

DISTRICT COURT OF QUEENSLAND

CITATION: *Hayes v Commissioner of Queensland Police* [2017] QDC 101

PARTIES: **HAYES, Bradley David**
(applicant)
v
The Commissioner of Police
(respondent)

FILE NO/S: D 46 of 2017

DIVISION: Criminal

PROCEEDING: Application pursuant to s 131(2) of the *Transport Operations Road Use Management Act 1995*.

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 28 April 2017

DELIVERED AT: Townsville

HEARING DATE: 19 April 2017

JUDGE: Durward SC DCJ

ORDERS: **1. Application granted.**
2. Absolute disqualification from holding or obtaining a driver's licence is removed from 19 April 2017.
3. Each party bear their own costs.

CATCHWORDS: CRIMINAL LAW — PARTICULAR OFFENCES — DRIVING OFFENCES — CULPABLE OR DANGEROUS DRIVING CAUSING DEATH OR BODILY HARM — DRIVING WHILST ADVERSELY AFFECTED BY AN INTOXICATING SUBSTANCE NAMELY ALCOHOL — s 131(2) of the *Transport Operations Road Use Management Act 1995* – where on 08 November 2012 the applicant pleaded guilty to dangerous operation of a motor vehicle causing death whilst adversely affected by an intoxicating substance and driving whilst disqualified. As part of the sentence the applicant was absolutely disqualified from holding or obtaining and driver's licence – Where the applicant seeks to remove the disqualification as more than 2 years have expired from the start of the disqualification period.

LEGISLATION: Sections 131(2), 131(2C) and 131(D) *Transport Operations (Road Use Management) Act 1995* (Qld)

CASES: *Tabakovic v Commissioner of Police* [2009] QDC 191;
Kennedy v Commissioner of Police [2009] QDC 181; *Hopper v Commissioner of Queensland Police* [2016] QDC 210

COUNSEL: Mr T Carlos for the Applicant.
 Mr M O'Brien for the Respondent.

SOLICITORS: Arthur Browne & Associates for the applicant.
 Queensland Police Service Solicitor for the respondent.

- [1] The applicant was convicted of two offences: dangerous operation of a motor vehicle causing death whilst adversely affected by an intoxicating substance and driving whilst disqualified. His Honour Judge Baulch SC sentenced the applicant in the District Court at Townsville on 08 November 2012 to 4 years imprisonment suspended after 16 months imprisonment with an operational period of 5 years. With respect to driving whilst disqualified, the applicant was sentenced to 6 months imprisonment to be served concurrently with the 4 year term and was disqualified from holding or obtaining a drivers licence absolutely.

The Application

- [2] The applicant applied for his driver's licence disqualification to be lifted. I heard submissions from Mr Carlos for the applicant and Mr O'Brien for the respondent on 19 April 2017. I granted the application, made the relevant orders and reserved these reasons.

The Relevant Statutory Provisions

- [3] Section 131(2) of the *Transport Operations (Road Use Management) Act 1995 (Torum)* provides that:

A person who has been disqualified, by operation of law or an order, from holding or obtaining a Queensland driver licence absolutely or for a period of more than 2 years, may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.

- [4] Section 131(2C) of the *Transport Operations (Road Use Management) Act 1995 (Torum)* provides that:

Upon hearing any such application the judge of the Supreme Court or District Court or justices constituting the court may, as is thought proper, having regard to the character of the person disqualified and the person's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, either by order remove the

disqualification as from such date as may be specified in the order or refuse the application.

The sentencing remarks

- [5] His Honour Judge Baulch SC took into account the applicant's early plea of guilty, his demonstration of remorse and cooperation with the police. However a critical observation was the applicant's antecedents. Although minor, the applicant had previously been disqualified from holding or obtaining a drivers licence for 3 months for driving while intoxicated. His Honour identified the similar nature of the previous offence, the short period of time between the commission of offences and the serious nature of this offence.

The Grounds of the Application

- [6] The applicant is eligible to make an application for removal of the absolute disqualification as more than two years have passed since ordered was made. Mr Carlos submitted that the applicant has been subject to the order for a not insignificant period, his conduct subsequent conduct of the order is not adverse and the affidavits demonstrate that the applicant has reintegrated back into society.
- [7] The court may take into consideration the character of the applicant, his conduct subsequent to the order, the nature of the offence and other circumstances of his case.

Submissions for the Applicant

Character - affidavits of the applicant, his partner and employer

- [8] Since release from custody in 2014 the affidavits of the applicant, his partner and employer demonstrate that the applicant has been in a supportive relationship with his partner, is expecting a child, is a committed employee and has not operated a motor vehicle since November 2012.

Conduct subsequent to the order

- [9] The applicant has not committed any further criminal or traffic offences subsequent to the absolute disqualification order.

The nature of the offence

- [10] It was conceded that the offence leading to the absolute disqualification was of a serious nature. The applicant disrespected a previous disqualifying order by driving a motor vehicle whilst intoxicated at the time of committing the offence. However as noted by the sentencing Judge the applicant demonstrated remorse and responsibility by remaining and assisting other persons at the scene.

The applicant's antecedents; any other circumstances of the case

- [11] The applicant was born 2 July 1991 and was 20 years of age when he offended, 21 at the time of sentence and is now 26 years of age. He is currently employed and has

potential to progress by obtaining a drivers licence. The applicant is expecting his first child in March 2017 and is in a supporting relationship.

- [12] Notwithstanding his convictions which lead to the absolute disqualification, the applicant has no prior or subsequent traffic or criminal history.

The respondent's submission

- [13] The respondent neither supports nor opposes the granting of the Application.

The judicial discretion

- [14] The applicant has been absolutely disqualified from holding or obtaining a licence since 08 November 2014. However 16 months of the disqualified period was spent in custody. Having regard to the time spent in custody, the applicant has been in the community since February 2014 and has not driven since his release. Such duration can be considered a sufficient length of deprivation '*to satisfy the community's demand for punishment*' as per Judge Robin QC in *Tabakovic v Commissioner of Police* [2009] QDC 191 at page 3.
- [15] In *Kennedy v Commissioner of Police* [2009] QDC 181 Judge Robin QC supported the removal of an absolute disqualification when it is apparent the applicant has performed well under such order.
- [16] With circumstances similar to that of *Hopper v Commissioner of Queensland Police* [2016] QDC 210, the maturity of the applicant since sentencing is a factor that can be taken into consideration. The removal of the absolute disqualification would promote the applicant's reintegration into the community and the public's interest in rehabilitation.

Findings

- [17] Taking into consideration the applicants circumstances, it is apparent the applicant has demonstrated good behaviour since his release from prison and should be afforded the opportunity to be licenced again.
- [18] I spoke directly to the applicant about the return of his licence and his need to take care. I advise the applicant that the disqualification was an absolute and due to his individual circumstances I exercise my discretion to remove the disqualification forthwith.

The decision and orders

- [19] Application granted pursuant to s 131(2) *Torum*, the absolute disqualification from holding or obtaining a Queensland driver licence ordered by the District Court of Queensland at Townsville on 8 November 2012 is removed with effect on and from 19 April 2017.
- [20] Each party bear their own costs.