

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

CR 154 of 2018

BETWEEN : **REX**

Prosecution

AND : **VILISONI FINAU**

Accused

Counsel: **Mr 'I Finau for the Prosecution**
 Mr S Tu'utafaiva for the Accused

Hearing: **31 May 2019**
Date of Ruling: **31 May 2019**

SENTENCING REMARKS

The conviction

[1] Mr Finau was found guilty on one count of reckless driving causing death contrary to s. 25(5) of the Traffic Act following a defended hearing. The maximum penalty for the offence of reckless driving causing death is 15 years imprisonment.

[2] I have set the facts out in my verdict of 3 May 2019 and do not propose to set them out again here. It is sufficient to say that on the evening of 1 June 2018 Mr Finau drove his vehicle in an intoxicated state and at high speed over a roundabout at the intersection of Vaha'akolo Road and Mateialona Road

colliding with a vehicle driven by Tou'anga Ma'a Tonga Kamea and causing Mr Kamea's death.

The material before me

- [3] I have been provided with and considered the following:
- (a) The Prosecution's sentencing submissions;
 - (b) A victim impact report; and
 - (c) A pre-sentence report.
- [4] I also heard from Mr Tu'utafaiva.
- [5] Mr Finau is 51 years old. He has no previous convictions. He came from a stable background, completed his education and then entered the Police where he served for over twenty years. He has been dismissed from the Police due to this offending and now works as a taxi driver. Mr Finau is married with children but is separated from his wife. He is said to be an active member of the Church. He has had a problem with alcohol abuse which he says he is taking steps to resolve.
- [6] The Probation Officer proffers the view that Mr Finau is in intense emotional distress as a result of his marriage failure, the loss of his employment and the consequences of his offending. When he was arrested Mr Finau was initially cooperative with the Police but then chose to defend the charge advancing two technical defences which were unsuccessful.
- [7] The victim impact report makes sad reading. Mr Kamea was married with 6 children and he also supported other family members who have health issues. No one now supports his family and they are struggling to provide for their basic needs. Mr Kamea's eldest daughter has had to leave school because the family cannot afford school fees. The children greatly miss their father and still grieve for him. Although Mr Finau says he has made peace with the victim's family, and he has made some modest payments to the family, the

information before me is that the widow does not accept his apology or the payments as amends.

Discussion

- [8] The maximum sentence for this offence indicates the Legislature's intention that sentences should reflect the fact that very serious cases involving violations of traffic laws resulting in death should result in longer sentences of imprisonment (*R v Fanua* [2016] Tonga LR 208, Cato J). In *Fanua* Cato J said at [6]:

I consider that Courts, in cases of reckless driving where a death or serious injury results must impose sentences which deter others from driving in this manner and causing death or injury to other members of the public. The sentences must serve as an example to others to ensure the security or safety of the public and to properly reflect the fact that a person has died or suffered injury.

- [9] In considering a starting point for sentencing purposes I have had regard to a number of authorities including *R v Latu* (Unreported, Supreme Court, CR 92 of 2018, 24 August 2018 Paulsen LCJ), *R v Fanua* (supra), *R v 'Aisea* (Unreported, Supreme Court, CR 160 of 2018, 15 February 2019, Paulsen LCJ) and *R v Tonga* (Unreported, Supreme Court, CR 143 of 2018, 22 March 2019, Paulsen LCJ).

- [10] Of these cases the most similar on the facts is *R v Latu*. In *Latu* the accused was charged with one count of reckless driving causing death and one count of reckless driving causing grievous bodily harm. He had been driving intoxicated and at excessive speed. I adopted a starting point in that case of 5 ½ year's imprisonment. In this case I am adopting a starting point of 5 years imprisonment. The difference reflects the additional victim in *Latu*. Both the Prosecution and Mr Tu'utafaiva accept this is the appropriate starting point.

- [11] In terms of mitigating factors, Mr Finau is entitled to credit for his previous good record and for his attempt to make amends with the victim's family which shows a degree of remorse. I reduce his sentence by 9 months for

these factors. Any credit that might have been due to him for cooperation was lost when he defended the charges. The result is that he is sentenced to 4 years and 3 months imprisonment.

- [12] It has been submitted that I should suspend Mr Finau's sentence in part. I have been ambivalent about that. The fact that Mr Finau pleaded not guilty suggests to me that he has not truly accepted responsibility for his actions. On the other hand he is a first time offender, the pre-sentence report indicates that he is addressing his alcohol problem and is at low risk of reoffending. Based on the principles in *R v Mo'unga* [1998] Tonga LR 154 I have decided that Mr Finau's prospects of rehabilitation will be enhanced if some part of the sentence is suspended subject to conditions that allows him to acquire life skills and deal with his addiction.

Result

- [13] The sentence I impose is that on the offence of reckless driving causing death Mr Finau is sentenced to 4 years and 3 months imprisonment. The final 12 months of his sentence is suspended on conditions:

(i) He will commit no offences punishable by imprisonment during the period of suspension;

(ii) He will be placed on Probation during the period of suspension and is to live where directed by his Probation Officer;

(iii) He is not to consume alcohol or any illicit drug during the period of his suspension; and

(iv) He is to undertake and successfully complete within 6 months of his release both a Life Skills and a Drug and Alcohol Abuse course with the Salvation Army or some other suitable provider as directed by his Probation Officer.

- [14] In addition to the above pursuant, to s. 29(1) of the Traffic Act I cancel Mr Finau's driver's license and disqualify him from obtaining a drivers licence for a period of 3 years from today.



A handwritten signature in black ink, appearing to be "O.G. Paulsen".

O.G. Paulsen
LORD CHIEF JUSTICE

NUKU'ALOFA: 31 May 2019