

DISTRICT COURT

APPELLATE JURISDICTION

JUDGE PACK

POLICE

Respondent

and

PHILLIP MARK DENMEADE

Appellant

BOWEN

..DATE 12/02/2010

ORDER

HIS HONOUR: On the 3rd of September 2009, the appellant was charged with one count of riding a bicycle without wearing an approved helmet, pursuant to section 256(1) of the Transport Operations (Road Use Management - Road Rules) Regulation of 1999. To that count he pleaded not guilty.

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The decision was delivered on the 2nd of October 2009. The appellant was neither convicted nor punished. The evidence before the Court, firstly from a police constable, Mr Dodds, who said that he had observed the appellant riding on a footpath without a helmet. That attracted his attention to the extent that the appellant was later intercepted.

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The police officer was not cross-examined as to where on what he had described as the footpath the appellant was riding. He did give evidence that he observed the appellant to ride across an intersection. The appellant recognised this in evidence in discussion with the Magistrate, but the Magistrate appeared not to have noted that that evidence had been given.

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The police officer was not cross-examined about that subject by the appellant. However, I think it appropriate that this matter should be approached upon the basis that the learned Magistrate, from his reasons, certainly appeared to accept that the appellant was riding adjacent to a concrete path at relevant times.

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There was a hedge which separated the area that had the concrete path, and there are grassed areas on either side of

it. On my interpretation of the evidence, the appellant was riding on the grassed area beside the concrete path, and it appears that he was - on that side of it which was closer to the hedged area. There is no contest to the proposition that the bicycle was being ridden without a helmet at the relevant time.

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Section 13(1) (b) of the regulations to the Act provides that a road related area includes (b) a footpath or nature strip adjacent to a road. Subsection 2 provides inter alia. Subsection (b) any other area that is a footpath or nature strip as defined in the dictionary.

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Footpath is defined in schedule 4 of the Act as follows:

"Footpath means an area open to the public that is designated for, or has one its main uses used by pedestrians."

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The Magistrate said as part of his reasons, "But you were on a nature strip, because that is an area between a road, which you were not on, except a road related area, which would have been the footpath. But you were on an area between Shute Harbour Road and the shopping centre, which I believe to be adjacent land. The shopping centre is adjacent land."

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The Magistrate then went on to describe the area, and said that - sand, "In my view both grassed areas are defined as nature strips, and are, by exhaustive definition, covered by the definition. If I am wrong, then I would in any case hold the grassed areas - could be held to be footpath because they

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are an area open to the public that has as one its main uses used by pedestrians. That is they are certainly designed for use by pedestrians, and, no doubt, used by pedestrians from time to time. This is through the grassed areas, because you don't have to walk on the footpath just because it's a footpath, you can walk on the grassed area because it's there."

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To the extent that the Magistrate may have concluded that at relevant times the appellant was on a nature strip, I respectfully disagree. He was, however, in my view, correct in his alternative view that the area beside the concrete path should have been regarded as a footpath.

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His reasoning in that context appears reasonable. He might have added that persons prefer to walk on grassed areas or run on grassed areas. Persons need to walk on grassed areas from time to time in order to give passage to other persons, such as persons with disabilities, who might occupy any concrete component to a footpath.

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A footpath in my view is not confined because of its composition or combination of its composition. That is to say that if there were a footpath comprised mainly or totally of gravel, that it would not only be the definable well worn path that carries most of the traffic, but would be regarded as a footpath.

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Such comments would apply similarly to a footpath that was

