

DISTRICT COURT OF QUEENSLAND

CITATION: *Priestley v Commissioner of Police (No. 2)* [2020] QDC 57

PARTIES: **PRIESTLEY**

v

COMMISSIONER OF POLICE

FILE NO/S: Appeal 118/19

DIVISION: Appellate

PROCEEDING: Section 222 Appeal

ORIGINATING
COURT: Magistrate Court

DELIVERED ON: 15/04/2020

DELIVERED AT: Brisbane

HEARING DATE: On the papers. 15/04/2020

JUDGE: RS Jones DCJ

ORDER:

1. Leave to appeal is granted;
2. The appeals against the sentences imposed in respect of one count of stealing a trailer and one count of trespass are allowed;
3. The sentences imposed by the court below on 17 October 2019 in respect of those charges are set aside;
4. In lieu thereof the appellant is sentenced to three years' probation in respect of the stealing charge with no conviction to be recorded;
5. That sentence is to be served concurrently with the sentences imposed by this court on 2 April 2020;
6. In respect of the one count of trespass, the sentence is that the appellant be convicted, but not further punished.

COUNSEL: C Hughes for the appellant

S Drinovac for the respondent

SOLICITORS: KLM Solicitors for the appellant

Director of Public Prosecutions for the respondent

- [1] On 2 April 2020, I was concerned with an appeal pursuant to s 222 of the *Justices Act* 1886. That appeal was against sentences imposed by the court below on 17 October 2019, in respect of two counts of unlawful use of a motor vehicle, one count of wilful damage and one count of possessing tainted property. The sentences imposed by the court below in respect of all charges was 12 months imprisonment, to be served concurrently by way of intensive correction orders. Consistent with the notice of appeal, the written submissions and indeed, the oral submissions made on behalf of both the appellant and the Commissioner of Police, only those four sentences were dealt with.
- [2] For reasons given *ex tempore* on 2 April 2020, those appeals were allowed and the sentences imposed by the court below were set aside and in lieu thereof, in respect of all but the charge of possession of tainted property, the appellant was sentenced to three years' probation, such sentences to be served concurrently. A conviction was to be recorded in respect of the most serious charge of unlawful use of a motor vehicle but otherwise no convictions were recorded. In respect of the possession charge, the appellant was convicted but not further punished.
- [3] On advice from the registry of the Magistrates Court at Maroochydore, it became apparent that the notice of appeal and, as a consequence, the appeal process itself, failed to address the fact that the court below also sentenced the appellant to two further periods of imprisonment to be served by way of intensive correctional orders. Those sentences were imposed in respect of one count of stealing a trailer and one count of trespass.
- [4] Following a mention of the matter on 9 April 2020, the appellant filed an application for an extension of time for the filing of a notice of appeal and an "*amended*" notice of appeal appealing the sentences imposed in respect of the stealing and trespass charges. The parties agreed that these appeals could be dealt with on the papers without the need for any further material or submissions.
- [5] For the reasons given disposing of the earlier appeals, I have reached the conclusion that the appeals against these sentences should also succeed.

- [6] The stealing offence was serious. It formed a part of the crime spree in which the appellant and others were involved over a short period of time. It was also a particularly brazen and callous crime. Sometime between 11.45 pm on 24 July 2019 and 7.00 am on 25 July 2019, the complainant had his Mitsubishi motor vehicle stolen by the appellant and his co-offenders. That vehicle was located soon thereafter having suffered some minor damage. It was when the appellant and his co-offenders were stealing the complainant's motor vehicle that they saw the same complainant's home-made dual axel car trailer. The appellant with his co-offenders returned to that property sometime between 10.00 pm on 25 July 2019 and 7.00 am on 26 July 2019 and stole the trailer. The purpose of the theft was to sell it for reward.
- [7] In all the circumstances, I find that when the criminality involved in respect of this offence is considered in the light of the other offences committed by the appellant during this crime spree, it is appropriate that while the appeal is to be allowed, he be sentenced to three years' probation, to be served concurrently with the other periods of probation imposed on 4 April 2020. No conviction is to be recorded.
- [8] In respect of the charge of trespass, that was a very minor example of such offending and was, in reality a part of the wilful damage charge for which the appellant was sentenced to three years' probation with no conviction to be recorded. In the circumstances, consistent with the approach adopted by me when disposing of the previous appeals, I consider that in respect of this offence, the appeal ought to be allowed and that the appellant be convicted, but not further punished.
- [9] Accordingly, the orders of the court are:
1. Leave to appeal is granted;
 2. The appeals against the sentences imposed in respect of the one count of stealing a trailer and one count of trespass are allowed;
 3. The sentences imposed by the court below on 17 October 2019 in respect of those charges are set aside;
 4. In lieu thereof the appellant is sentenced to three years' probation in respect of the stealing charge with no conviction to be recorded;
 5. That sentence is to be served concurrently with the sentences imposed by this court on 2 April 2020;
 6. In respect of the one count of trespass, the sentence is that the appellant be convicted, but not further punished.

- [10] I should conclude by pointing out that the reason why these reasons have been published before those delivered ex-tempore on 2 April 2020, is because the transcript to those proceedings have yet to be received.