

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT KAIKOHE**

**I TE KŌTI-Ā-ROHE  
KI KAIKOHE**

**CRI-2019-027-000556  
[2020] NZDC 98**

**NEW ZEALAND POLICE**  
Prosecutor

v

**RIKO NGARUHE**  
Defendant

Date of Ruling: 8 January 2020

Appearances: Sergeant R Price for the Prosecutor  
D Owen-Tana for the Defendant

Judgment: 8 January 2020

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**RULING OF JUDGE G L DAVIS  
[ON S 106 APPLICATION]**

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[1] Riko Ngaruhe is before the Court today. He is for sentence on two charges, each charge arises out of the same event that occurred on 11 May 2019.

[2] They are, one, that he being a person in charge of a motor vehicle, caused a bodily injury to [victim name deleted], while under the influence of drink, to the extent that he was incapable of having proper control of the motor vehicle. The second charge is that he drove while he was forbidden to drive. The driving under the influence and causing injury carries with it a maximum term of imprisonment of five years and/or a fine of \$20,000, while the driving whilst forbidden charge carries with it a maximum penalty of a fine of \$10,000.

[3] The background to the offending is as follows, Riko. On 8 January 2019, you were forbidden to drive a motor vehicle because you did not have a licence. Then on 11 May at about 7 o'clock, you were driving on Cobham Road in Kerikeri. You approached a pedestrian crossing and collided with the victim who was walking across the pedestrian crossing at the time. When spoken to by the police, you showed signs of having consumed alcohol. Breath testing procedures were carried out and your breath was found to contain 332 micrograms of alcohol per litre of breath. As a result of the accident, [the victim] received injuries to her ribs, her arm, and was hospitalised. You said you had been driving your friends up to Liquorland to purchase more alcohol and you had had three or four Codys prior to driving.

[4] So those are the facts that I have to look at today, Riko. Ms Owen-Tana, on your behalf, has filed an application pursuant to s 106 Sentencing Act 2002 asking the Court that you be discharged without conviction. She has filed an affidavit in support of that and some legal submissions. The application is opposed by the police.

[5] The Court must not discharge a person without conviction unless it is satisfied that the consequences of a conviction are out of all proportion to the gravity of the offending. That is the legal test that is set out in s 107 Sentencing Act. It is described as a gateway. Every application has to make it through that gateway to be successful, and what the Courts have said is that there are three things that the Court has to look at. First, it has got to look at the gravity of the offending, the seriousness of the offending is step one.

[6] Step two is to look at what is called the direct and indirect consequences of a conviction, and step three is the balancing exercise, it is to weigh all of that up. It is a bit like scales. You are probably too young, but Mum and Mrs Pou might remember the old scales where they had two sides on them and you would put something on one side and it would go this way or that way, as the case may be, and you had to balance them all up, the old-fashioned scales, and it is a balancing exercise like that.

[7] So, the Court has to look at how serious was the offending, that goes on one side of the scales, then it has to look at the direct or indirect consequences of a conviction, that goes on the other side of the scales, and then the Court has got to

weigh it all up and see which way it tips. Conviction, no conviction, as the case may be, or it might be somewhere where it is balanced in the middle. So that is what we have to do here today.

[8] So, step one is to look at the seriousness of the offending. The summary speaks largely for itself. At the time, you were 17 years of age, you did not have a driver's licence. You also had mates in the car and you were going up to the liquor shop to get some more alcohol. At the time or before then, you had been consuming alcohol. So while your reading was not above the point at which a conviction would automatically be entered in the adult Court, you were still well above the legal limit for a person under 20. The legal alcohol limit for a person under 20 is zero, so everybody aged under 20 is not allowed to have any alcohol on their breath at all.

[9] Another factor that I need to consider in all of this is the fact that you did not have a driver's licence at the time. Now there is a separate charge for that, but in addition to that, one of the concerning aspects is you had some mates in the car. They should not have been in the car with you at all. Well, you should not have been in the car and nor should your mates, is the short point.

[10] Now why that is significant is because cars, young fellas and alcohol are a really scary mix, and I am glad that I am sentencing you today, because the alternate could have been that you could have killed yourself or your mates or the pedestrian lady on the pedestrian crossing, and then we would be asking harder questions. How did this young fella get hold of the alcohol? Where did it come from? Where was the whānau keeping an eye on him? How did he get hold of the car when he did not have a licence? These would be the questions that were being asked if somebody was killed, so we are really lucky in one sense that the questions I am having to ask today are these ones about a discharge without conviction, but we need to put this offending in another context.

[11] I also have to weigh up, in assessing the gravity of the offending, the impact that this offending has had on the victim. [The victim], as the sergeant has said, is 37 years of age and she was working over here in Kaikohe at the time. She and her partner or husband, I am not sure, have their own house. She describes her injuries, and this

is back in July last year, as long-term damage to her left shoulder. At the time, she needed to see a specialist to decide if they were going to operate on it. Unfortunately, we have not got an up-to-date report to know whether that happened or not. She got a concussion and had headaches every day since the accident, and this is about two months after the event that this report was written. She could only sit in front of the computer for a short period of time. She has got some bad grazing to her left leg and a deep gash to her upper right eye which needed to have a stone removed and she has now got a permanent scar.

[12] What she says is that she had about four weeks off work before she could go back to work on light duties. They had all planned a holiday, her and her whānau, but all her sick leave got used up. She has been on ACC the whole time, but as a result, they were short about \$150 to \$200 a week which meant her husband had to pick up extra shifts to keep the money coming in to pay the bills. Having said that, she said she does not want financial reimbursement from you.

[13] Most significantly, while there were physical injuries to [the victim], she spoke of some emotional injuries. As a result of the incident, she has had trouble sleeping and the effects on the family were hard. She has difficulty crossing the road as it triggers bad memories for her and she does not trust vehicles coming to her. She does not want you to go to jail, that is another thing that she said, but she would like you to learn a lesson from this incident. You have caused a lot of stress to her and her family that she sees and would like you to have bail conditions, this is when bail was being talked about, not to drive and not to consume alcohol. That is a really charitable response by [the victim]. I can tell you that I have seen victim impact statements for similar offences like this where people have said they want you chucked in jail and they want the keys thrown away because of the risk that you pose to the community. That is a really generous approach by [the victim].

[14] So those are all of the factors that I have to weigh up in considering how serious is this offending. Also as part of the seriousness of the offending, the Court can also look at things that you have done since the offence. What are some of the things that you might have done to address the underlying causes of your offending? Now to that extent, I note that a plan was put together with Te Mana o Ngāpuhi Kowhāo Rau where

they were really looking at a number of issues that they saw came out of your broader lifestyle, including cognitive thinking and understanding thought patterns and then general thinking through the consequences of the actions. They wanted you to work on future aspirations, including obtaining a driver's licence, restorative justice, and significantly, drug and alcohol counselling.

[15] One of the things that Te Mana have said in the period that they have been working with you, which is about three or four months over the period which you have been working with them, is that they do not believe that you fully understood or understand or think through the consequences of your actions. That, in my view, is not hugely surprising. Part of that is because at the time of this offending, you were 17 years of age. It is not uncommon for 17 year olds, particularly 17-year-old males not to think through the consequences of the actions.

[16] You will have to forgive me for the story that I am about to tell, but the best way that it was described was by a fella Haami Piripi. He is the CEO of Te Rūnanga o Te Rarawa up in Kaitaia. He came and talked to a whole lot of Judges about seven or eight years ago and he said to the Judges, and he put it the best way, he said, "Judges, you have got to understand how young Māori men in particular think, they do not think," is what he said. He said, "They do some of the dumbest stuff in the world, and when they see what has happened, they got the sorriest asses in the world," as well. Excuse the crude way with which I have put it, but I think he summed it up really, really well. It is not until it is all laid out in front of somebody's eyes that they think, "Geez, did I do that?". Very sorry, very sorry as a result, but do not actually think beforehand, "If I do this, what will happen?", but that is being 17, 17 does that. When you get to a much older and more mature thing, the years that come with that maturity allows you to think through some of those things more fully.

[17] There has been a lot of recent scientific studies done, Riko, about brain development. It used to be that people thought that a brain fully developed, fully wired up when a person reached about 25 years of age, but the brain science which started to think now that it is closer to 30 that a brain, so while a person may be physically developed, the brain takes a bit longer to grow, to mature, to develop, to wire up fully. What the brain science also says, Riko, is that when fellas are using drugs and alcohol

at a young age, it can slow that development down even more. So, if your mum is anything like my mum and used to say, “What on earth were you thinking?”, often, to put it bluntly, we were not thinking, because the brain had not fully wired itself up. So that has to be factored into it.

[18] Why I have gone through the cognitive thinking with Te Mana o Ngāpuhi Kowhao Rau and in particular the drug and alcohol sessions, which I have to say did not really get off the ground? In my view, some of that might be your fault, some of that might be the counsellor’s fault, but it has not really taken traction, is that in another report that I have, a pre-sentence report, says that one of the main drivers, one of the main causes of this offending has been your drug and alcohol use. It describes it in the following terms, that it was a major contributing factor to the offending and you are at a high risk of substance abuse, which is focused on your almost daily (self-reported) use of cannabis. With respect to alcohol, you are described as a medium risk, so they have got some real concerns about that and that is why the Court is worried that the drug and alcohol counselling had not really gotten off the ground.

[19] So when one puts all of those factors into the mix and puts them on the scales, in my view this is offending that is at a moderate level. It is not the most serious offending in the world, but equally I do not think it is minor, particularly when one weighs up the injuries sustained by the victim. That is step one.

[20] Step two is looking at the consequences of the conviction, and in fairness to Ms Owen-Tana, she really hangs her legal hat, if I can use that word, on the fact that this offending occurred in May 2019 and you were 17. If it had occurred on 11 July 2019, you would likely have remained in the Youth Court. She points out that you are at Regent Training Centre, you are about to embark on a building course, but your long-term ambition is to be an automotive mechanic of some description, and in fairness to Ms Owen-Tana, she says she cannot point to anything in particular that says if a conviction is entered, it will somehow inhibit or bring your career aspirations to a grinding halt. She says it is unlikely that an employer would use this as something to prevent you gaining employment, unless of course there is somebody who is almost exactly identical to you without a conviction. That is as far as she can pitch the consequences. What she does say, however, is that that is not surprising also because

you are a young fella, and young fellas do not necessarily have a 100 percent idea of what they are going to be doing in 20 years' time either.

[21] The police oppose the application on public safety grounds. They say that when one weighs all the factors that I have mentioned as stage one, that the offending in their view is at that moderate to low end of the scale, and when one weighs all of those factors up, the consequences of a conviction simply cannot be said to be out of all proportion to the gravity of the offending, and I agree with the police on this occasion, Riko. This is one of those instances where the offending could have been far worse than what it was. You are lucky that it was not. A young fella driving without a licence with mates has driven into somebody on a pedestrian crossing. She suffered significant injuries. I simply do not see from what I have in front of me that the consequences of a conviction are out of all proportion to the seriousness of that offending and the discharge without conviction will not be granted.

[22] What is now needed is to consider what sentence should be imposed. The sergeant very helpfully says that they are not looking to throw the book at you. They are not looking to throw you in jail or anything of that nature. There needs to be a rehabilitative focus, a need to address the drug and alcohol use. That is a significant component of any sentence, and Sergeant is quite right, all what he is saying. If you are going to be a mechanic, you have got to be drug and alcohol free because you are never going to get a job if you are turning up to work stoned or haurangi, and you are going to be driving Ms Owen-Tana's car to take on the road test, they will not let you near the place, they will throw you out. In other words, if Ms Owen-Tana takes her car in for a warrant and Riko turns up haurangi, they are not going to let you near the car is the short point.

[23] Likewise, if you follow through being a builder, they are not going to let you on the building site and say, "Riko, can you put the roof on this house today," if you are high as a kite, and that is just simply about your safety as well as everybody else's. I agree with the sergeant that one component here has to be a focus on the drug and alcohol use.

[24] So in that sense, in respect of the driving under the influence causing injury, I am going to enter a conviction on that matter and sentence you to intensive supervision for 12 months, on the basis set out in the pre-sentence report, namely:

- (a) You are to attend an assessment for drug and alcohol programmes, as directed by your probation officer, and you are to attend and complete any counselling, treatment or programmes recommended by the probation officer.
- (b) Secondly, you are to work with Corrections and Te Mana o Ngāpuhi Kowhao Rau to identify a mentor to support your rehabilitation.
- (c) And you are to attend and complete a specialist Māori cultural assessment as directed.
- (d) I am going to add in there that you are to also work to get ready to sit your driver's licence once any disqualifications are ended.

[25] In terms of punitive elements, punishment elements, the sergeant asks whether the recommendation of community detention in your case is really a punishment. What he says is that your interests appear to be staying home and watching movies and the Court would effectively be sentencing you to community detention, would be sentencing you to stay home and watch movies. I am of the view there needs to be a punitive element, but it needs to be short and it needs to be sharp to remind you of the significance of all of this.

[26] So I am going to direct that you be sentenced to community detention for a period of three months and that is to be served at [address deleted]. You are going to be on a curfew and that is going to be from 7.00 pm on a Friday to 6.00 am on a Monday. So you are locked down on the weekends, the whole weekend, which means you will not be able to get out on the Saturday to the beach with the mates and that is the punitive element I will put in place. Through the week you are allowed out. On the weekend, you are at home. The reason for that, Riko, in my view is that those Fridays and Saturday nights are the high-risk times for drunk fellas and alcohol. So I

am going to lock you down for three months [the address] from Friday at 7 o'clock to 6.00 am Monday for that three months.

[27] The other thing that I have to do, as it is mandatory, which you will be disqualified from holding or obtaining a driver's licence. That will be for a period of one year and one day, and that will begin today, 8 January 2020.

[28] There is another charge here, driving whilst forbidden, it is a fine only matter. On that charge, because I have put in place intensive supervision and the community detention, I am not going to fine you. On that one, I am going to convict and discharge you.

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Judge GL Davis  
District Court Judge

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