

# DISTRICT COURT OF QUEENSLAND

CITATION: *Murray v Commissioner of Police* [2021] QDC 48

PARTIES: **ADRIAN JOHN MURRAY**  
(applicant)  
v  
**COMMISSIONER OF POLICE**  
(respondent)

FILE NO: D3/21

DIVISION: Civil

PROCEEDING: Application

ORIGINATING COURT: District Court at Beenleigh

DELIVERED ON: 1 April 2021

DELIVERED AT: Beenleigh

HEARING DATE: 8 March 2021

JUDGE: Chowdhury DCJ

ORDER: **Application refused.**

CATCHWORDS: APPLICATION TO REMOVE ABSOLUTE DISQUALIFICATION OF DRIVER LICENCE – WHERE APPLICANT WAS CONVICTED OF DANGEROUS OPERATION OF A MOTOR VEHICLE CAUSING DEATH, WHILE AFFECTED BY A INTOXICATING SUBSTANCE – WHERE APPLICANT WAS SENTENCED TO 7 YEARS IMPRISONMENT WITH PAROLE ELIGIBILITY AFTER 2 YEARS – WHETHER THE APPLICANT HAS DEMONSTRATED IT IS PROPER TO REMOVE THE ABSOLUTE DISQUALIFICATION ORDER

LEGISLATION: *Transport Operations (Road Use Management) Act 1995* (Qld)

CASES: *Slivo v Commissioner of Police* [2016] QDC 46  
*R v Shirley* [1969] 1 WLR 1357  
*Morgan v Commissioner of Police* [2007] QDC 10  
*Johnson v DPP (Qld)* [2009] QDC 300  
*Tabakovic v Commissioner of Police* [2009] QDC 191

COUNSEL: R. Tannock (*Sol*) for the applicant  
M. O'Brien (*Sol*) for the respondent

SOLICITORS: Clarity Law for the applicant  
Queensland Police Service for the respondent

## **Introduction**

- [1] By way of originating application filed on 25 January 2021, the applicant seeks the removal of the absolute disqualification of his driver licence made by me on 18 December 2017, following a conviction for dangerous operation of a motor vehicle causing death, while affected by an intoxicating substance.
- [2] The application is opposed by the respondent.

## **Circumstances of the disqualifying offence**

- [3] On Christmas Day 2016, the applicant had been drinking heavily during the course of the day. Witnesses at the residence where the applicant was imbibing described him as being heavily intoxicated. He was drinking Wild Turkey, an American bourbon.
- [4] At about 4.30pm that day, it was decided that he and others would go to another address in Springwood. The applicant ordered an Uber driver for one of his companions. Another companion queried the applicant about whether he was going to order an Uber as well. The applicant stated he was going to drive, to which his companion said *“that’s a stupid idea, man. You’ve had a lot to drink. Catch an Uber home.”* Despite that, the applicant insisted he was going to drive.
- [5] According to the applicant’s police interview, he drove a distance of about five kilometres. He was approaching the intersection of Jardine Drive and Rholanda Crescent at Springwood. At the same time the deceased child was walking with his older brother and family friends southwards along the western concrete footpath of Rholanda Crescent. The applicant approached the intersection at high speed, did not slow down nor apply his brakes. At about 7.25pm that evening he lost control of his car, crossed the north and south bound lanes of Rholanda Crescent, crashing into a parked Ford Falcon sedan. The rear end of that Falcon sedan was shunted onto the footpath, and the applicant’s car continued onto the footpath, colliding with the deceased child. The applicant’s car continued across the footpath to a line of bushes then into the front yard of an address, where his car collided with a trampoline, water tank and then into the north eastern corner of the dwelling.

- [6] The applicant got out of his car, and was seen to be so drunk that he almost stood on the deceased child, who was fatally injured. He attempted to get back into his car to reverse back, but was told by others at the scene not to do so.
- [7] Upon police investigation the applicant was found to have a breath alcohol concentration of 162 grams of alcohol in 210 litres of breath, equivalent to a total blood alcohol concentration of 0.162. A forensic medical officer expressed the opinion that the applicant's ability to safely control a motor vehicle would have been severely impaired.
- [8] The deceased child suffered traumatic brain injury and after two days on life support it was switched off, causing devastating grief to his family.

### **Antecedents of the applicant**

- [9] The applicant had a traffic history which contained a number of significant speeding offences. On 3 April 2010, he exceeded the speed limit by more than 20 kilometres per hour but less than 30 kilometres per hour. On 27 May 2011, he exceeded the speed limit by less than 13 kilometres per hour over the speed limit. On 25 July 2011, he was speeding by more than 20 kilometres per hour over the speed limit but not more than 30 kilometres per hour over the speed limit.
- [10] The applicant had an accumulation of demerit points, resulting in his licence being suspended. It was later restored and the applicant was placed on a good driving behaviour period on 25 June 2012, with a late night driving restriction. A further speeding offence was committed on 11 April 2016, when he exceeded the speed limit by more than 13 kilometres per hour but no more than 20 kilometres per hour. A further speeding offence was committed on 22 May 2016 by speeding less than 13 kilometres over the speed limit.
- [11] In respect of the applicant's criminal history, he has convictions for urinating in a public place, supply dangerous drugs, unlawful possession of dangerous drugs, and receiving property from the supply of dangerous drugs.
- [12] The applicant was 24 years old at the time of the dangerous operation causing death offence. He was 25 at time of sentence.

**The sentence**

- [13] In sentencing I took into account the applicant's early plea of guilty, and his excellent work history. He finished school at grade 10, and since then had been in regular employment, and he was a qualified carpenter. A number of references were tendered which spoke highly of the applicant. He had done the traffic offenders program by the time of sentence. Having regard to comparable cases, I imposed a sentence of seven years imprisonment, with parole eligibility after two years. The driver licence of the applicant was disqualified absolutely.

**Basis of the application**

- [14] The applicant states in his affidavit filed 25 January 2021 that he currently resides with his wife at an address, and is currently employed as a car detailer. He has been working in that role for about 10 months. His current job does not require a driver licence, and at the moment he is getting to and from work with his employer. It is stated that apparently this is causing some strain on his otherwise good working relationship with his employer.
- [15] The applicant states that he was released from prison on parole on 17 February 2020, after serving two years and two months in prison. While in prison he completed a low intensity, substance intervention program. Before his sentence he was seeing a counsellor, and he continued with counselling while in prison with the prison psychologist. Exhibit B to the applicant's affidavit is a copy of his prison offender file, which includes the sessions with the prison psychologist.
- [16] The applicant states that since being released from prison he has complied with all the conditions of parole. One of the ongoing conditions is that he must not consume any alcohol. On 22 September 2020, his parole officer removed the condition that he not hold a Queensland driver licence. He currently reports to his parole officer once every four months, and is on a wait list to undertake the Substance Abuse Maintenance Intervention program ("SAMI").
- [17] The applicant states that he has completed the Queensland Traffic Offenders Program for a second time, and the copy of the certificate of completion is marked Exhibit C to his affidavit.

- [18] The applicant states that the building company he used to work for, Construction Plus, is prepared to rehire him once he obtains a driver licence. He had previously worked for them for about four years before he was imprisoned. A job with this company would require him to have a valid driver licence because he would be required to drive to construction sites, sometimes up to four different sites on any given day, and to drive to suppliers to collect materials, tools and equipment.
- [19] The applicant set out in his affidavit his current income and expenses. It is asserted that he and his wife will struggle financially if his current job should finish before he can return to his previous position as a carpenter.
- [20] The applicant set out personal hardships from not having a driver licence, including visiting his grandparents who are both quite elderly, assisting his mother who is in a wheelchair, and visiting his sister who has Down's Syndrome and lives in a care home. He would also assist his father, who has Parkinson's disease and cannot drive long distances, to visit his mother in Bundaberg.
- [21] The applicant asserts at [35] of his affidavit that he realises the importance of having a driver licence, and that a having driver licence is a privilege, and not a right.
- [22] Supporting affidavits were filed from the applicant's wife, Christie Murray, his godmother Shane Warner, his current employer Reece Jung, his father Wayne Murray, and Leanne Bax, one of the company directors of Bax Investments Pty Ltd, trading as Construction Plus.
- [23] The following submissions were made on the applicant's behalf by his lawyer, in his written outline:

*“[48] The applicant submits that, based on the evidence of his otherwise good character, his change of attitude since being released from prison, his engagement in counselling and rehabilitation programs, and compliance with parole, this court may be satisfied that the applicant is likely to continue to conduct himself in accordance with community expectations once his driver's licence is reinstated.*

*[49] The court may also be satisfied that the reinstatement of the applicant's driver licence will further his endeavours to reintegrate within the community by allowing him to gain and retain meaningful and permanent employment. It will also*

*allow him to provide necessary support to members of his extended family, according to their need, and not, according to his availability.*

[50] *The applicant submits that, having regard to his character and conduct, the nature of the offence (including the circumstance that it appears to have been an entirely out-of-character occurrence), and the other circumstances mentioned in this outline, that it is open for this court to be satisfied that it is appropriate to grant the order sought.*

[51] *Lastly, the applicant submits that it is open to this court to be satisfied that the order for a removal of the applicant's absolute disqualification from holding or obtaining a Queensland driver's licence ought to commence from the date of the hearing of his application. In the alternative, the applicant does not object to the court ordering reinstatement of his licence to occur at any such date that the court sees fit."*

### **Submissions of the respondent**

- [24] It is submitted that the seriousness of the original offence was at the highest level. The conduct of the applicant, and his cavalier approach after a friend suggested he was too intoxicated to drive and to get an Uber driver, resulted in the loss of life of a young child on Christmas Day. The seriousness of the conduct was aggravated by the fact that the applicant was over the legal alcohol limit at the time.
- [25] While the respondent concedes that the applicant has provided evidence of his good character and conduct since the disqualification order was made on 18 December 2017, that must be viewed in the context that the respondent has really only been back in the community for 13 months. Reference was made to the observation of his Honour Judge Farr SC in Slivo v Commissioner of Police [2016] QDC 46, where his Honour observed at [41] that "*a driver licence disqualification can hardly be considered a punishment for a prisoner during the period of incarceration.*"
- [26] It was submitted that the applicant had not demonstrated sufficiently legitimate reasons for the court to remove the absolute disqualification. It was observed that the applicant is currently employed, and there is no evidence to suggest that he would lose that job simply by reason of not having a driver licence. It was ultimately submitted that the applicant had not been subject to a sufficiently lengthy period without a driver licence while in the community to meet the community's demand for punishment.

### Relevant legislation

- [27] A person who has been disqualified, by operation of law or an order, from holding or obtaining a Queensland driver licence absolutely or a period of more than two years, may, at any time after the expiration of two years from the start of the disqualification period, apply for the disqualification to be removed: s 131(10) *Transport Operations (Road Use Management) Act 1995* (“TORUM”).
- [28] If the disqualification was ordered by a Judge of the District Court, the application must be made to a Judge of that Court: s 131(11) TORUM. Upon hearing any such application, a District Court Judge “*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*”: s 131(14).

### Relevant case law

- [29] In R v Shirley [1969] 1 WLR 1357, Sachs LJ said this at 1358:

*“Long periods of disqualification from driving may prove a very severe handicap to man when he comes out of prison and desires to pursue a different type of life to that which has led him into that prison. Such periods of disqualification may shut out a large sector of employment, especially in certain areas. Moreover, if the length of disqualification is overlong, and amounts to a period such as a decade, the position may well seem hopeless to the man – and that of itself sows the seeds of an incentive to disregard the law on this point. However wrong such an attitude may be, it springs from a human factor which it is wise to take into account.”*

- [30] These comments were approved of by his Honour Judge Newton in Morgan v Commissioner of Police [2007] QDC 10. His Honour observed in respect of an application such as this:

*“[31] Ultimately, however, a judgement is required which, in a particular case, balances the interests of the applicant in having his or her licence restored with those of the community in not prematurely sanctioning the right of an offender to resume driving after committing a serious criminal offence which placed in jeopardy the safety of members of that community.”*

[31] In Slivo v Commissioner of Police, supra, Farr SC DCJ observed that the onus of proof is on the applicant to demonstrate that it is proper to remove the disqualification.

[32] In Johnson v DPP (Qld) [2009] QDC 300, Irwin DCJ at p 17 of his judgment said this:

*“For completeness, I observe that I do not consider the inconvenience to the applicant and his wife arising from the licence disqualification in his day-to-day life is a factor in favour of removing it. Some level of inconvenience can always be expected to flow from a disqualification. If it did not, a disqualification would not have the essential deterrent effect. However, it is another matter when there is an indication of the potential loss of employment arising from his not holding a driver's licence.”*

[33] In Tabakovic v Commissioner of Police [2009] QDC 191, Robin QC DCJ said this at p 3 of his judgment:

*“In my respectful opinion, the section is there serving the useful purpose of providing an inducement to offenders to perform well, in which event there is a reasonable likelihood that they will be given the opportunity to become licensed to drive again - after suffering a sufficiently lengthy deprivation of the ability to drive to satisfy the community's demand for punishment.”*

### **Consideration**

[34] On any objective view the original offence of dangerous operation causing death whilst adversely affected by an intoxicating substance was a very serious example of that offence. The applicant was warned by a friend that he was not in a state to drive, but he decided to do so anyway. The consequences of that decision were catastrophic. The decision to disqualify him from holding or obtaining a driver licence absolutely was not made lightly.

[35] The applicant has made commendable efforts, firstly by being a model prisoner while in custody, and being a model parolee. He has employment at the moment, although the hours he works varies according to customer demand. There is no question there is a major social inconvenience to the applicant and his wife.

[36] I also accept that the applicant's financial position would be significantly improved if he were able to resume his employment as a carpenter with the building company.

The applicant's rehabilitation is not only important for him, but also for the community.

- [37] However, I agree with the submission of the respondent that there has been an insufficient deprivation of the ability to drive to satisfy the community's demand for punishment in this case, even taking into account the period of licence suspension between charge and sentence. If the application is refused, the applicant cannot renew this application for another year: s 131(15) TORUM.
- [38] The court has the discretion to remove the disqualification at a specified date in the future. In my view, at least a further year of disqualification would be the minimum period to satisfy the community's demand for punishment.
- [39] In all the circumstances I am not satisfied that the applicant has met his onus in establishing that the absolute disqualification should be removed at this point.
- [40] The application is refused.