

SUPREME COURT OF QUEENSLAND

CITATION: *Allen v Kluck & Anor* [2020] QCA 19

PARTIES: **KIM CRAIG ALLEN**
(applicant)
v
MAGISTRATE PAUL KLUCK
(first respondent)
SERGEANT SCOTT PEARSON
(second respondent)

FILE NO/S: Appeal No 3038 of 2019
SC No 12661 of 2018

DIVISION: Court of Appeal

PROCEEDING: Application for Leave/Judicial Review

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 20 February 2019
(Davis J)

DELIVERED ON: 14 February 2020

DELIVERED AT: Brisbane

HEARING DATE: 20 August 2019

JUDGES: Sofronoff P and Philippides and McMurdo JJA

ORDER: **Leave to appeal be refused with costs.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW –
GENERALLY – where the applicant was charged with
summary offences under the *Transport Operations (Road
Use Management) Act 1995 (Qld)* – where the applicant
refused to submit to the jurisdiction of the Magistrates Court
– where the applicant was convicted on all charges and was
fined – where the applicant had the right to appeal to the
District Court of Queensland under s 222 of the *Justices Act
1886 (Qld)* – where the applicant applied for relief by way of
judicial review under the *Judicial Review Act 1991 (Qld)* –
where the applicant sought a declaration that the Court had
exceeded its jurisdiction and the fines and convictions were
void *ab initio* for want of prosecution – where the applicant
submitted that the prosecution failed to prove the due passing
of the *Transport Operations (Road Use Management) Act
1995 (Qld)* – whether the application was vexatious, frivolous
and an abuse of process – whether the application for judicial
review should be allowed

Evidence Act 1977 (Qld)
Judicial Review Act 1991 (Qld), s 12, s 13, s 15(4), s 48(1),
s 48(5)
Justices Act 1886 (Qld), s 222

Transport Operations (Road Use Management) Act 1995 (Qld)

COUNSEL: The applicant appeared on his own behalf
 No appearance for the first respondent
 P J McCafferty QC for the second respondent

SOLICITORS: The applicant appeared on his own behalf
 No appearance for the first respondent
 Queensland Police Service Legal Unit for the second respondent

- [1] **SOFRONOFF P:** The applicant was charged with certain summary offences under the *Transport Operations (Road Use Management) Act 1995 (Qld)*. When he appeared in the Magistrates' Court, he claimed to refuse to submit to the Court's jurisdiction. The learned Magistrate then entered a plea of not guilty to the charges and proceeded to hear the evidence. At the conclusion of the trial he convicted the applicant on all charges and fined him.
- [2] Section 222 of the *Justices Act 1886 (Qld)* provides for a right of appeal to the District Court in a case like the present one. However, the applicant instead applied for relief by way of judicial review under the *Judicial Review Act 1991 (Qld)*. The relief he sought was a declaration that "the Court exceeded its jurisdiction by moving forward without subject matter jurisdiction and/or the consent of the parties" and a declaration that "all fines and convictions related to this matter be declared void ab initio for want of lawful prosecution".
- [3] On 20 February 2019 the application came on for hearing before Davis J by way of an application on the part of the second respondent to this appeal, the police prosecutor, to strike out the applicant's application pursuant to ss 12 and 13 of the *Judicial Review Act 1991 (Qld)*. Those sections provide, relevantly, as follows:

"12 When application for statutory order of review may be dismissed

Despite section 10, but without limiting section 48, the court may dismiss an application under section 20 to 22 or 43 that was made to the court in relation to a reviewable matter because—

...

- (b) adequate provision is made by a law other than this Act, under which the applicant is entitled to seek a review of the matter by the court or another court.

13 When application for statutory order of review must be dismissed

Despite section 10, but without limiting section 48, if—

- (a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter; and
- (b) provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the

matter by another court or a tribunal, authority or person;

the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.”

- [4] The second respondent to this appeal, the applicant before Davis J, pointed to the right of appeal from a conviction conferred by s 222 of the *Justices Act* 1886 (Qld) to support his submission that the proceedings for judicial review should be dismissed.
- [5] Before Davis J, the applicant contended that the prosecution had failed to prove the due enactment of the *Transport Operations (Road Use Management) Act* 1995 (Qld). He complained that he did not have the benefit of the discovery process in relation to that issue. He argued that similar proof was required about the due passing of the *Justices Act*.
- [6] His Honour concluded:
- “Section 13 is applicable here because there is a right of appeal under section 222 of the Justices Act. The question under section 13 then is whether it is in the interests of justice to dismiss the application. It is. There is a clear right of appeal to the District court. There is no proper reasons offered as to why that was not pursued. The application for judicial review on its face is a nonsense.”
- [7] His Honour also considered the application of s 48(1) of the Act, which confers a discretion to dismiss a proceeding under the Act if the court considers that there is no reasonable basis for the application or that the application is frivolous or vexatious. His Honour concluded that there was no reasonable basis for the application for judicial review and that it was, therefore, frivolous and vexatious as well as an abuse of process.
- [8] Upon those bases his Honour dismissed the proceeding. The applicant now seeks leave to appeal that order under s 15(4) and s 48(5) of the *Judicial Review Act* 1991 (Qld).
- [9] The applicant’s notice of appeal contains 15 paragraphs but it is not necessary to examine them because, at the hearing of this application, the applicant accurately submitted that the “kernel of why we’re here” lay in the prosecutor’s failure to prove the due passing of the relevant statute. The content of the notice of appeal confirms that that is the substance of the applicant’s case. He further wishes to argue that reliance upon the *Evidence Act* 1977 (Qld) to prove the due passing of the Act (creating the offences) was itself conditional upon proof of the due passing of the *Evidence Act* 1977 (Qld). This was in keeping, he submitted, with High Court precedent that there was “no matter to be heard” because the prosecution had failed to prove that the relevant laws had been properly passed as statutes.
- [10] It is enough to have described the nature of the applicant’s proceeding in that summary way to demonstrate that Davis J was undoubtedly right to conclude that the proceedings were vexatious, frivolous and an abuse of process and, for those reasons, should be dismissed. Leave to appeal should be refused with costs.

[11] **PHILIPPIDES JA:** I agree with Sofronoff P.

[12] **McMURDO JA:** I agree with Sofronoff P.