

DISTRICT COURT OF QUEENSLAND

CITATION: *Cintra- Suarez v Commissioner of Police* [2015] QDC 230

PARTIES: **LEIDER CINTRA- SUAREZ**
(**appellant**)
v
COMMISSIONER OF POLICE
(**respondent**)

FILE NO/S: 2898/14

DIVISION: Criminal

PROCEEDING: Appeal

ORIGINATING COURT: Magistrates Court at Brisbane

DELIVERED ON: 19 June 2015, delivered ex-tempore

DELIVERED AT: Brisbane

HEARING DATE: 19 June 2015

JUDGE: Farr SC DCJ

ORDER: The application seeking an extension of time within which to file a notice of appeal is not allowed and the appeal is refused.

CATCHWORDS: **APPEAL**- s222 *Justices Act* 1886- whether an extension of time to appeal against conviction and sentence should be granted - whether the conviction was irregular - whether the penalty imposed was excessive.

COUNSEL: Self-represented
W F Cloake for the respondent

SOLICITORS: Self-represented
Director of Public Prosecutions for the respondent

[1] On the 22nd of October 2013, the Appellant – or the Applicant – pleaded guilty in the Magistrates Court in Brisbane to one count of driving over the general alcohol limit, that offence occurring on 5 October 2013. The Magistrate convicted the Applicant and imposed a fine in the amount of \$350 and disqualified him from driving for two months. The Applicant is a Cuban national and has limited understanding of English. He was assisted in the Magistrates Court on the 22nd of October 2013 by a person that was identified only by the name of Emilio who was present to translate the court proceedings into Spanish for the Appellant. Of relevance to this matter is the fact that 19 days after that conviction, the Applicant was charged with disqualified driving.

- [2] The Applicant seeks leave to appeal – or for an extension of time to appeal against that conviction and sentence and he filed a notice of appeal in the application for leave on the 29th of July 2014. He was therefore approximately eight months out of time to lodge the appeal. The grounds of the appeal are that (a) the conviction was irregular and ought be set aside in the interests of justice and (b) the penalty imposed was excessive. An outline of submissions was filed on his behalf on the 26th of August 2014. Those submissions were prepared by a barrister, Mr Kissick, who was acting on behalf of the Applicant at that time.
- [3] Each of the grounds of appeal were particularised as follows: in relation to appeal Ground (A), the particulars are that the proceedings were irregular in that the Magistrate failed to properly inform herself of the Appellant’s understanding of the proceedings, his understanding of the charge, the consequences of his plea, and the need for an interpreter.
- [4] In relation to Ground (B), it was particularised as follows: the proceedings were irregular in that the Magistrate failed to properly inform herself of the Appellant’s understanding of the proceedings, his understanding of the charge, the consequences of his plea and the need for an interpreter.
- [5] On an extension of time application, the principles that arise for consideration are (1) the reason for and the length of the delay (2) whether it is in the interests of justice to grant the extension which may involve some assessment of whether the appeal is a viable one and (3) the prejudice to the respondent. I refer to the case of *R v Tate* (1998) QCA 304 in that regard. The respondent has conceded that there is no prejudice arising from the delay. Turning to the issue of whether it is in the interests of justice to grant the extension, the issue of whether the appeal is a viable one is relevant. In that regard, the applicant has made submissions on his own behalf today. The effect of those submissions is that he concedes he understood the nature of the charge that he was facing, he understood what was meant by a plea of guilty, he intended to plead guilty to the charge because he accepted he was guilty and he appreciated that a penalty would follow that plea of guilty.
- [6] He has also – in the course of his submissions today – accepted that he understood the penalty that was imposed, that is, that it involved a fine of \$350 and that he was disqualified from driving for two months. He did not understand, however, that the period of disqualified driving commenced that same day. He believed that it wouldn’t commence until he received a letter. The submission that has been made his behalf is that a miscarriage of justice has occurred because the plea of guilty that was entered was equivocal because he didn’t understand the nature of the charge he was pleading guilty to. Mr Suarez, however, has made it perfectly clear that that was not the case and that he did understand the charge. He has also made it clear that he understood the proceedings in the Magistrates Court as they occurred, either through his own limited English or with the use of the person who was interpreting for him that day.
- [7] The appellant’s right of appeal lies in section 222 subsection (2)(c) of the *Justices Act* 1886 in that it provides that if a defendant pleads guilty or admits the truth of a complaint a person may only appeal under section 222 on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate. There is some support for the argument that the District Court has power to set aside a conviction based on a
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plea of guilty that is equivocal or even if unequivocal if there has been a miscarriage of justice.

- [8] As I understand the submissions for the respondent no issue is taken with that submission. It is unnecessary for me, however, to examine the case law authority on the issue as I am of the view, given the information supplied by Mr Suarez, that he entered an unequivocal plea of guilty and that there has been no miscarriage of justice.
 - [9] The argument that Mr Suarez has raised today may well be relevant to the issue of his guilt in relation to the charge of disqualified driving but it has no relevance to the issue of the charge that I'm concerned with. I also note that the penalty that was imposed appears to me to be quite moderate, including the length of the disqualification period and there is no merit to any argument that it was excessive. I do not really understand Mr Suarez to be submitting to the contrary, in fact.
 - [10] Accordingly, it is my view that the applicant has failed to establish that his plea of guilty was equivocal such as to invoke the jurisdiction of section 222 of the Justices Act. The applicant has failed to establish on the balance of probabilities that he did not understand the nature of the charge to which he pleaded guilty nor that he failed to understand the proceedings that were conducted and nor did he fail to understand the penalty that was imposed and, accordingly, he has failed to establish that the discretion to set aside the plea in the interests of justice has been enlivened. Accordingly, the application seeking an extension of time within which to file a notice of appeal is not allowed and the appeal is refused.
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