

DISTRICT COURT

No 35 of 2005

APPELLATE JURISDICTION

JUDGE HOWELL

SERGEANT G R SEABROOK

Appellant

and

REUBEN DANIEL VINTEN

Respondent

GLADSTONE

.. DATE 17/03/2006

JUDGMENT

HIS HONOUR: On the 10th of November 2005, the respondent entered a plea of guilty to driving a motor vehicle with a blood alcohol concentration of .063 and to a further charge that he drove whilst disqualified by a Court order. The said offending occurred on the 27th of September 2005.

The offence of disqualified driving is viewed seriously. Such is driving whilst in defiance of a Court

order. In Groning, CA89/71, Hoare J. with whom Hart J. and W.B. Campbell J., as he then was, agreed, stated: "It must be appreciated by Magistrates that the driving of a vehicle by a disqualified driver is a very serious offence. It involves a defiance of the law. When treated as a comparatively minor offence, as unfortunately some Magistrates seem to regard it, the deterrent effect is entirely lost."

The offence of disqualified driving was viewed so seriously in the mid-1970s that the minimum penalty had to be six months' imprisonment. It is now an open-ended discretion. The Full Court has made clear, on a number of occasions, a driving licence is a privilege, not a right. A motor vehicle is a very powerful piece of machinery that requires proper care and control. The legislature has made it clear, in accordance with community demands, that a person not be allowed to drive a motor vehicle if such person's capacity to properly control a motor vehicle is impaired.

A person must not drive a motor vehicle with a blood alcohol concentration of .05 or more. Your blood alcohol concentration was .063. One might say the starting point is that your capacity was impaired to a minor degree. The Legislature is also careful to see that only those who are licensed to drive are behind the wheel of a motor vehicle. Driving without a licence is viewed seriously, to a degree. Driving whilst disqualified by a Court order is viewed seriously indeed.

What is somewhat worrying about your driving, not only whilst disqualified but with a proscribed blood alcohol concentration, is that you may have had certain problems with mental health and/or non-compliance with taking medication which would make you a very real worry, indeed, whilst behind the wheel of a motor vehicle.

What is of concern is that you were on probation at the time for offences of some seriousness. Courts view it seriously if offences are committed whilst on probation, as I would imagine your lawyers have explained to you. Probation means you are not being sentenced, you are provisionally being dealt with leniently on the basis

that you comply with all the terms of the order. As I always make it clear, an important term of that order is you shall not commit another offence, particularly an indictable offence or serious simple offence such as disqualified driving. If you do, you will be back before me, and I usually tell such accused the gaol term he will have to talk me out of if he does not take advantage of that chance.

With the chance you were given in the Cairns Magistrates Court on the 26th of July for offences of obvious seriousness, one would imagine if you had an ounce of decency or an ounce of principle you would have moved heaven and earth to comply, as distinct from committing a simple offence as serious as disqualified driving.

On the 26th of July 2005, you pleaded guilty in the Cairns Magistrates Court to a number of offences that occurred on the 9th of July 2005. One offence of serious assault involved assaulting two police officers while they were acting in the execution of their duty. One can only wonder, when one looks at your worrying criminal history and the serious circumstances of this offence, why you were not actually gaoled on that occasion. Police were called because of a complaint you apparently had assaulted a female. The police have a difficult and off unappreciated duty to do. They can strike a violent criminal most any day of their week. There is the real potential for violence at domestic incidents.

When the police arrived, you had armed yourself with a steak knife, a weapon of some wickedness. You were at the front of the premises. You held the knife in front of you and your threats to police, whilst armed with the knife, included, "You get out of that fucking car, I'll fucking kill you both." You waved the knife at police. You said, "If you pull into this driveway you're gone." Unsurprisingly, the police formed the belief that you had both the means and intention to carry out such threats. You put the knife at your own throat and threatened to kill yourself. You were aggressive and very agitated.

One imagines you were irrational. Whether that was contributed to in relation to any health problem you have, or failure to take medication, I do not know, but such irrational person so armed must have been frightening, indeed, for the police. The police attempted to calm you and it took quite some time before the police were able to control the situation. At a later stage, you then suddenly moved towards another police officer making further threats. Because of the understandable fear of immediate physical violence the police used capsicum spray. You were then able to be detained.

Your performance may be contributed to by, to an extent, the result of your voluntary ingestion, it seems, of a not insubstantial amount of alcohol. If you had any episodes, whether bipolar affective disorder, or perhaps schizophreni form or schizophrenic potential, the voluntary ingestion of liquor could easily be a trigger.

There was a number of other charges out of that incident besides the serious assault. There were offences of resist police, obstruct police. The Magistrate did not sentence you, but provisionally dealt with you leniently on the basis you behaved yourself for two years. As I say, Courts view it seriously if offences are committed whilst on probation. The learned Magistrate does not seem to have regarded that as a serious feature. When one reads the learned Magistrate's order, it seems to be, "In the few months in the interim you are making progress in the eyes of a probation office. So, therefore, perhaps what would otherwise have been an appropriate sentence for the disqualified driving, far from being increased, should be ameliorated."

I am unaware if the Cairns Magistrates Court had your full criminal history and your full traffic history. Your criminal history is substantial, indeed. You showed a certain versatility in relation to the fields of criminality. It involves dishonesty, violence, vandalism, drug matters and serious traffic offences.

All sorts of orders were tried in your interests; community based orders, they did not improve or deter. Intensive correction orders, suspended gaol terms and

actual gaol terms did not deter. You seem to have certainly been compassionately or leniently dealt with on a number of occasions. Well into your criminal history the offence of armed robbery, the order of the 24th of February 1998, you received a 12 month intensive correction order. Your previous offence of trafficking in dangerous drugs was a wholly suspended sentence. I do not propose to go through all the lengthy criminal history. At the time of this offending, it was no trivial offence, it was no spur of the moment offence and it was not committed by any callow youth. You were born on the 5th of April 1976.

To try to fully interpret your traffic history, it appears that on the 10th of September 2003 for an offence of refusing a breath test, for an offence of dangerous driving, an offence of drink driving and an offence of unlicensed driving that occurred on the 14th of June 2003, you were sentenced to nine months' imprisonment, suspended after four months for a period of 12 months and you were disqualified from holding or obtaining a driver's licence for four years.

There is another offence of unlicensed driving that occurred on the 26th of August 2003. That is while you were on bail awaiting sentence for those matters that resulted in the order on the 10th of September 2003. You drove whilst disqualified on the 19th of May 2001 and on the 6th of March 2002 you received an intensive correction order. You drove whilst disqualified the previous month, namely on the 5th of April 2001, and that also resulted in an intensive correction order.

You committed an offence of unlicensed driving on the 23rd of October 1998. On the same date, and that of the same incident, you drove with a blood alcohol concentration of .081. On the 29th of September 2000 you drove with a blood alcohol concentration of .076. In relation to that last entry, you also drove whilst disqualified. You received an order of one month's imprisonment, but the sentencing fiction of wholly suspending it was implemented.

On the 22nd of February 2000 you drove whilst disqualified. You apparently also stole from that said motor vehicle. And there is quite an amount more.

The learned Magistrate imposed a licence disqualification order for the blood alcohol concentration offence that is below the statutory minimum. Accordingly, that order has to be set aside.

The driving in question occurred when you were driving home with your girlfriend and children. How could a responsible citizen, knowing your health problems, knowing you were a disqualified driver, and knowing that you had voluntarily ingested liquor above the maximum permissible level - how could you drive your children in such state, one can only wonder.

Your lawyer before the Magistrate, said that the probation report engendered a certain optimism - there was a certain improvement. There was a plea of guilty manifesting cooperation in the administration of justice for which allowance should be made.

The learned Magistrate said, in sentencing, "Certainly your history in Victoria is certainly unenviable. I do take into account the fact that you have not committed any traffic offences within the past two years." One might have found a stronger epithet than "unenviable" for your traffic history, and the learned Magistrate said, "I have also taken into account the fact that this has breached your probation, but having regard to the report that has been done with regard to your probation, you are obviously making a genuine effort to improve yourself, and to get yourself back on the straight and narrow, so that is taken into account."

With the said breach of the probation with the disqualified driving with the said blood alcohol concentration so soon after the order, I would have regarded your performance on probation as not good but somewhat bad. If there had been an appeal against the order by the Magistrates for breach of probation, you could have anticipated I would have been imposing a

cumulative gaol term for those original offences of serious assault and such like.

The learned Magistrate then said, "For the drink driving and disqualified driving, there is one penalty. You are fined \$550 dollars, and disqualified from holding or obtaining a drivers licence for two years." For the breach of probation you were merely fined \$150 dollars.

In my view, clearly the sentences are manifestly inadequate. The sentence for the disqualified driving is certainly, in my view, no deterrent, personal or general. It may even have, one might say, the opposite effect.

The appeal is allowed. I set aside the orders of the Magistrate, and for the offence of disqualified driving, you are sentenced to imprisonment for six months.

For the blood alcohol concentration offence, you are sentenced to imprisonment for six weeks. For the disqualified driving, you are disqualified from holding or obtaining a drivers licence for three years, and for the blood alcohol concentration offence, you are disqualified from holding or obtaining a drivers licence for six months.

I order that a warrant do issue forthwith, for the arrest of the respondent, Reuben Daniel Vinten.

Thank you, Mr Whalley. Thank you, Mr O'Gorman.

MR WHALLEY: Thank you, your Honour.
