

COURT OF APPEAL

**SOFRONOFF P
ATKINSON J
APPLEGARTH J**

**CA No 351 of 2016
DC No 19 of 2015
DC No 20 of 2015**

MANNING, John Frederick

Applicant

v

QUEENSLAND POLICE SERVICE

Respondent

BRISBANE

TUESDAY, 18 JULY 2017

JUDGMENT

SOFRONOFF P: This is an application for leave to appeal against a decision of a District Court Judge to dismiss an appeal under s 222 of the *Justices Act* 1886. On the 14th of November 2013, the applicant was convicted of two summary offences. In summary, these were making unnecessary noise or smoke and having a defective vehicle. He was fined and disqualified from holding or obtaining a driver's licence for three months. The applicant appealed that decision on the same day. The consequence of that was that the disqualification itself was suspended pursuant to s 131(3A) of the *Transport Operations (Road Use Management) Act* 1995.

On the 23rd of May 2014, Rackemann DCJ dismissed that appeal. This had the consequence that the disqualification ordered by the learned Magistrate took effect by virtue of s 131(3B) of the Act. On the 14th of June 2014 and the 15th of June 2014, the applicant was seen driving a vehicle. He was charged with driving whilst disqualified. It is enough to refer to the facts relating to the occasion of driving on the 15th of June 2014. On that occasion he was recorded, by police in a police vehicle, driving.

At the trial of that charge the applicant did not contend that he was not driving. His main complaint in respect of that charge and, indeed, the other charge was that for a number of reasons he had been led to believe that he was not disqualified from driving on those days. He believed that the disqualification had expired. However, as the learned Magistrate correctly concluded, an error of that kind is an error of law, not an error of fact, and in particular an error about whether or not one is or is not disqualified from driving or is or is not the holder of a licence to do an act is not an error of a kind that can be relied upon as a defence under sections 23 or 24 of the *Criminal Code*; see *Ostrowski v Palmer* (2004) 218 CLR 493 at 503, paragraph 10.

For this reason, the learned Magistrate convicted the applicant and, as he had to, disqualified him from holding or obtaining a driver's licence for a period of two years. The applicant appealed this order pursuant to s 222 of the *Justices Act*, and his appeal was heard in due course in the District Court. On that appeal he re-agitated, upon a variety of bases, the same contention, namely that he did not know that he was disqualified when he committed the offence. The learned District Court judge rightly dismissed the appeal, citing *Ostrowski*.

On his application for leave to appeal to this Court the applicant seeks to re-agitate the same grounds. Pursuant to s 118(3) of the *District Court of Queensland Act 1967*, the applicant requires leave to appeal against the order of a District Court judge dismissing an appeal under s 222 of the *Justices Act*. The discretion reposed in this Court to grant leave to appeal is unfettered but it has been held in previous decisions of this Court that relevant considerations

may be constituted by the fact that a case raises for consideration an important point of law, or that a question of public importance is involved in the case, or that an appeal is necessary to correct a substantial injustice. In this particular case, if leave were granted, the applicant would wish to re-agitate his baseless case yet again. For this reason, no grounds have been shown why leave should be granted and in my opinion leave to appeal should be refused.

ATKINSON J: I agree.

APPLEGARTH J: I agree.

SOFRONOFF P: Mr Cummings, are there any cost consequences in an appeal of this kind?

MR CUMMINGS: I don't believe so, no, your Honour.

SOFRONOFF P: Anyway, you don't ask for costs?

MR CUMMINGS: No.

SOFRONOFF P: The order of the Court is that leave to appeal is refused. Adjourn the Court.

ASSOCIATE: All rise.

APPELLANT: Excuse me - - -

ASSOCIATE: The Court is adjourned.

APPELLANT: - - - your Honour. Could I get you Judges' names, please?

SOFRONOFF P: My name is President of the Court of Appeal. Adjourn the Court.