[2015] QCA 115

COURT OF APPEAL

GOTTERSON JA
MORRISON JA
PHILIPPIDES JA

CA No 29 of 2015
DC No 155 of 2014

CROSSMAN, Ian Norman **Applicant**

v

QUEENSLAND POLICE SERVICE **Respondent**

BRISBANE

THURSDAY, 25 JUNE 2015

JUDGMENT

GOTTERSON JA: On the 24th of February 2014 at the Magistrates Court at Cairns the applicant, Ian Norman Crossman, was found guilty of a speeding offence. The particulars of the offence alleged were that on the 15th of August 2013 at 7.55 pm on the Captain Cook Highway at Craiglie the applicant disobeyed the speed limit by driving a limousine hire vehicle at 84 kilometres an hour in a 70 kilometre an hour zone.

During the hearing the Magistrate heard evidence from two traffic officers. They identified the applicant as the driver when the vehicle was clocked travelling at that speed. Their evidence that the prevailing speed limit was 20 – was, I'm sorry, 70 kilometres per and of the applicant's driving over the speed limit was accepted. It was corroborated by a recording of a roadside interview in which the applicant appeared to acknowledge that the speed limit was 70 kilometres per

hour, said that he was going at probably 80 and remarked that he was trying to get some people whose flight had been brought forward to the airport. The applicant gave evidence that his recorded acknowledgment was that there was a 70 kilometre an hour speed limit sign in Craiglie, that his idea was that Craiglie was 300 metres behind him and that he was on the open road. He said that he joined the highway at Dickson Street and that at that point there was no 70 kilometre per hour sign on the highway. He claimed that the roadway where he was detected speeding was later signposted at 80 kilometres per hour.

The Magistrate rejected the applicant's submission that he believed that he was on the open road as not credible and self-serving. The applicant was convicted, fined $330 and ordered to pay costs of Court of $87.20. The applicant applied for an extension of time within which to appeal to the District Court under s 222 of the *Justices Act* 1886. The application was filed seven months late. It was heard and decided on the 10th of December 2014. His Honour considered the merits of the appeal in order to inform his decision whether or not to extend time. He viewed the merits unfavourably. His Honour observed:

> "It seems to me that the significance of speed limits in and out of the built up area attributed by the appellant is misconceived. The speed limit in a particular zone is exactly that, and there was evidence before the trial Magistrate to make findings about a different speed limit."

Ultimately, the charge was found to be proven that the speed limit applicable was 70 kilometres per hour. The applicant sought to impugn the evidence of the traffic officers concerning the provenance of an 80 kilometre per hour sign. Evidence on that issue was extracted in the course of the applicant's cross-examination of the officers. On his Honour's reading of the transcript the area signed 80 kilometres per hour was an area further south on the highway and not the area where the speeding was detected. In his view it was irrelevant to the charge. The application for extension of time was refused.

The applicant wishes to apply for leave to appeal to this Court against the refusal pursuant to s 118(3) of the *District Court of Queensland Act* 1968. He failed to do so within time and seeks

an extension. As to the delay, the applicant – I'm sorry, the application for extension of time document states that the applicant did not receive the transcript of the District Court hearing until the 12th of February 2015. This application is dated 16th of February 2015. It was not filed until the 5th of March 2015. Delay beyond the 16th of February is not satisfactorily explained. I would not, however, regard that alone as justifying a refusal of an extension of time. There is no affidavit in support of the application nor any proposed notice of appeal. There is a notice of application for leave to appeal document also filed the 5th of March 2015. The applicant filed written submissions on the 5th of June 2015.

The relevant frame of reference is the decision of the District Court Judge, which the applicant wishes to appeal. The task for the applicant is to persuade this Court that it is in the interests of justice to grant the extension. This decision does not involve an important point of law or question of general or public importance. Thus, in accordance with authorities of this Court, the applicant need demonstrate that leave to appeal against the refusal is necessary in order to correct a substantial injustice to him and that there is an error to be corrected in the decision.

The notice of application for leave to appeal states as the grounds for the application that both the Magistrate and the District Court Judge failed to place due relevance on the two most important features that contributed to the defence of the Prosecution being taken up in the first place:

1. The complete lack of signage in the area for traffic travelling south.

2. My experience with the site.

There is no contention of error of law on the part of his Honour in the document with respect to either of these two factual assertions. Moreover, the applicant's submissions do not identify any error of law on the part of the judge below in his assessment of merits of the proposed appeal or otherwise.

In the submissions document there are complaints that the evidence of the traffic officers as to the prevailing speed limit was preferred to his by the Magistrate, that his Honour did not

attribute significance to a theory of differential speeds which the applicant proposed were permitted in and out of the built up area of Craiglie, that explanations rationalising apparent admissions made by him in the recorded interview were not accepted and that the issue of the placement of the 80 kilometre per hour sign for his direction of travel was not accorded relevance, but none of these complaints bespeak legal error.

I would mention that the applicant has filed a bundle of documents apparently in support of his application. The most recent of these documents is dated 28th of November 2014. There is no application to adduce the documents as evidence in the application to this Court. Had there been such an application, it is one that ought to be refused on the basis of lack of relevance. In any event, official material within the bundle would not have assisted the applicant. A letter dated 14th of July 2014 from the Superintendent, Road Policing Command for the Queensland Police Service affirms that the location where the applicant's speeding was detected was within a 70 kilometre per hour zone and at a point before the 80 kilometre per hour zone was reached.

In failing to demonstrate any error of law on the part of the judge below the applicant has also failed to demonstrate any substantial injustice to him in the refusal of the extension of time to appeal to the District Court. It follows that his application for an extension of time to apply for leave to appeal to this Court against the refusal of his application for an extension of time to appeal to the District Court must also be refused. I would so order.

MORRISON JA: I agree.

PHILIPPIDES JA: I agree.

GOTTERSON JA: The order of the Court is that the application for extension of time to apply for leave to appeal to this Court is refused.