SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

[2005] QSC 220

FRYBERG J

No BS3197 of 2005

NOEL TURNER	Applicant
and	
THE REGISTRAR STATE PENALTIES ENFORCEMENT REGISTRY ("SPER")	Respondent

BRISBANE

..DATE 11/08/2005

ORDER

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HIS HONOUR: This is an application for an order quashing and setting aside the decision of the respondent to issue an enforcement order under the State Penalties Enforcement Act 1999 against the applicant and further for an order directing the respondent to refrain from taking all further action of every description for the recovery of a fine imposed on the applicant.

The evidence discloses that in 1978 when Mr Turner was 39 years of age he was prosecuted in the Magistrates Court on one charge of unlawful possession and another of disobeying police. I think I may take judicial notice of the fact that around that time there were numerous such protests and that the use of the Traffic Act to suppress them was a matter of public debate. Mr Turner appeared at the Magistrates Court on 23 November 1978 and pleaded not guilty to both charges. He was, however, convicted and was fined $30 on each charge.

He instructed his solicitor to appeal and it seems that appeals were filed on 22 December 1978. I assume that that had the effect of staying the enforcement of the fines. Notwithstanding that, warrants of commitment upon conviction for penalty in the first instance were issued on 27 December 1978 in respect of the convictions.

In May 1979, two police officers called at the applicant's home to enforce one of the warrants, warrant number C150665. They did not have the warrant C150666 which had been issued in respect of the offence of disobeying a police direction

because that warrant had been recalled when it was realised that notices of appeal had been lodged. It may be that, in fact, both warrants had been recalled and warrant C150665 re-issued, but this is not altogether clear. In any event, warrant C150666 remained in the Magistrates Court Registry until November 1979 and was therefore not the one in respect of which police were acting at the time they went to Mr Turner's home in May.

As he was entitled to do, Mr Turner gave the police officers $30 in satisfaction of the fine in respect of which the only warrant they had with them was issued. He has deposed, without contradiction, that he asked them if the matter was thereby completed, and was told yes.

Mr Turner has deposed that he thought that discharged his obligations regarding the "matter". It is not clear whether, by the word "matter", he means both fines or only one.

The position then was that there was outstanding the fine of $30 for disobeying a direction and in late 1979 the warrant in respect of that fine was reissued.

It is unnecessary to detail the subsequent correspondence which occurred regarding the matter. Unsurprisingly no one seems to have been very interested in enforcing the fine over the years and until relatively recent times.

In 1999 Parliament passed the State Penalties Enforcement Act and to give effect to that Act a computerised system for enforcement of penalties was established.

To centralise an enforcement of fines the Act provided for Registrars of Courts or appropriate Court officers to notify the Registrar appointed under the State Penalties Enforcement Act 1999 of outstanding fines and that was done by a computer transaction which took place in 2001. Thereafter the matter was revived. The SPER computer showed that there was an outstanding fine and Mr Turner was notified.

He appears to have become somewhat irritated by this latest notification, perhaps understandably. It was, by the time he received it, some 24 years after the offence was committed and the fine imposed.

Correspondence has ensued between Mr Turner or his solicitors and various government authorities but no resolution has been reached. That is so notwithstanding that Mr Turner was told that no action would be taken to enforce the notice which had been created under the Act and given to him and that a review was in progress (by implication to change the provisions of the Act in cases such as his).

At some point Mr Turner seems to have become confused between the enforcement notice, which was issued under the new Act, and the warrant, which was outstanding from 1978. That confusion was best exemplified when, in the proceedings before

me, the respondent through his counsel offered undertakings that he would take no action under s 52 of the SPE Act particularly under s 52(2) of the Act. That would have meant that the enforcement notice had no practical effect save in the unlikely event that the court relieved him of the undertakings. That however was not enough for Mr Turner because he continued to be agitated by the existence of the warrant.

When it was pointed out that the relief sought in his present application for judicial review would not affect the warrant his counsel applied for leave to amend the application and to seek an order that was apparently designed to have an effect upon the warrant. That application was promptly withdrawn when the question of the correct parties was raised - the warrant, of course, having been issued by the Registrar or Clerk of the Magistrates Court not the present respondent and having been directed to officers of the Police Service.

Since Mr Turner was unwilling to accept the undertakings proffered on behalf of the respondent I must now deal with the application for judicial review. I note the submission on behalf of the respondent that there is no right to judicial review of the decision as sought in the application because of the provisions of s 155 of the SPE Act.

In response to that submission, Mr Ryan on behalf of Mr Turner, submitted that ss 155(2) and (3) could not prevent the Court from having jurisdiction in relation to a decision which

was not authorised by the SPE Act because it could not be said that such a decision was one made "under" s 38 within the meaning of s 155(1)(c)(i).

It was also pointed out that in any event the exclusion provided by s 155 is only in relation to Parts 3 and 4 of the Judicial Review Act and it would be possible in the present case to treat the matter as one where the application could be dealt with under Part 5 of the Judicial Review Act pursuant to Rule 569 of the Uniform Civil Procedure Rules. I am prepared to assume that one or another or both of those arguments is correct and to proceed to deal with the matter.

Next it was submitted on behalf of the respondent that whatever provision one looked at, Part 3 or Part 5, the application was brought out of time. That is true but Mr Ryan, on behalf of Mr Turner, sought an extension of time to bring the application. No prejudice is suggested on the part of the respondent and although there are a number of other considerations which might affect the decision on an extension, I propose to proceed on the assumption that if there be merit in the argument advanced on behalf of Mr Turner, time may be extended to the extent necessary to deal with the matter. I do so without passing upon the merits of the extension or exercising my discretion in relation to it.

The question then is whether or not the decision under review was unlawful. Mr Ryan submitted that the requirements of

s 34(2) of the SPE Act were not satisfied with the consequence that the Registrar was not entitled by s 38 to make the enforcement order which was made under that section. He submitted that when a warrant was issued by the Magistrates Court it had the effect of converting the fine into a penalty and for a reason which I did not understand it thereby ceased to satisfy the requirements of s 34(2).

This magical transformation was said to have occurred under s 165 of the Justices Act as in force at the time the warrant was issued. That section provided that a warrant might be issued in a number of circumstances. One was where a decision requiring payment of a penalty was made. Another was where the decision requiring payment of a sum of money, or costs, was made. There was another still which is not material at the present.

Those conditions, if they existed, authorised either the imposition of a period of default imprisonment by the Court, or the actual imprisonment in accordance with the section of the individual concerned, in the circumstances stated in the section.

The section is not an easy one to interpret, having been written in the style of the 11th year of the reign of Queen Victoria. Whatever meaning one may give to some of the more obscure parts of it, however, there is, in my judgment, no way it can be regarded as having the effect of taking the order of

the Magistrates' Court beyond the purview of s 34(2) of the SPE Act.

The next argument advanced on behalf of Mr Turner was that s 171 of the SPE Act made it clear that there could be no proceedings under the SPE Act while the warrant remained outstanding. As I understood the argument, it accepted that s 171 could not apply in the present case because it relates only to the situation where there is a warrant issued in circumstances dealt with by Part 10 of the Act. In particular, reference was made to s 167 where clearly the section deals with the case of an infringement notice offence under the Justices Act, or a situation of non-payment of a fine imposed under the Penalties and Sentences Act, but not the case of non-payment of a fine imposed under the Justices Act.

There is a reasonable argument for the view that the other provisions of Part 10 deal only with those two cases and that s 171(1), in particular, deals with what is to happen before the end of the amnesty period referred to in s 171(2).

As best I could understand it, the submission was that in the absence of an equivalent provision to s 171 which did cover the case, there would be no provision for the recall of the warrant.

That being so, there would be two enforcement processes operating at once: the warrant issued in 1978 and reissued

subsequently, and the processes under the SPE Act. That was a result which, it was submitted, was one which could not have been the intention of the Parliament, with the consequence that it must be inferred that it was not intended that the SPE Act, particularly s 34 and s 38 would cover the case.

I do not think that the submission can possibly succeed. Apart from anything else, even in the cases that are dealt with, s 171 provides that the Registrar "may" recall a warrant, not that he must do so. Moreover, there is no reason why the two enforcement regimes should not co-exist and, indeed, there is some support in the Penalties and Sentences Act for the idea that they are intended to co-exist. It follows, in my judgment, that the attempt to show that the enforcement notice was unlawfully issued fails.

I am not satisfied that the respondent lacked the authority to issue it. I do not accept that a belief of the applicant that he had discharged it, even if true, is relevant, and there is no basis of discretionary relief because the matter is harsh and oppressive.

It follows, in my view, that the application should be dismissed.

...

HIS HONOUR: The respondent seeks costs and in the ordinary course costs should follow the event. The applicant opposes

the order for costs on the grounds variously that the respondent has suffered no prejudice, that the matter has been around for a long time, that it would be unfair and that it should not be done.

The matter has not been around for a long time. The application was filed on 19 April 2005 and the applicant has pressed it in the teeth of statements that no further action would be taken on the enforcement order. That, in a perhaps slightly ambiguous way, was conveyed to him in a letter dated 20 April, the day after the application was filed, and reinforced in another letter of 3 June where the matter was put reasonably clearly.

The applicant has, even today, refused to accept undertakings which would have, in my view, given him far more than he has in fact achieved by refusing them and pressing on with the application. Costs are not to be awarded simply in accordance with a particular judge's sense of fairness but rather in accordance with the principles that have been enunciated over many years. The main principle involved is that costs should follow the event. I am prepared to accept that given the time lapse and the circumstances to which I have referred in my reasons, it was perhaps not unreasonable for the applicant to initiate the application but certainly I do not think the matter should have been continued past his receipt of the letter exhibit DMcK4 of 3 June.

Consequently I order that the applicant pay the respondent's costs of and incidental to the application incurred on or after 5 June 2005 to be assessed.
