DISTRICT COURT

APPELLATE JURISDICTION

JUDGE MCGINNESS

No 103 of 2011

SANDRA SANDI HARLEY Appellant

and

QUEENSLAND POLICE SERVICE Respondent

SOUTHPORT

..DATE 20/01/2012

JUDGMENT

HER HONOUR: Yes, just take a seat, please.

All right. Now, I intend to hand down Judgment in this matter now. For the record it's Judgment in the matter of Sandra Sandi Harley, H-A-R-L-E-Y, and Queensland Police Service.

On 3 August 2010 the Applicant, Ms Harley, was convicted of one speeding offence committed on 1 December 2009. She was convicted pursuant to section 142A Justices Act 1886 Queensland in her absence. She was-----

APPELLANT: It was the 2nd of August.
HER HONOUR: Sorry?
APPELLANT: 2nd August.

HER HONOUR: 2nd August, thank you for the correction; on 2 August 2010 she was convicted pursuant to section 142A Justices Act 1886 Queensland in her absence. She was fined $200 and ordered to pay Court costs of $73.80.

Now a chronology of what subsequently occurred is set out in a table which I will mark as Exhibit 1 and place on the Court file.

ADMITTED AND MARKED "EXHIBIT 1"

HER HONOUR: This is just a history of the Court appearances and the dates that the applicant sent in the letters asking for an re-opening, coupled with two medical reports concerning the defendant's mother's medical history.

In summary, what occurred was the applicant tried, on a number of occasions, by filing applications with the Court, to have the Magistrate re-open her hearing. She informed the Court by letter, on a number of occasions, that the reason that she had failed to appear was because her mother suffered from pancreatic cancer; that Ms Harley was her mother's sole carer that. She didn't have help from any others and for that reason she could not attend.

At one stage, the Registry sent her a letter indicating that no evidence had been supplied. As a result of this, Ms Harley sent in two medical reports. One was dated the 5th of June 2000 and noted that the applicant's mother suffered some minor features associated with pancreatitis.

And the second was a letter dated the 9th of November 2007 signed; authored by a Doctor Koulouris, K-O-U-L-O-U-R-I-S, which noted some results of both an abdomen x-ray and an ultrasound. Unfortunately, no material was sent to specifically show why the applicant had failed to appear at Court on the actual day of the 2nd of August 2010.

Magistrate Kilner, on two occasions, formally considered the applications for re-hearing. On the final occasion he noted, "No basis shown that would have explained reasonable grounds for failing to appear." That was on the 23rd of August 2010. And on 23 November 2010. On 24 November 2010 the Registry sent the applicant a letter acknowledging receipt of the two

medical documents, and advising the applicant that the Magistrate had considered her latest application and again, refused the application for re-opening.

The Magistrate also placed a further note on the Court file, asking the Registry to advise the applicant that she may wish to appeal the decision. And it was subsequent to that that on the 10th of January the applicant filed a Notice to Appeal.

When the respondent filed an outline of the submissions, and certainly upon first looking at the Notice of Appeal in the material, it was unclear whether Ms Harley was intending to appeal against Magistrate Kilner's refusal on the two occasions to re-open the ex-parte hearing, or whether what the applicant was doing was basically, intending to apply for an extension of time to lodge an appeal against her conviction and sentence.

The prosecution submitted if it was the first alternative that the District Court has no jurisdiction to decide an appeal against a Magistrate's refusal to re-open under section 142A(12) Justices Act. The prosecution submitted that this decision by the Magistrate was administrative in nature, and the proper course was for the applicant to have gone to a different Court to seek a judicial review under the Judicial Review Act, and the prosecution refer to a number of cases which he submitted supported this submission.

It's certainly an interesting point, but for the reasons that

I'll now address, I do not need to decide this point at present. The applicant, during the hearing today, and certainly from her Notice of Appeal, clearly is appealing against - or seems to be appealing against the decision to convict her in the Magistrates Court. The Applicant appears to be appealing against conviction and sentence.

However I will make the following comments, just in case it is a point that I should have considered, and just in case I did have jurisdiction to decide that particular appeal against a re-opening; Section 142A(12) allows the Magistrate a discretion to grant a re-hearing for such reason as the Magistrate thinks proper." It is clear from a review of the Court file, which is summarised in the chronology that, the Magistrate properly considered the applications sent in by the applicant to re-open.

The applicant failed to provide any reasonable explanation to the Magistrates Court as to why she failed to appear, or at least contact the Court, prior to the hearing date, as to why she could not attend. She provided no documentation or explanation specific to the 2nd of August 2010, and it is understandable that the Magistrate found that her explanations were clearly insufficient to grant a re-opening.

As I've indicated, the applicant didn't even argue this point, and so therefore did not place any further material before this Court, or any meritorious argument, to show that the learned Magistrate erred in the exercise of his discretion.

I'll now go on to consider what the applicant says she is actually arguing today which is, she's appealing against the conviction and the sentence. The applicant, I must note, filed her Notice of Appeal approximately five months after the date the conviction was entered. Under s 222, Justices Act 1986, "When a person appeals they must file a notice within one month after the date of conviction." The applicant on this occasion filed her Notice to Appeal out of time.

Therefore what the applicant really should have done, was put in an Application for Extension of Time to Appeal. But because the applicant is unrepresented, I believe, it's fair, in this case, for me to amend her Notice of Appeal to an Application for Extension of Time in which to Appeal.

Now, you understand what I'm saying?

APPELLANT: Yes.

HER HONOUR: Yes. And I'll make the following comments: The applicant was unrepresented at all times, and remains so. The history outlined in the Magistrates Court as to what happened demonstrates that the reasons the Application to Appeal against a conviction was filed out of time, was because the applicant had been corresponding with the Magistrates Court in an effort to have the ex-parte hearing re-opened. And this correspondence was from very soon after the date of conviction.

When the learned Magistrate made his final decision to refuse

the application to re-open, he advised the Registry to notify the applicant, Ms Harley, that she could appeal if she wished to do so. A letter to this effect was sent to Ms Harley on the 16th of December 2010, and then again on the 5th of January 2011, due to rain damaging the letter which had been posted on the 16th of December 2010.

Therefore, the applicant filed her Notice of Appeal within 25 days of the first letter, sent on the 16th of December, and within five days of the second letter. And the Notice of Appeal, as I've already indicated, shows that she is appealing against her conviction.

Having regard to these matters, I am of the view there is a satisfactory reason before the Court to show why the applicant failed to file her Notice of Appeal within time, and I formally order the Notice of Appeal be amended to become an Application for Extension of Time in which to Appeal.

Now that I'm considering the application in that form, I note the case of the Queen against Tate, unreported, [1998] QCA 304 where the Court, when considering the question of extension of time, and having regard to the authorities, stated, and I quote, "That the Court will examine whether there is any good reason shown to account for the delay and consider overall whether it is in the interest of Justice to grant the extension; that may involve some assessment of whether the appeal seems to be a viable one."

I've already indicated that there was good reason to account for the delay, and I now turn to the merits of the applicant's appeal. The applicant has provided a number of documents to the Court which summarise her grounds of appeal. She has made oral submissions before me today.

For example, in her original Notice of Appeal, she states, "It is not a law where I can be convicted. This legislation has not been enacted in Parliament of Queensland (1900 UK); it has not been signed by the Governor, in the Queens name and is not law. Speeding measuring equipment does not comply with Section 10 of Commonwealth Measurement Act."

The applicant has also attached by way of written submissions, a Notice of Default document that was sent to Senior Constable David Gibson, and a letter which she sent to the Magistrates Court re-stating why she believes she should not have been convicted. And there is also on file, an original letter sent to Sergeant Gibson. All of those documents are ones which, as I say, summarise her argument and which I have read and considered.

The applicant has reiterated her case in oral argument. In summary, she argues that the law under which she was convicted, is not a valid law and there is no valid law to convict a person of speeding in Queensland. There are some other remaining arguments which, to me, are very difficult to understand.

I have had regard to all of this material and in my view, the issues raised by the applicant have no basis, are somewhat irrational, and without merit. She does not contest that she was owner of the vehicle, or the driver of the vehicle. She has not complied with section 124 subsections 4 and 5 of the T-O-R-U-M which states that if she wished to challenge the accuracy of the LIDAR equipment, she was required to give notice of her intention to challenge any speed detection devices at least 14 days before the day listed for hearing.

In the circumstances, there is no merit in any of the arguments that the applicant has placed before the Court. I therefore refuse her Application for Extension of Time in which to appeal. Her application is dismissed.

All right. And there's no order as to costs against you.

Now what that means is Ms Harley, I have dismissed your application and so it's up to you now if you wish to take the matter further or not. And what it means is that your fine of $200 will be reinstated.

APPELLANT: Yes.

HER HONOUR: And the Court costs. But as I say, you can certainly organise with SPER to make those payments periodically so that it shouldn't have any affect financially.

APPELLANT: So if I make an appeal I have to go up to the Supreme Courts, is that right?

HER HONOUR: Yes, you have to go to the Court of Appeal.

APPELLANT: Court of Appeal, okay.

HER HONOUR: All right. Now, you know, hopefully your mother's, you know, not too - is she coping alright?

APPELLANT: People have died from pancreatic cancer

HIS HONOUR: I know that, yes, so-----

APPELLANT: I mean, look at Patrick Swayze-----

HIS HONOUR: Yes.

APPELLANT: -----the famous movie star, look at-----

HER HONOUR: And are you still caring for her?

APPELLANT: I'm caring for her, 24/7.

HIS HONOUR: Yes, all right then. Now, is there any other matters that you wanted to ask me about or raise at this stage?

APPELLANT: No, ma'am I don't.

HER HONOUR: Alright then. Mr Kay, anything further?

MR KAY: I have nothing further, thank you, your Honour.

HER HONOUR: All right then, we'll just adjourn.
