

SUPREME COURT OF QUEENSLAND

CITATION: *McIntosh v Winston* [2011] QCA 209

PARTIES: **McINTOSH, Adan Joshua**
(applicant)
v
WINSTON, Glen Robert
(respondent)

FILE NO/S: CA No 326 of 2010
DC No 2491 of 2008

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 26 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 12 April 2011

JUDGES: Margaret McMurdo P, Atkinson and Peter Lyons JJ
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for an extension of time for leave to appeal refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where the applicant was found guilty in the Magistrates Court of unlicensed driving, obstructing police and failing to stop a vehicle for prescribed purposes – where the applicant applied for an extension of time to appeal to the District Court – where those applications were heard and determined – where the applicant did not provide a satisfactory explanation for the lengthy delay in filing his application for leave to appeal from the decision of the District Court judge – whether the applicant has any prospects of success on appeal – whether it is in the interests of justice to grant an extension of time

District Court of Queensland Act 1967 (Qld), s 118
Justices Act 1886 (Qld), s 222
Police Powers and Responsibilities Act 2000 (Qld) (Reprint 4K), s 444(1)
State Penalties Enforcement Act 1999 (Qld) (Reprint 1E), s 4, s 7, s 8, s 9, s 14, s 22, s 28, s 29, s 31, s 33, s 34, s 38, s 40, s 41, s 105, s 106, s 157
Transport Operations (Road Use Management) Act 1995 (Qld) (Reprint 7A), s 78(1), s 78(3)

COUNSEL: The applicant appeared on his own behalf
D R Kinsella for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **MARGARET McMURDO P:** The applicant was found guilty after a trial before Magistrate Nunan on 22 February 2007 of unlicensed driving and obstructing police on 3 July 2006. He was fined \$150 on each count, in default two days imprisonment. On the first count he was also convicted and his driver's licence was disqualified for one month. On the second count, no conviction was recorded. Arising out of the same incident on 3 July 2006, he was also charged with failing to stop a vehicle for prescribed purposes. He was found guilty of that offence by Magistrate Kluck on 17 July 2007¹ at Brisbane when he failed to appear. He was convicted and fined \$450 and ordered to pay \$67.90 costs of court in default 10 days imprisonment and given 28 days to pay.
- [2] The applicant applied for an extension of time to appeal to the District Court under s 222 *Justices Act* 1886 (Qld) from the two convictions and the finding of guilt together with the resulting sentences. His application from Magistrate Nunan's orders was 15 months out of time. His application from Magistrate Kluck's orders was also out of time. Those applications were heard and determined in the District Court on 6 January 2009. The application for an extension of time to appeal from Magistrate Nunan's order was refused with no order as to costs. The application for an extension of time to appeal from Magistrate Kluck's order was granted and the appeal was allowed to the extent that the \$450 fine was set aside and instead he was fined \$100. The judge made no order as to the costs of the appeal.
- [3] The applicant did not file any application for leave to appeal to this Court from the District Court judge's decision under s 118(3) *District Court of Queensland Act* 1967 (Qld) until 24 December 2010, about 22 months out of time. The long delay has had the result that some exhibits tendered before Magistrate Nunan are unable to now be found.
- [4] If granted leave to appeal, his grounds of appeal would be: failure to award costs; failure to give due consideration to material evidence; failure to comply with the legislated requirements of a District Court judge; failure to comprehend basic evidence as presented; and failure to recognise the relevant legislation.

Reason for delay

- [5] The applicant made the following assertions to this Court by way of explanation for the extraordinarily long delay in attempting to progress his appeal rights:
- "Due to a lengthy illness the [applicant] was not in reasonable health to be able to submit this appeal in a more timely manner. It should be stressed that irrespective of any delay to the [applicant's] health, it is in the interests of justice for this appeal to be heard given that the conviction is wrongful and based solely on a clerical error by the

¹ The applicant's traffic history records 17 July 2007 and the District Court judge's order refers to this occurring on 17 July 2007 but the transcript before Magistrate Kluck states it occurred on 17 July 2008. It seems like the transcript is wrong.

Magistrates Court. Without this error, no conviction would have been possible. The [applicant] has suffered immense hardship due to this injustice, far beyond that provided by law for infringement itself; from not being able to insure a car, to great financial and psychological burden. No person should be convicted without trial or presumed guilty and had to prove their innocence which is exactly what has happened in this instance.

Thus this appeal should be allowed in the interests of justice and with due consideration of the [applicants] health."

- [6] The applicant has provided no evidence to support his claim of a lengthy illness. He has not provided any satisfactory explanation for the long delay in applying for leave to appeal to this Court. The offences of which he was convicted or found guilty and now wishes to challenge on appeal were minor traffic offences. He was late in his appeals to the District Court. Some key exhibits from the principal Magistrates Court trials have been lost. Neither these matters, nor the public interest in the finality of litigation, favour the granting of an extension of time to appeal to this Court. Even so, this Court would not necessarily refuse the application for an extension of time to apply for leave to appeal if it was clearly in the interests of justice. It is therefore desirable to understand something of the applicant's grievances before determining his application for an extension of time.

The Magistrates Court hearing before Magistrate Nunan

- [7] The applicant, who was self-represented, indicated to Magistrate Nunan that he was pleading not guilty to the offences of driving without a licence under s 78(1) and s 78(3)(f) *Transport Operations (Road Use Management) Act 1995 (Qld)*² and obstructing a police officer under s 444(1) *Police Powers and Responsibilities Act 2000 (Qld)*.³
- [8] The police prosecutor stated that the corroborating police officer was unavailable as she was having surgery and he handed up a medical certificate to that effect.
- [9] The first prosecution witness was police officer Jesse Lee, who gave the following evidence. On Monday, 3 July 2006, he was working from 11.00 pm to 7.00 am with Constable Janine McLeod. At about midnight, they were in a police car on Gympie Road near Webster Road, Aspley. He saw a person on a motorbike in the carpark of the Apex toilet block where there was sometimes unlawful activity. The police officers drove around the park. In a side street, he saw the motorbike again. It had no visible registration plates. He lost sight of it for a while. When he next saw it, he activated the lights and siren on the police car and accelerated to pursue it. The police officers came to within about 20 metres of the motorbike and continued to follow it through side streets. The motorbike struggled travelling up a hill and they came within 10 metres of it. He saw the driver look over his shoulder at the police car which still had its lights and siren activated. The motorbike was travelling between 60 and 70 kph. They followed it into the driveway of 28 Haverling Street. The rider got off and looked at the police vehicle. He ran towards a small gate which he jumped. The police officers followed but were unable to locate him.

² Reprint 7A as in force 3 July 2006.

³ Reprint 4K as in force 3 July 2006.

- [10] After about 10 minutes a male came out of the house and enquired what was happening. Police officer Lee asked if he was the rider of the motorbike. He responded, "Yes", and identified himself as the applicant. Police officer Lee activated his electronic recording device and obtained the applicant's details.
- [11] The tape recorded conversation between the police officers and the applicant was played in court. Magistrate Nunan noted that it did not "seem to be coming out very well". No transcript of the recording had been made. The prosecutor again attempted to play the tape but again noted that it did not appear to be very clear, to which the magistrate responded, "That's an understatement."
- [12] The prosecutor elected not to rely on the tape-recording and instead asked police officer Lee to give his recollection of the conversation. In addition to his evidence of the conversation already given, police officer Lee added that the applicant admitted that he was the driver of the motorbike. The police conducted an alcohol breath test which, it can be inferred, gave a negative result. The applicant said that he did not see the lights or hear the siren on the police car and was unaware they were following him or wanting him to stop. By way of explanation, he added that the motorbike was noisy. The police asked him if there had been an accident or any emergent reason for him not stopping. He replied that he rode the motorbike to obtain some paperwork for a friend in England who had a job interview, but he agreed that there was no life endangering emergency.
- [13] Police next undertook computer checks which revealed that the applicant was unlicensed and "SPER⁴ suspended". They asked him if he had a Queensland driver's licence. He stated that he had a Queensland driver's licence but it was "SPER suspended". He produced a current Canadian driver's licence. Police officer Lee issued the applicant with a notice to appear for obstructing police, unlicensed driving whilst "SPER suspended" and three traffic infringement notices for driving an unregistered vehicle, driving a vehicle whilst uninsured, and failing to stop for a prescribed purpose.
- [14] The applicant cross-examined police officer Lee. During that exchange, the applicant made clear that he was not challenging the fact that he was driving the motorbike that night. He also made clear that he had admitted to police that he had been notified of his SPER suspension beforehand. Police officer Lee agreed that it may have been a cool night, perhaps seven degrees as the applicant suggested, and that the applicant as driver of the motorbike may have been cold. Police officer Lee also conceded that it was possible that the applicant did not hear the siren because of the noise from the motorbike.
- [15] The applicant consented to the tendering of two certificates relating to "SPER's dealings with the [applicant]" under s 157 *State Penalties Enforcement Act 1999* (Qld)⁵ which constituted evidentiary proof of their contents (ex 2). It seems these exhibits were returned to the Magistrates Court after the District Court appeal and have been misplaced or destroyed.
- [16] The prosecution next called Melvin Van Creasy, a compliance enforcement officer with the State Penalties Enforcement Registry (SPER), who gave the following evidence. On 15 May 2006 at 11.58 am, he spoke to a person at 28 Havering Street,

⁴ State Penalties Enforcement Registry.

⁵ The relevant portion of s 157 are set out at [48] of these reasons.

Aspley, who identified himself as Adan McIntosh. Mr Creasy remembered the unusual name. He first tried to have the applicant comply with the SPER order and pay his fines in cash. He next explained that the applicant could participate in an instalment program and make piecemeal payments through Centrelink. The applicant refused to either pay cash or enter into an instalment program. Mr Creasy explained that the applicant's driver's licence was suspended because of the SPER order and that it would remain suspended until he complied with the order. Once he had complied and signed the necessary papers, his driver's licence suspension would be lifted immediately. Mr Creasy explained to the applicant that if he was driving whilst suspended and stopped by police he would be charged with not having a driver's licence because of his SPER suspension. This would result in an additional fine and a further suspension of the driver's licence. The applicant still refused to pay his SPER fines.

- [17] The applicant cross-examined Mr Creasy about the accuracy of the SPER information about his traffic history. Mr Creasy stated that to the best of his knowledge it was accurate. The offences listed under the SPER order were failing to stop vehicle number 566 GHN for an amount of \$555, registered with SPER on 29 August 2003; a passenger 16 years failing to wear a seatbelt in vehicle number 652 ECC for \$210, registered with SPER on 14 January 2004; exceeding the speed limit by more than 13 kilometres but less than 20 kilometres per hour in vehicle number 507 ICV for \$494, registered with SPER on 11 February 2004. Mr Creasy added that this last offence was "the one which [the applicant's] licence was suspended on".
- [18] The applicant showed Mr Creasy a letter and asked him to read out the last paragraph. The transcript records that the witness complied by reading out the following:
"On the 16th May 2006 the error was noted and the fine was recalled from the State Penalties Enforcement Registry whereupon the fine was revoked on the 17th of May 2006 finalising this matter."⁶
- [19] The magistrate looked at the letter which was dated 16 February 2007 and verified that Mr Creasy had read it out correctly, adding:
"... but it does not have ... any other matching infringement orders or numbers ... [s]o I cannot say that what he has here is what I have on my sheet."
- [20] The magistrate asked Mr Creasy if he recalled whether the fine referred to in the letter related to one of the three offences under the SPER notice which he had given to the applicant. Mr Creasy agreed that this was possible but he was unsure without further investigation. Mr Creasy confirmed that when he notified the applicant of the SPER suspension, he did not challenge the amounts owing under SPER or tell him of any problems with those amounts.
- [21] After, the prosecution closed its case, the applicant submitted that he had no case to answer as his licence had been suspended in error. The magistrate rejected that submission as the applicant had not challenged the suspension with Mr Creasy or police officer Lee. Even if there had been an error, until the error was reversed the licence was still suspended. The magistrate was satisfied that the applicant had a case to answer on both charges.

⁶ Transcript, 22 February 2007, 30.

- [22] The applicant gave the following evidence in his case. On 3 July 2006, he needed to obtain some information and urgently email it to a friend who was overseas. He used his only available transport, his motorbike. He knew he should not be on the road as his motorbike was a "dirt bike" and was unregistered. At one point, he noticed a police car behind him but was not aware that it was pursuing him. His hearing was affected by the noise from his motorbike's loud exhaust, and he was wearing a helmet. The fact that the police followed him to his house showed that he was not trying to evade them. When he stopped at his house he was cold and may have hurried inside; he was only wearing shorts. Later he saw police cars at his residence. He went outside and asked what was wrong. He told them that he was the rider of the motorbike.
- [23] About six weeks earlier a SPER officer told him that his licence was suspended. There were three offences listed. The first was a failure to stop but that was dismissed by a court a few years earlier. The second was a speeding ticket but he was not in Australia at the time it was issued. The third was for failing to wear a seatbelt; he had elected to challenge that in court and it was to be heard later in 2006. He knew there were irregularities or problems with this SPER suspension, and the next day telephoned and verified that there was a mistake in the failing to stop charge. He was told that "they'd take care of that". As to the speeding ticket, he was told that, even though he was out of Australia when it was issued, because some years had passed, unless he could provide a statutory declaration from the driver, he could not now challenge it. The seatbelt offence had already been heard in his absence, but as he was not notified of the hearing date, he was able to have it re-opened. That charge, too, was due for hearing later in 2006.
- [24] In cross-examination, he maintained that he was unaware that police were following him as he returned to his home on the motorbike on 3 July 2006. He took a route that may not have been the quickest but it was the most convenient for him as he was not a confident rider. He insisted that he did not see any flashing lights or hear the police siren and that he ran inside his house because he was cold. He wanted to warm himself in front of the heater. He remembered Mr Creasy told him that his licence was suspended about a month before this incident. He agreed that he may have told Mr Creasy, "I don't care, I'm not going to pay". The magistrate asked him if this was the first notice he had that his licence had been suspended. The applicant responded:
- "That's right, your Honour. I didn't know until that point. The 2 notices that SPER had sent had been sent while I was out of the country ... in early 2004. So I just – I didn't get them. Whether my dad may have forwarded them on, he may have not have, I'm not sure. But I did not receive them."
- [25] He added that he was absent from Australia from December 2003 until May 2004 and then from February 2005 until about February 2006. His SPER suspension was presently lifted but he did not know why as he had not paid any fines. He apprehended that matters had "finally been transferred out of SPER". He had returned to Australia only a little over a month ago, having left Australia again just two weeks after being charged with the July 2006 offences. He claimed he had sent a payment for two of the fines issued under SPER and had asked for a court hearing in respect of the third. He subsequently wrote to various Magistrates Courts seeking to challenge some of the traffic convictions entered against him.
- [26] The applicant did not call any witnesses or tender any exhibits.

- [27] Magistrate Nunan found as follows. Police officer Lee was an impressive witness who made fair concessions. His Honour preferred police officer Lee's account of events to that of the applicant whose evidence about not hearing or seeing the police vehicle following him was implausible. The magistrate was satisfied beyond reasonable doubt that the applicant, not thinking clearly, had hoped to get away from police and in the process had obstructed them. As to the charge of unlicensed driving, the applicant had a Queensland licence that was SPER suspended so that he could not drive on his Canadian licence: see s 105 and s 106 *State Penalties Enforcement Act*. The applicant claimed that he should not have been SPER suspended because three of the entries in his traffic history should not have resulted in fines. After being told on 15 May 2006 that his licence was SPER suspended, the next day he contacted the Magistrates Court and arranged for a hearing in respect of one fine which was re-opened, and eventually that charge was dismissed. Nevertheless, the applicant should not have been driving the motorbike on 3 July 2006. He may have been in the process of having the suspension lifted on 3 July 2006 when apprehended by police. But he was obliged to obey the suspension, and until it was lifted he was not entitled to ride or drive a motor vehicle in Queensland. He found the applicant guilty of both counts.
- [28] His Honour refused the prosecutor's application for a costs order in respect of Mr Creasy's witness expenses. As the applicant was a student spending much of his time in Canada, the magistrate fined him \$150 on each count, in default two days imprisonment and did not record a conviction for the offence of obstructing police.

The Magistrates Court hearing before Magistrate Kluck

- [29] The applicant did not appear at the hearing before Magistrate Kluck for the charge of failing to stop the motorbike. The magistrate noted that the fine on a ticket issued for this offence was \$450, and that service was proved. He convicted and fined the applicant \$450, ordered him to pay \$67.90 costs of court, in default 10 days imprisonment with 28 days to pay.

The District Court application for an extension of time to appeal

- [30] The application for an extension of time to appeal to the District Court from the order of Magistrate Nunan was many months out of time. The application for an extension of time to appeal from the order of Magistrate Kluck was also out of time. Both applications were heard together on 6 January 2009 and the applicant was again self-represented.
- [31] The applicant submitted that he should be permitted to give technical evidence about the noise levels of his motorbike as compared to the noise levels of a police siren. He could also give technical evidence about the power of his motorbike as compared to the power of a police car, relevant to his motorbike's ability to accelerate away from a police car. The judge refused his application to adduce further evidence, noting that the evidence was not in proper form.
- [32] The judge gave succinct *ex tempore* reasons. His Honour noted that all three charges arose out of the one incident. The applicant argued that the SPER suspension of his licence was invalid. He contended that he should have been permitted to rely on a taped conversation he had with the police officers which the prosecution did not tender at the Magistrates Court hearing. The applicant argued that a conviction would detrimentally impact on his ability to travel overseas.

- [33] The judge noted that Magistrate Nunan preferred the police officer's evidence to that of the applicant. His Honour "could well understand" that the magistrate found the applicant's account implausible.
- [34] The judge rejected the applicant's contention that, because some of his traffic history was wrongly recorded, the SPER suspension of his licence was invalid at the time of the offences on 3 July 2006. The SPER suspension was valid until set aside and it had not been set aside on 3 July 2006. It followed that the applicant had no right to be driving on 3 July 2006 and no right to now complain about the resulting finding of guilt by Magistrate Nunan.
- [35] The judge found that, even though the applicant was self-represented, there was no unfairness arising from the fact that the tape recording of the conversation between the applicant and the police officers was not tendered at trial. He could have raised the issue at trial but did not.
- [36] The judge concluded that, as the applicant's proposed appeal against Magistrate Nunan's orders had no merit, that application for an extension of time should be refused.
- [37] The judge then dealt with the application for an extension of time to appeal against Magistrate Kluck's order, noting that he had already dealt with the matters which were common to the appeal against Magistrate Nunan's orders. Magistrate Kluck's decision was a lawful *ex parte* order. But the applicant's appeal against the sentence imposed by Magistrate Kluck had some merit. The \$450 fine was excessive. Had the matter been before Magistrate Nunan with the other matters, he would not have imposed such a heavy fine. Magistrate Nunan rightly adopted a lenient approach in the circumstances. Had Magistrate Kluck been aware of the reasons for Magistrate Nunan's approach, he was unlikely to have imposed such a heavy fine. A \$100 fine should be substituted. Magistrate Kluck's order should be otherwise confirmed.
- [38] The judge considered that there should be no order as to costs either from the application for an extension of time to appeal from Magistrate Nunan's orders or in respect of the applicant's partially successful appeal from Magistrate Kluck's orders.

The applicant's contentions in this application

- [39] At the hearing in this Court, the applicant handed up a copy of the letter from the Department of Justice and Attorney-General, addressed to the applicant at 28 Havering Street, Aspley, which seems to have been that referred to in the hearing before Magistrate Nunan.⁷ It was in the following terms:

"16 February 2007

Dear Sir,

RE: FAIL TO STOP VEHICLE ON 26/03/02 AT STAFFORD

A complaint of Failing to stop a vehicle on the 26th March, 2002, at Stafford, was made against Adan Johusa McINTOSH in this Court.

It was dealt with in the defendants absence on the 5th November, 2002, and a fine was ordered in the sum of \$450.00 with costs of \$61.35.

⁷ See [18]-[19] of these reasons.

An application was made to rehear the matter which was granted on the 29th November, 2002.

The matter was listed for a hearing on the 27th May, 2003, where no evidence was offered by the prosecutor and the charge was dismissed.

This office then incorrectly reinstated the fine instead of revoking it on the 27th August, 2003.

The fine subsequently was forwarded to the State Penalties Enforcement Registry as it was outstanding and was received there on the 29th August, 2003.

Yours faithfully

R.A. Ward
Clerk" (errors in the original)

- [40] A copy of the applicant's traffic history as at 14/02/2012 was also handed up. It contained the following entries relevant to the SPER suspension about which Mr Creasy gave evidence:

OFFENCE/ ACTN DATE	DESCRIPTION/ COURT	DETAILS	RESULT DATE	RESULT
26/03/2002	FAIL TO STOP VEHICLE FOR PRESCRIBED PURPOSE – PRIVATE VEHICLE BRISBANE MC		27/05/2003	NO EVIDENCE OFFERED
...				
13/12/2002	PASSENGER => 16YO FAIL TO WEAR SEAT BELT BRISBANE MC CONVICTED AND FINED		02/12/2003 14/08/2007	\$105.00 I/D 3 DAYS IMP APPEALED – Rehear Prev Decis Set... Aside Set for Ment
31/12/2002	SPER SUSPENSION LIFTED			
10/12/2003	EXCEED SPEED LIMIT IN SPEED ZONE BY AT LEAST 13KMH NOT MORE 20KM/H SPER MC	3 PTS	11/02/2004	\$150.00
01/05/2004	SPER SUSPENSION APPLIED			
...				
24/01/2007	SPER SUSPENSION LIFTED			

- [41] The applicant's contentions in this application may be summarised as follows. The SPER suspension had no basis in law and there was no authority to implement it. The prosecution acted improperly in not providing him with his own copy of the tape recorded conversation he had with police officers well before the hearing before Magistrate Nunan. He was disadvantaged by the fact that the tape recording was not tendered and played at the trial before Magistrate Nunan. The applicant should have been permitted to call further evidence about the noise levels of his motorbike compared to the noise levels of a police siren. He had been assumed guilty and the onus was wrongly placed on him to prove his innocence. The judge failed to understand the facts of his cases and to acknowledge the problems in the *ex parte* hearing before Magistrate Kluck. His convictions would have a detrimental impact on his ability to travel overseas. The judge had a duty to exclude illegally obtained evidence. He "was an 'unwary offended' without any

reasonable cause to have knowledge of the offence, even in law". For these reasons, he contended he was wrongly convicted of all three counts. He also submitted that the judge's costs orders were wrong in law.

Relevant aspects of the *State Penalties Enforcement Act*

- [42] The applicant's principal point was that Magistrate Nunan could not have been satisfied beyond reasonable doubt that he was driving without a licence because his licence was wrongly SPER suspended. The answer to this contention requires a consideration of the *State Penalties Enforcement Act*. The relevant reprint as at 3 July 2006 when the offence occurred is Reprint 1E.
- [43] The Act has as its objects maintaining the integrity of fines as a viable sentencing or punitive option for offenders;⁸ maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced;⁹ and reducing the cost to the state of enforcing fines and other money penalties.¹⁰ The Act establishes SPER¹¹ which collects amounts payable under the Act; administers the making of enforcement orders and takes enforcement action under the Act.¹² These functions must be performed in accordance with the SPER charter¹³ which relevantly includes reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms.¹⁴
- [44] It is not contentious that the offences the subject of the SPER suspension are infringement notice offences under the Act.¹⁵ Part 3 of the Act deals with "Infringement notices". An infringement notice may be served on the registered owner of the vehicle or by post to the latest address of the registered owner.¹⁶ If an infringement notice is served on an alleged offender, the alleged offender must within 28 days pay the fine in full; or elect to pay by instalments if above a designated amount;¹⁷ or elect to have the matter decided in the Magistrates Court; or give the administering authority¹⁸ an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration for the vehicle.¹⁹ If within 28 days after service with an infringement notice the person has not paid the fine in full; applied to pay the fine by instalments; given an appropriate declaration; or elected to have the matter decided in the Magistrates Court, the administering authority may give to SPER for registration a default certificate for the infringement notice offence.²⁰
- [45] Part 4 of the Act is headed "Enforcement orders". If all or part of a fine is unpaid, the court registrar may give to SPER for registration the prescribed particulars of the unpaid amount.²¹ The registrar may issue an enforcement order against the

⁸ The Act, s 4(a).

⁹ The Act, s 4(b).

¹⁰ The Act, s 4(c).

¹¹ The Act, s 7.

¹² The Act, s 8(1)-(2).

¹³ The Act, s 8(3).

¹⁴ The Act, s 9(d).

¹⁵ See the definition of "infringement notice offence" in Sch 2 Dictionary.

¹⁶ The Act, s 14.

¹⁷ The Act, s 22(2).

¹⁸ As prescribed by regulation: see definition of "administering authority" in Sch 2 Dictionary.

¹⁹ The Act, s 22(1).

²⁰ The Act, s 33.

²¹ The Act, s 34(2).

person concerned for the unpaid amount.²² The registrar must in writing order the person to pay the amount stated in the order to SPER within 28 days.²³ The enforcement order may be made in the absence of and without notice to the enforcement debtor.²⁴ The registrar may serve an enforcement order personally or by sending it by ordinary post to the last known address of the place of residence or business of the person.²⁵ If an enforcement order is served on an enforcement debtor for an amount, the enforcement debtor must within 28 days either pay the amount in full to SPER;²⁶ apply to SPER for an extension of time to pay;²⁷ apply to SPER to pay the amount by instalments;²⁸ apply to SPER for conversion of the amount to unpaid community service hours under a fine option order;²⁹ or, if the order relates to an infringement notice offence, make to SPER an election to have the matter decided in the Magistrates Court.³⁰

[46] Part 5 is headed "Civil enforcement" and its Div 7 is headed "Suspension of driver licence". If the SPER registrar decides to suspend an enforcement debtor's driver's licence the registrar must serve a notice of intention to suspend the licence.³¹ If the enforcement debtor does not pay the unpaid amount within 14 days, the enforcement debtor's driver's licence is suspended until it is paid or otherwise discharged.³² The suspension of a driver's licence operates on an enforcement debtor who holds a driver's licence issued outside Queensland while the person is in Queensland.³³

[47] Division 4 of Part 3 of the Act is headed "Withdrawal and re-issue of infringement notice". Under s 28, an administering authority may withdraw an infringement notice at any time before the fine is paid or otherwise discharged under the Act³⁴ by serving the alleged offender with a withdrawal notice in the approved form and repaying any amount paid for the offence;³⁵ and giving SPER a copy of the withdrawal notice.³⁶ The registrar of SPER must as soon as practicable after receiving a copy of a withdrawal notice under s 28, cancel any enforcement order and refund any amount paid to SPER.³⁷ If demerit points have been allocated against the alleged offender's traffic history, the demerit points are cancelled and the traffic history is corrected.³⁸ If this happens, a licence which has been SPER suspended is no longer suspended unless it would still be suspended or cancelled or no longer in force for another reason.³⁹

[48] Section 157 contains the following relevant wide-ranging evidentiary provisions:

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- 22 The Act, s 34(4).
 23 The Act, s 38(2).
 24 The Act, s 38(5).
 25 The Act, s 40(a).
 26 The Act, s 41(a).
 27 The Act, s 41(b).
 28 The Act, s 41(c).
 29 The Act, s 41(d).
 30 The Act, s 41(e).
 31 The Act, s 105(1).
 32 The Act, s 105(2)-(3).
 33 The Act, s 106.
 34 The Act, s 28(1).
 35 The Act, s 28(2).
 36 The Act, s 28(3).
 37 The Act, s 29.
 38 The Act, s 31(3).
 39 The Act, s 31(4).

"157 Evidentiary provisions

- ...
- (2) A certificate purporting to be signed by or for an administering authority and stating any of the following matters is evidence of the matter—
- (a) a stated infringement notice was served in a stated way on a stated person for a stated infringement notice offence;
 - (b) an alleged offender did not pay a fine as required under an infringement notice;
 - (c) an alleged offender elected to have a matter of an offence decided in a Magistrates Court;
 - ...
 - (e) an infringement notice has not been withdrawn or was withdrawn on a stated date;
 - (f) an offence stated in an infringement notice involved a stated vehicle ...;
 - (g) a stated person owned a stated vehicle ... at a stated time;
 - ...
 - (i) a stated address is the latest address of the owner of a stated vehicle in the record of registration of vehicles under a registration Act;
 - (j) a stated person has or has not given the administering authority an illegal user declaration, known or unknown user declaration or sold vehicle declaration for an offence stated in an infringement notice;
 - (k) a fine has not been paid by ... a stated or any person for an offence stated in an infringement notice.
- (3) A certificate purporting to be signed by the registrar and stating any of the following matters is evidence of the matter—
- (a) stated information or particulars were registered under the Act on a stated day;
 - ...
 - (g) a stated document was issued on a stated day;
 - (h) a notice of intention to suspend the driver licence of a stated person was served on the person in a stated way on a stated day;
 - ..."

Conclusion

- [49] The application of the preceding summary of relevant aspects of the Act to the facts of this case establishes the following. The applicant had been charged with and fined for a number of infringement notice offences. The fines were not paid and an enforcement order was issued. This enabled the SPER registrar to suspend his driver's licence. Until the infringement notice for one or more of the offences listed in the SPER order suspending the applicant's licence was withdrawn under s 28 of the Act, the applicant's driver's licence remained suspended under the SPER order. This was so on 3 July 2006 when the present offences occurred, even though it may be that one or more of the offences listed in the SPER order suspending the applicant's driver's licence were subsequently withdrawn. I note, however, that it is far from certain that the withdrawn charge referred to in the letter of 16 February 2007 was one of the charges leading to the SPER suspension. The applicant

conceded that Mr Creasy informed him that his driver's licence was suspended and that he knew this when he drove his motorbike on 3 July 2006. As Magistrate Nunan and the District Court judge explained to him, as the SPER suspension was not lifted on 3 July 2006, even though he may have been in the process of having it lifted, he was not entitled to ride the motorbike in Queensland. His contention challenging the validity of the SPER suspension fails.

- [50] The applicant claimed that, had the tape recording of his conversations with the police officers on the night of 3 July 2006 been before Magistrate Nunan, this would have undermined the credibility of the police witness. He has not demonstrated why this would follow. The applicant did not challenge the general tenor of his conversation with police when cross-examining police officer Lee. He did not give evidence that the police made improper comments or statements to him or that police officer Lee's evidence of their conversation was inaccurate. The transcript indicated that the tape recording was of such poor quality that it was useless. For that reason, it was not relied on by the prosecution at the hearing. The failure of the prosecution to provide an audible copy of the recording to the applicant at a reasonable time before the hearing is regrettable, but he has not demonstrated that it has resulted in any miscarriage of justice. This contention is not made out.
- [51] The applicant's submission that he should have been permitted to call further evidence before the District Court about the respective noise levels of his motorbike and the police siren are unpersuasive. At the trial before Magistrate Nunan, he gave evidence that he did not hear the siren because of the noise of the motorbike. Magistrate Nunan rejected that evidence as implausible. The District Court judge reviewed the evidence and agreed with that assessment. The judge was concerned that the evidence the applicant sought to lead in the District Court appeal was not in the proper form. But more significantly, the judge appreciated that, had the evidence which the applicant sought to lead on appeal in the District Court been given at trial before Magistrate Nunan, it was most unlikely to have resulted in his acquittal. The judge was right to refuse to allow the appellant to give the evidence. This contention is not made out.
- [52] The applicant referred to the fundamental principle of the criminal justice system that it is for the prosecution to prove the case against him beyond reasonable doubt and that he carried no onus of proof. He claimed that both magistrates assumed he was guilty and made him prove his innocence when it was not for him to prove his licence was unlawfully suspended. There is nothing in the material which the applicant has provided to suggest that either Magistrate Nunan, Magistrate Kluck, or the District Court judge misapplied the standard and onus of proof. The evidentiary provisions in s 157 *State Penalties Enforcement Act*⁴⁰ are wide-ranging. Two certificates were tendered under s 157 before Magistrate Nunan. The applicant's long delays in bringing the present application have had the result that these exhibits are now unavailable. They were *prima facie* evidence of the matters stated in them, presumably that the applicant had not paid the fines resulting in the SPER suspension and that he had been served with the relevant infringement notices and that those notices had not been withdrawn as at 3 July 2006. For the reasons already given as to the construction of the Act, the applicant did not give or produce any plausible contradictory evidence. This contention is not made out.

⁴⁰

Set out at [48] of these reasons.

- [53] He next complained that the District Court judge did not appreciate that he was not served with notice of the date of the hearing before Magistrate Kluck. Notice of that hearing was posted to the applicant's last known address. Under s 142A(9)(b) *Justices Act*, a certified copy of the document signed by the Clerk of the Court indicating that service had taken place, deemed service to have taken place when the Clerk of the Court posted that notice to the applicant's last known address. The certificate placed before Magistrate Kluck was evidence that he was duly served. This contention also fails.
- [54] His next contention was that the magistrates and the District Court judge had a duty to exclude illegally obtained evidence. This submission is particularly difficult to apprehend. It seems to be that, as his driver's licence was never lawfully suspended, any conduct on his part after that point could not be led in evidence against him. Alternatively, he was effectively entrapped as an "unwary innocent" into committing these offences by the unlawful action of the Magistrates Court and SPER. As I have explained, under the Act his licence was lawfully suspended as at 3 July 2006, even though the suspension appears to have been later lifted because of errors in the recording of some infringement notice offences. This contention has not been made out.
- [55] The applicant next contended that his traffic convictions would have a detrimental effect on his ability to travel overseas. I note that Magistrate Nunan, thoughtfully, did not record a conviction for the offence of obstructing police. There is no evidence that convictions for traffic offences will have any impact on the applicant's future travel arrangements. This contention fails.
- [56] The applicant's contention, that the costs orders made by the District Court judge were wrong in law, seemed to centre on the judge's observation that there was little point in awarding costs in the applicant's favour as he was self-represented. Costs orders are a matter for the discretion of a judicial officer, although the discretion must be exercised according to law. Ordinarily, costs orders are not awarded in favour of self-represented litigants. The applicant was partially successful on but one aspect of the appeal from Magistrate Kluck and unsuccessful on all aspects of the appeal from Magistrate Nunan. The judge made no order as to costs in either appeal. That order was within the limits of a sound exercise of discretion. If anything, it was favourable to the applicant. This contention also fails.
- [57] The applicant has given no satisfactory explanation for the lengthy delay in filing his application for leave to appeal from the decision of the District Court judge. That delay followed earlier delays in filing his appeals from the decisions of Magistrate Nunan and Magistrate Kluck. His extreme tardiness resulted in the loss of exhibits at the trial before Magistrate Nunan. The public interest in the finality of litigation strongly favours the refusal of his application for leave to appeal. But even more significantly, he has not demonstrated any error on the part of the District Court judge to suggest that the interests of justice require granting an extension of time to apply for leave to appeal. He should not have been driving his motorbike on 3 July 2006 as he knew he was SPER suspended. He obstructed police by trying to evade them. He failed to stop when he knew the police had activated their vehicle's siren and lights to apprehend him. He was dealt with leniently for his unlawful behaviour.
- [58] The application for an extension of time for leave to appeal should be refused.

ORDER:

Application for an extension of time for leave to appeal refused.

[59] **ATKINSON J:** I agree with the order proposed by McMurdo P and with her Honour's reasons.

[60] **PETER LYONS J:** I have had the advantage of reading in draft the reasons of McMurdo P, with which I agree. I also agree with the order proposed by her Honour.