a rental vehicle.

[3] I accept that he paid for the repair of the vehicle and for a replacement vehicle while the car was being repaired. He accepted responsibility also for the offending with his prompt plea of guilt. He has, I am told, apparently suffered some embarrassment within the police and also the public for his offending.

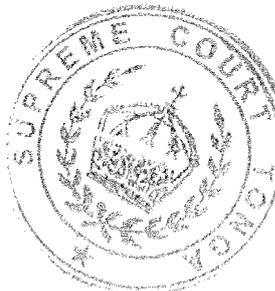
[4] The issue that I have to decide here on the basis of the Crown appeal is was the sentence imposed by the Magistrates one that was manifestly inappropriate? There was no conviction imposed in this case. There is now in Tonga provision for a discharge without conviction under the Criminal Offences legislation but

this must be exercised very sparingly, and it is very unlikely that the Respondent could have met the criteria for this had application been made. It was wrong in principle that no conviction was entered here.

[5] I agree with the Crown also that a fine should have been imposed. The maximum fine is one of \$2000. I agree with the Crown's suggestion that a \$500.00 fine should be imposed taking into account all mitigating factors. I also take into account on the level of fine together with other mitigating factors mentioned that the Respondent has paid for repairs to the complainant's motor vehicle. The Magistrate's decision merely to severely reprimand was, however, plainly manifestly inappropriate and inadequate, and sent out entirely the wrong message to the public.

[6] The appeal is allowed. He is convicted of reckless driving under section 25(2) of the Traffic Act and fined \$500 to be paid within one month which he assures me he will pay within this period.

DATED: 21 AUGUST 2017



A handwritten signature in cursive script, appearing to read "Cato", written in black ink.

C. B. Cato

JUDGE