COURT OF APPEAL

HOLMES CJ
MORRISON JA
PHILIP McMURDO JA

Appeal No 217 of 2014
DC No 54 of 2014

PETTET, Ian Edward	**Applicant**
v	
WALTER JAMES VAN DER MERWE	**Respondent**

BRISBANE

FRIDAY, 5 FEBRUARY 2016

JUDGMENT

THE CHIEF JUSTICE: The applicant was convicted by a magistrate of two offences of failing to vote at an election without a valid or sufficient excuse, in the first instance, contrary to section 168(1) of the *Local Government Electoral Act* 2011, and in the second, contrary to section 186(1A) of the *Electoral Act* 1992.

He seeks leave to appeal, pursuant to s 118 of the *District Court of Queensland Act* 1967, against the decision of a District Court Judge dismissing his appeals against those convictions. Because he raises what purport to be Constitutional matters, the respondent has given notice to the Attorneys-General under s 78B of *Judiciary Act* 1903. For reasons that will become apparent, none has chosen to appear. There was also an application to adduce evidence as to the applicant's residence at various times.

The applicant made written submissions in support of his application and, to some extent, made oral submissions, but truncated them and left the hearing of the application. These reasons, then, are given in his absence.

It was at no stage disputed that the applicant had not voted in respect of Local Government and State elections, although he was enrolled as an elector respectively for the Sunshine Coast Regional Council and the Caloundra electorate. He advised the Electoral Commission that he did not believe he should have to vote, for a number of reasons which it is not necessary to explore here.

In the Magistrates Court, the applicant sought a directions hearing in order to raise what he described as a no case submission. The State Penalties Enforcement Registry, which I will refer to as SPER, had sent enforcement orders to him in respect of infringement notices issued as a result of the failures to vote. He applied for cancellation of the enforcement orders; which, after an initial refusal, unsuccessfully appealed by the applicant to a magistrate, ultimately occurred.

The relevance of that was that s 52 of the *Justices Act* 1886 required the making of complaint within one year unless some other time were limited by relevant law for the making of the complaint. The latter is the case. Section 60(4) of the *State Penalties Enforcement Act* provides that the limitation period for proceeding for an offence in relation to which an order has been made starts from the day the order is cancelled.

The applicant's no case submission turned on the effect of the cancellation of the enforcement orders. He submitted to the magistrate that the cancellation decision was in some way an abuse of process; that the proceeding was, in light of the cancellation of the orders, somehow contrary to the principle of double jeopardy; that the complaint was defective because of the failure to plead the cancellation; that the earlier magistrate's dismissal of his application to have the orders cancelled before they were, in fact, cancelled by SPER, raised an estoppel; and, more generally, that all these things amounted to an abuse of process. Not surprisingly, the magistrate rejected all those arguments.

The applicant then said that he was leaving the court. The magistrate advised him that, if he did so, she would deal with the matters under s 142A of the *Justices Act*. That occurred. The magistrate proceeded under s 142A in the applicant's absence, which enabled her to accept the facts and particulars alleged in the complaint as constituting an offence as if they had been established by evidence. In addition, she received a certificate of the Electoral Commissioner under the Electoral Act which, inter alia, set out the fact that the applicant, an elector, had failed to vote at the State election.

The applicant's appeal to the District Court, and his application here, raised a number of grounds which revolved around his assertion that he did not live in the electoral districts in which he was alleged in the complaint and summons to have been enrolled. He contended that the information on the electoral roll was false. Those grounds were repeated here, but now included an argument that his rights under the International Covenant for Civil and Political Rights to liberty of movement, and freedom to choose his residence, were in some way breached.

The District Court Judge noted that the material was not in evidence before the magistrate on the hearing of the charges, and that the *Electoral Act* placed the onus on the elector to notify the Electoral Registrar of any change of address. His Honour was correct. There was no evidence as to the applicant's residence before the magistrate. In any case, the offence under each Act requires only that the person be an elector – that is, a person entitled to vote – and under each Act the prerequisite for entitlement to vote is enrolment on the relevant roll. All of that was pleaded and accepted.

The applicant sought here to adduce evidence on the subject, and claimed that the District Court judge refused him leave to do so. It is not clear to me that there was such an application before his Honour, but if he refused such an application, he was correct. The material sought to be adduced was plainly available at the time of the Magistrates Court hearing; is not, as put before us, in any admissible form; and, for a number of reasons, is irrelevant. The grounds concerning residence are not viable, and I would dismiss the application to adduce further evidence.

Next, the applicant argued that the SPER registrar was exercising federal judicial power in breach of the Constitution in issuing enforcement orders under the *State Penalties Enforcement Act* 1999, because that Act is expressed to bind the Commonwealth as far as the legislative authority of the Parliament permits. The District Court Judge described the point as entirely unmeritorious. I agree.

Finally, there seems to be an argument that compulsory voting is unconstitutional because it somehow suppresses political dissidence and freedom of speech. No explanation is given as to why laws making voting compulsory would not be within the constitutionally conferred law-making powers of the Queensland Government. Nor was any reference made to anything in the Constitution of the Commonwealth inconsistent with the existence of such a power. And, patently, to require a person to vote in no way impedes the exercise of freedom of political communication.

There is no merit in any of the proposed grounds. I would dismiss the application for leave to appeal.

MORRISON JA: I agree.

PHILIP McMURDO JA: I agree.

THE CHIEF JUSTICE: The application for leave to adduce evidence, and the application for leave to appeal, are dismissed.