SUPREME COURT OF QUEENSLAND

CITATION:	*Reid v Queensland Police Service* [2011] QCA 122
PARTIES:	**REID, Alexander Ronald** (applicant) **v** **QUEENSLAND POLICE SERVICE** (respondent)
FILE NO/S:	CA No 208 of 2010 DC No 85 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Cairns
DELIVERED ON:	10 June 2011
DELIVERED AT:	Brisbane
HEARING DATE:	27 May 2011
JUDGES:	Fraser and Chesterman JJA and Jones J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal refused**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – GENERALLY – where the applicant was found guilty in the Magistrates Court of riding a bicycle without an approved bicycle helmet – where the applicant's appeal to the District Court was struck out for want of prosecution – where the applicant argued that he was prejudiced by a disability and lack of legal representation, that wearing an approved bicycle helmet would expose him to skin cancer and brain damage, and that the requirement to wear a helmet was inconsistent with other State legislation and international law obligations and was "unconstitutional" – whether leave to appeal should be granted *District Court of Queensland Act* 1967 (Qld), s 118 *Transport Operations (Road Use Management – Road Rules) Regulation* 2009 (Qld), s 256(1) *Workplace Health and Safety Act* 1995 (Qld), s 3(2), s 9, s 11
COUNSEL:	The applicant appeared on his own behalf R W Griffith for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** On 31 March 2010 the applicant was found guilty in the Magistrates Court and fined $300 for an offence of riding a bicycle whilst not wearing an approved bicycle helmet. On 8 April 2010 the applicant filed a notice of appeal against his conviction to a District Court Judge pursuant to s 222 of the *Justices Act* 1886 (Qld). On 31 May 2010 the applicant was sent a notice of the respondent's application to strike out the appeal. The matter was mentioned in the District Court on 16 June 2010. The transcript of that hearing records that the primary judge informed the applicant that the matter was set down for hearing on 16 August 2010 at 9.15 am. The Registrar also wrote to the applicant on 16 June 2010, at the address shown in the applicant's notice of appeal to that Court, advising the applicant that the matter would be heard at 9.15 am on 16 August 2010.

[2] The applicant did not appear at the hearing of his appeal in the District Court. The primary judge held that there was no merit in the appeal and struck it out.

[3] The applicant has now applied for leave to appeal to this Court pursuant to s 118 of the *District Court of Queensland Act* 1967 (Qld). That application should be refused because there was no arguable error in the decision of the primary judge.

[4] Much of the applicant's address in this Court was devoted to his contention that he was prejudiced because he suffers from a disability affecting his short term memory, and because he was unable to secure legal representation. Regrettable as those matters are, they do not provide any basis for finding that the primary judge was wrong in concluding that there was no merit in the applicant's appeal.

[5] The applicant also contended that he could not be found guilty of the offence because the use of an approved bicycle helmet would expose him to an increased risk of developing skin cancer as well as an increased risk of suffering brain damage in the event of a serious accident. This argument lacked evidentiary support. At the trial in the Magistrates Court, the prosecution called one witness, a police officer. She gave evidence that she saw the applicant riding a bicycle on a public street wearing only a straw hat on his head, and that the applicant did not have a medical exemption to excuse him from wearing a bicycle helmet. The applicant did not take advantage of his rights, clearly explained to him by the Magistrate, to cross-examine the police officer, to give evidence or to call witnesses.

[6] In any event, proof of any such matter would not have defeated the prosecution case. The applicant argued that s 256(1) of the *Transport Operations (Road Use Management – Road Rules) Regulation* 2009 (Qld), which created the offence, was inconsistent with the *Workplace Health and Safety Act* 1995 (Qld). The latter Act had no potential application because there was no suggestion that the applicant was a "worker" or in a "workplace" as defined in s 11 and s 9 of that Act respectively. Furthermore, s 3(2) of that Act provides that it does not limit the application of the *Transport Operations (Road Use Management) Act* 1995 (Qld) (or any regulations made under it).[1]

[7] The applicant also argued that s 256 was inconsistent with a United Nations covenant to which Australia was signatory and was for that reason "unconstitutional in Australia", but he did not refer to any law of the Commonwealth with which s 256 might arguably conflict.

[8] The primary judge correctly concluded that the applicant's appeal to the District Court had no merit. An appeal to this Court would therefore be futile.

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1 See *Acts Interpretation Act* 1954 (Qld), s 7.

[9] The application for leave to appeal to this Court should be refused.

[10] **CHESTERMAN JA:** I agree with the order proposed by Fraser JA for the reasons given by his Honour.

[11] **JONES J:** I have read the reasons of Fraser JA. I respectfully agree with those reasons and the order proposed.