DISTRICT COURT OF QUEENSLAND

CITATION:	*Singh v Commissioner of Police* [2022] QDC 236
PARTIES:	**UPDESH SINGH** (Appellant) **v** **COMMISSIONER OF POLICE** (Respondent)
FILE NO:	2356/21 and 2357/21
DIVISION:	Civil
PROCEEDING:	Appeal - *Justices Act 1886* (Qld) s 222
ORIGINATING COURT:	Magistrates Court of Queensland at Richlands
DELIVERED ON:	20 October 2022
DELIVERED AT:	District Court at Brisbane
HEARING DATE:	23 September 2022
JUDGE:	Loury KC DCJ
ORDER:	**(1) Leave to adduce new evidence is granted;** **(2) Appeal number 2357/21 is allowed;** **(3) The sentence imposed on 8 June 2021 is set aside to the extent that convictions were recorded;** **(4) No convictions are recorded for the offences of possession of tainted property and failing to take reasonable precautions with a syringe or needle on 17 May 2021;** **(5) Appeal number 2356/21 is dismissed.**
CATCHWORDS:	*2357/21* APPEAL – s 222 of the *Justices Act 1886* (Qld) – whether the learned Magistrate erred in his discretion to proceed under section 142A of the *Justices Act 1886* (Qld) – whether the requirements of section 142A(5) were complied with – whether the recording of a conviction renders the sentence excessive *2356/21* APPEAL – s 222 of the *Justices Act 1886* (Qld) – whether the learned Magistrate's refusal to re-open the sentence was an error of law – whether this court has jurisdiction to hear an appeal against a refusal to rehear a matter pursuant to section 142A(12) of the *Justices Act 1886* (Qld) – whether the recording of a conviction renders the sentence excessive

LEGISLATION:	*Criminal Proceeds Confiscation Act* 2002 (Qld) s 65, s 104, s 252(1), s 252(2)
	Justices Act 1886 (Qld) s 142A(4), s 142A(5), s 142A(12)
	Penalties and Sentences Act 1992 (Qld) s 12
CASES:	*Guy v McLoughlin & Anor* [2006] QDC 17
	McGee v McKeever; ex parte McGee [1995] 1 Qd R 623
	Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority (1991) 24 NSWLR 156
COUNSEL:	E Kurz (solicitor) for the appellant A Jayachandran (solicitor) for the respondent
SOLICITORS:	Legal Aid Queensland for the appellant Director of Public Prosecutions (Queensland) for the respondent

Introduction

[1] On 8 June 2021 at 12.47 pm, the appellant was convicted, in his absence pursuant to section 142A of the *Justices Act 1886* (Qld), of possessing tainted property and failing to take reasonable care and precautions in respect of a syringe or needle in the Richlands Magistrates Court. Those offences occurred on 17 May 2021. He was fined $800 with convictions being recorded.

[2] On 13 August 2021 the appellant applied for a rehearing of those charges pursuant to section 142A(12) of the *Justices Act 1886* (Qld). That application was refused. The appellant was also convicted on that date, of failing to take reasonable care and precautions in respect of a syringe or needle on 8 June 2021. He was fined $500. A conviction was recorded.

Grounds of appeal

Appeal No 2357/21

[3] The appellant's grounds of appeal, as amended, are:

(1) the learned Magistrate erred in his discretion to proceed under section 142A of the *Justices Act 1886* (Qld);

(2) the learned Magistrate erred in proceeding under section 142A as the requirements of section 142A(5) were not complied with; and

(3) the recording of a conviction renders the sentence excessive.

Appeal No 2356/21

[4] The appellant's grounds of appeal, as amended, are:

(1) that the learned Magistrate erred in his dismissal of the application under section 142A(12); and

(2) The recording of a conviction renders the sentence excessive.

Circumstances of the offences

Appeal No 2357/21

[5] At 9.45 am on 17 May 2021 police saw what they thought to be a drug deal being conducted. They approached a parked vehicle. The appellant walked away from police. He was intercepted and detained for the purposes of a search. Inside his shirt, police located a bank card belonging to another person. The defendant said that he found the card at a shopping centre the night prior and did not know the name on the card. The defendant appeared vague to police and offered no lawful emergent reason to be in possession of someone else's card. The owner of the card confirmed to police that she had lost the card the night before.

[6] When asked if there were any loose syringes in the car, the defendant indicated that there might be two loose syringes between the front seats. Police located two syringes. One had a cap on it, the other had the needle clearly exposed. The appellant's explanation for not properly storing or disposing of those syringes was that he forgot and was lazy.

Appeal No 2356/21

[7] At 2.50 pm on 8 June 2021 police observed the appellant inside a car at the Durack Tavern. He was in the driver's seat. There were two other men in the car with him. They all appeared to be moving around attempting to conceal items. None of the occupants could provide any explanation as to why they were sitting in the vehicle in the car park. They were not local to the area. They were all detained for a search. A syringe and needle was located underneath the driver's seat of the car. There was a second syringe and needle located in the rear footwell.

Consideration

Appeal No 2357/21

[8] Section 142A of the *Justices Act 1886* (Qld) provides for a procedure where if a defendant does not appear at the time and place fixed for the hearing of a simple offence, the court, if satisfied that the facts as alleged constitute a simple offence, and that reasonably sufficient particulars are stated, can deal with and determine the matter as if the facts and particulars had been established by evidence under oath before it and as if the defendant had personally appeared at the time and place fixed for the hearing.

[9] It is contended by the appellant that the facts as alleged by the prosecution did not make out the charge of possessing tainted property.

[10] In *Harvey v Commissioner of Police*,[1] Devereaux SC DCJ (as he then was) agreed with earlier statements of McGill SC DCJ in *Guy v McLoughlin & Anor*[2] that to

[1] [2019] QDC 106 at [2] – [3].

challenge the merits of a conviction which occurs in the defendant's absence pursuant to section 142A, the appellant must first apply for a rehearing.

[11] In this case the appellant did apply for a rehearing. The grounds set out in the application form for the rehearing state:

> "The Applicant was unrepresented and unwell on the day of the Hearing and was accordingly unable to attend court on that day. He obtained a medical certificate (attached) to that effect, however the matter was heard ex-parte before he was able to provide the Court with that material."

[12] The application for the rehearing was filed by the appellant's then-solicitor.

[13] The appellant's current legal representative accepts that the application for the rehearing was for the purposes of submitting that no convictions should have been recorded. It was not, therefore, for the purpose of submitting that there was no offence disclosed known to the law or for submitting that the appellant was in fact, not guilty of the offence. There was nothing said either in the application for the rehearing or in court to the effect that the appellant was not guilty of the charge.

[14] The appellant now contends that there was nothing in the facts presented to the learned Magistrate in his absence that disclosed an offence known to the law. It is contended that the fact that the appellant's account of having found the bank card was verified by the complainant having informed police that she lost it means that there was no evidence that the bank card was tainted property.

[15] The appellant contends that a finding that there was no offence disclosed in the facts presented means that in accordance with the statements of McGill SC DCJ in *Guy v McLoughlin & Anor* an appeal can lay to this court pursuant to section 222 of the *Justices Act 1886* (Qld).

[16] The absence of any identifiable offence, or even any suggestion that the appellant was not guilty of the offence of possession of tainted property was not a ground relied upon in either the application for a rehearing or in oral submissions before the learned Magistrate. It seems to me that the appellant is now raising for the first time in this court that he is not guilty of the offence. In *Atkin v Commissioner of Police,*[3] Richards DCJ referring to *Guy v McLoughlin & Anor,* said that it is not authority for the fact that there can be no appeal, merely that new matters throwing doubt on the conviction cannot be raised on the appeal. It seems to me that the appellant is doing precisely that. He is raising for the first time, that he is not guilty of the offence of possessing tainted property which is contrary to the submissions of his own lawyer in the Magistrates Court. Indeed the appellant's current representative confirmed that it was the recording of the convictions against which the appellant is appealing. The appellant does not intend to defend the charge if the matter is returned to the Magistrates Court.

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[2] [2006] QDC 17 at [11].
[3] [2015] QDC 224 at [9].

[17] I would dismiss his appeal on that basis, that he is raising for the first time, that he is not guilty of the offence of possessing tainted property contrary to the submissions of his lawyers both in the Magistrates Court and in this Court.

[18] If I am wrong in that regard, I nonetheless disagree with the contention that the facts presented did not give rise to a reasonable suspicion that the property was tainted property. I do so in the face of the respondent's concession that the appeal should be allowed on the basis that "there was no basis alleged in the facts for a reasonable suspicion on the appellant's part that the property was tainted".

[19] Section 252(1) of the *Criminal Proceeds Confiscation Act 2002* (Qld) provides that:

> A person must not receive, possess, dispose of, bring into Queensland, conceal or disguise property that may reasonably be suspected of being tainted property.

[20] Subsection (2) provides for a defence if the person satisfies the court that the person had no reasonable grounds for suspecting that the property mentioned in the charge was either tainted property or derived from any form of unlawful activity.

[21] Tainted property is defined under section 104 of the *Criminal Proceeds Confiscation Act 2002* (Qld) to mean:

> **104 Meaning of tainted property**
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> (1) ***Tainted property***, for a confiscation offence, means—
> (a) property used, or intended to be used, by a person in, or in connection with, the commission of the offence; or
> (b) property or another benefit derived by a person from property mentioned in paragraph (a); or
> (c) property or another benefit derived by a person from the commission of the offence; or
> (d) if the offence is money laundering, property mentioned in section 250(2)(a); or
> (e) if the offence is against section 252(1), property mentioned in that subsection.
>
> (2) Property mentioned in subsection (1)(a) includes property the use of which is, or the intended use of which would be, all or part of the confiscation offence.
>
> (3) Subsection (1)(d) and (e)—
> (a) do not limit subsection (1)(a) to (c); and
> (b) apply even though an act done in relation to the property is all or part of the confiscation offence.

[22] "Reasonably suspect" means suspect on grounds that are reasonable in the circumstances.[4] "Suspects" includes believes and knows.[5]

[23] In *McGee v McKeever; ex parte McGee*[6] it was held of the same expression under the predecessor legislation, section 65 of the *Crimes (Confiscation of Profits) Act 1989* (Qld), that it falls to the court at the time of trial to determine objectively, on the basis of the facts proved at that time, whether it is satisfied beyond reasonable

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[4] *Criminal Proceeds Confiscation Act 2002* (Qld) sch 6.
[5] Ibid.
[6] [1995] 1 Qd R 623.

doubt that the property may reasonably be suspected of being stolen or unlawfully obtained. The description "that may reasonably be suspected of being tainted property" is one which the court must be satisfied attaches to the goods.[7] It is incorrect in law that it is the appellant who must hold the reasonable suspicion. The respondent's concession is based on a lack of understanding of the state of the law. The respondent conceded in oral argument that it would be open to me to find that the bank card was reasonably suspected of being tainted property.

[24] The appellant further argues that the learned Magistrate's reasons for proceeding pursuant to section 142A were inadequate. All the learned Magistrate said was "Section 142A has been complied with".

[25] In *AK v Western Australia*,[8] Heydon J quoting the Honourable Murray Gleeson in his article 'Judicial Accountability',[9] said of the objectives underlying the duty to provide reasons at 470:

> First, the existence of an obligation to give reasons promotes good decision making. As a general rule, people who know that their decisions are open to scrutiny, and who are obliged to explain them, are more likely to make reasonable decisions. Second, the general acceptability of judicial decisions is promoted by the obligation to explain them. Third, it is consistent with the idea of democratic institutional responsibility to the public that those who are entrusted with the power to make decisions, affecting the lives and property of their fellow citizens, should be required to give, in public, an account of the reasoning by which they came to those decisions.

[26] The learned Magistrate's reasons were delivered *ex tempore*. By that nature they are briefer than they might otherwise be. The reasons, nonetheless, must be at a minimum adequate for the exercise of a facility of appeal[10] and must expose the reasons for resolving the critical points in contest between the parties.[11] It is not necessary that the reasons need spell out every detail of the process of reasoning to a finding.[12]

[27] The provision of reasons needs to be considered in the context of the appellant having not appeared. It is noteworthy that whilst the appellant relies upon his having been unwell on 8 June 2021 as his explanation for not appearing, in fact he was at the Durack Tavern engaging in conduct associated with the consumption of illicit drugs.

[28] The learned Magistrate's reasons are brief, however there were no issues to resolve between the parties. The learned Magistrate had to be satisfied only that the facts alleged constituted a simple offence/s and that reasonably sufficient particulars were provided.

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[7] See *King v De Villiers* [1997] QCA 419.
[8] (2008) 232 CLR 438, 470.
[9] Murray Gleeson, 'Judicial Accountability' (1995) 2(2) *The Judicial Review* (1995) 117, 122.
[10] *Soulemezis v Dudley (Holdings) Pty Ltd* (1978) 10 NSWLR 247, 260 (Kirby P).
[11] *North Sydney Council v Ligon 302 Pty Ltd* (1995) 87 LGERA 435, 442 (Kirby ACJ); *Re Minister for Immigration and Multicultural and Indigenous Affairs; ex parte Palme* (2003) 216 CLR 212, 224 [40] (Gleeson CJ, Gummow and Heydon JJ).
[12] *Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority* (1991) 24 NSWLR 156, 171 (Mahoney JA).

[29] As an appeal pursuant to section 222 is to be conducted as a rehearing I must conduct a real review of the evidence given at first instance and the Magistrate's reasons for judgment to determine whether he has erred in fact or in law.[13]

[30] On the evidence before the learned Magistrate, which remains undisputed, I am satisfied that the bank card "may reasonably be suspected" of being tainted property. The appellant's statement that he found the bank card at a shopping centre needs to be considered in its full context. The police saw what appeared to them to be a drug deal. The appellant walked away from police. Whilst he said that he found the card at a shopping centre, the appellant appeared vague. He neither then nor now has provided an explanation for why he did not hand the card into the authorities either at the shopping centre where he found it or to the police given he did not know the person whose card it was. He had, even on his account been in possession of the card overnight. It was 9.45 am when he was intercepted by police in Biota Street, Inala less than two kilometres from the Inala Police Station. The appellant has pointed to no other evidence or sought leave to file any evidence to establish that he had no grounds for believing that the property was tainted property.

[31] The onus falls to the appellant pursuant to section 252(2) of the *Criminal Proceeds Confiscation Act 2002* (Qld) to satisfy the court that he had no reasonable belief that the property was stolen. His failure to attend at the hearing of the matter goes against his having any such reasonable belief. The mere fact that he claimed to have found the bank card does not, given his failure to appear at the hearing of the matter and in the absence of any evidence to the contrary, give rise to any concern on my part that the offence was not one known to the law. Further, the absence of any reliance on the appellant's belief at the rehearing also tends against his having such a reasonable belief that the property was not tainted.

[32] I am well satisfied that the conditions in section 142A of the *Justices Act 1886* (Qld) had been met.

[33] No argument has been directed to why the appellant's conviction for the offence of failing to properly dispose of a needle or syringe warrants being overturned. That is because, as indicated, it is the recording of the convictions against which the appellant is appealing.

[34] The appellant argues that in determining to record convictions for the two offences which occurred on 17 May 2021 the learned Magistrate erred in that he failed to "take into account any information considered by it to be relevant brought to its notice…in relation to the circumstances of the matter of the complaint and the imposition of the penalty."[14] When considered with the portion of the legislation that requires the learned Magistrate to "deal with and determine the matter of the complaint as fully and effectually to all intents and purposes as if the said facts and particulars have been established by evidence under oath before it and as if the defendant had personally appeared at the time and place fixed for the hearing of the complaint",[15] the appellant submits that the learned Magistrate's statement that

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[13] *Robinson Helicopter Co Inc v McDermott* (2016) 90 ALJR 679, 686-7 [43] (French CJ, Bell, Keane, Nettle and Gordon JJ).
[14] *Justices Act 1886* (Qld) s 142A(5).
[15] Ibid s 142A(4).

there was no material before him to enliven his discretion to not record a conviction was an error.

[35] As the appellant did not attend court there was no positive material before the learned Magistrate as to the impact that the recording of a conviction would have on the appellant's economic or social well-being or his chances of finding employment. However, the prosecution did not allege any criminal history against the appellant. That means, in my view, that there was sufficient material before the learned Magistrate to enliven his discretion to not record convictions. Section 12 of the *Penalties and Sentences Act 1992* (Qld) requires the court to consider the nature of the offence and the offender's character and age in addition to the impact that the recording of a conviction would have on the offender's economic or social wellbeing or chances of finding employment. That the prosecution did not allege any criminal history at all means that the appellant fell to be sentenced as a first-time offender. The absence of any criminal history was a feature which, given the nature of the offending being, relatively speaking, at a low-level, enlivened the learned Magistrate's discretion. I consider that the learned Magistrate fettered his discretion by stating that there was no material before him which would enliven his discretion to not record a conviction.[16]

[36] By the time the application for a rehearing arose (13 August 2021), a criminal history was alleged against the appellant. That was because the appellant also fell to be sentenced for failure to take reasonable precaution with a syringe on 8 June 2021.

[37] The material before me demonstrates that the appellant has a criminal history and a relevant traffic history. In the face of that material, the appellant nonetheless argues that the recording of convictions makes the sentence imposed on 8 June 2021 manifestly excessive. The respondent concedes that on the basis that the prosecution did not allege a criminal history at the sentence, that convictions ought not to have been recorded.

[38] The appellant's criminal history reveals that on 7 February 2017 the appellant was convicted of contravening a domestic violence order and sentenced to a recognisance in the amount of $1600 conditioned that he be of good behaviour for 12 months. No conviction was recorded. More significantly on 30 October 2020 the appellant was convicted of driving with a relevant drug present. He was fined $400 with his licence being disqualified for 1 month. No conviction was recorded.

[39] As this appeal is to be conducted as a rehearing, I am able to substitute my own decision based on the facts and the law as they stand.[17] In addition to the material before the learned Magistrate at the hearing of the appeal the appellant sought leave (which was not opposed) to adduce new evidence. That evidence establishes that on 2 June 2022 the Office of Fair Trading cancelled the appellant's security licence as he had been convicted on 13 August 2021 for an offence of failing to take reasonable care and precautions in respect of a syringe or needle. The appellant also relies upon a letter from the Chief Executive Officer of Austec Services Pty Ltd which indicates that the appellant has been employed by that organisation for two years. It further indicates that he cannot continue his job without a security licence.

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[16] Decision Transcript, 2, line 2-4.
[17] *Allesch v Maunz* (2000) 203 CLR 172, 180 [23] (Gaudron, McHugh, Gummow and Hayne JJ).

The appellant also relies upon a rejection of employment as a DoorDash delivery driver on the basis that he did not pass a national police check.

[40] The appellant's only criminal conviction at the time of sentence for the offences of possessing tainted property and failing to dispose of a syringe was a contravention of a domestic violence order. He had not previously been convicted of offences involving dishonesty or the possession of drug paraphernalia. The recording of convictions for such offences can be seen to impact on the appellant's social and economic wellbeing and also on his ability to obtain employment. The offending on 17 May 2021 tended, in my view, to fall towards the lower end of the scale of seriousness. When that feature is balanced against the impact of the recording of convictions, I would be inclined to exercise my discretion and not record convictions.

Appeal 2356/21

[41] The appellant has otherwise appealed against the refusal of the Magistrate to re-open the sentence on 13 August 2022. At the hearing of the appeal I invited the parties to provide supplementary submissions as to whether this court has jurisdiction to entertain an appeal against a refusal to rehear a matter pursuant to s 142A(12). The respondent submits that I do not have jurisdiction as such an application does not dispose of the complaint itself as section 222 requires. The appellant relies on obiter statements of McGill DCJ in *Guy v McLoughlin & Anor* to argue I do not have jurisdiction. Given the finding that I have made as to an error in the exercise of the learned Magistrate's discretion it is unnecessary to further consider this ground, including whether there is jurisdiction to entertain an appeal against a refusal to re-open a sentence. The appellant's supplementary submissions however extend well beyond addressing the issue of jurisdiction. I have had no regard to these submissions.

[42] The appellant however also appeals against the recording of a conviction for the offence of failing to properly dispose of a needle/syringe, that offence having been committed on 8 June 2021, the very day the appellant was to appear in court in relation to the offences committed on 17 May 2021.

[43] The respondent has submitted that the learned Magistrate erred by placing too much weight on the appellant's limited criminal history and not taking into account other considerations under section 12 of the *Penalties and Sentences Act 1992* (Qld). The respondent however does not appear to have regard to the nature of the offence which is a feature that section 12 requires. The respondent has also submitted that the fine imposed should in effect be reduced by $100 to $400. No reasons have been provided for that submission. No such submission has been made by the appellant.

[44] What is relevant to a consideration of the nature of the offence in section 12 are the following circumstances. On the day of the offence, 8 June 2021, the appellant was due to appear in the Magistrates Court in relation to an identical charge of failing to take reasonable precautions with a syringe or needle. At 9.20 am on that date he telephoned the Magistrates Court and informed a person who worked in the Registry that he was feeling sick and was seeing a doctor. Tendered at his hearing on 13 August 2022 was a medical certificate which indicated that the appellant was "unfit for work" on 8 June 2021. That medical certificate was provided by a doctor at Queensland Progressive Health in Stones Corner. It is unknown what time he

attended upon his doctor. However at 12.46 pm the appellant's matters were dealt with pursuant to section 142A of the *Justices Act 1886* (Qld) in the Richlands Magistrates Court. The appellant's representative on 13 August 2021 informed the court that the appellant was on the opioid substitution programme and that the medications he was on made him severely ill which was why he could not attend court. The appellant had, it was submitted, developed an addiction to heroin around one year earlier. He had seen a doctor at Queensland Progressive Health who he engaged shortly after he was charged on 17 May 2021. The appellant had moved out of the family home to focus on his rehabilitation. The appellant informed the learned Magistrate that he had diabetes and that in India doctors recommend opium in the treatment of diabetes. Heroin was "part of opium".[18] The appellant indicated that he was ashamed by his conduct and that it had impacted upon his family. He said that he was taking methadone to treat his addiction. He claimed to have applied for Canadian citizenship as his mother lived in Canada and that the recording of a conviction would impact on his ability to obtain citizenship.

[45] The appellant's then-solicitor tendered some references on the appellant's behalf. Those references were from his brother-in-law who wrote on 12 August 2021 that the appellant had not committed any crime in the past. That was clearly incorrect. The appellant's wife also provided a reference in which she said that the appellant had changed a lot since the offending and was taking medicine from Queensland Progressive Health. Her reference also stated that the appellant regretted his actions and that he had never engaged in such actions previously. Again, that was clearly incorrect. I would infer that the appellant had not been truthful when disclosing his past history to his wife or brother-in-law.

[46] Further evidence which appears to have been before the learned Magistrate from Queensland Progressive Health indicates that the appellant "had recommenced" on the opioid substitution program (methadone) on 9 August 2021.

[47] At 2.50 pm on 8 June 2021 when the appellant was due to appear in court, he was in the carpark at the Durack Tavern engaging in what I would infer was the consumption of illicit drugs. Despite being "severely ill" as was submitted on his behalf, the appellant left his home in Wishart before attending the Durack Tavern where he committed the offence of failing to take reasonable precautions with a syringe.

[48] It is that feature, that on the very day when the appellant was due to appear in court in circumstances where he has tried to convince the court that he was unwell, he was rather, committing a like offence at a place not terribly far from the Richlands Magistrates Court. That feature means in my view that the nature of the offence does not favour the non-recording of a conviction.

[49] In determining the appropriate sentence the learned Magistrate said that he had regard to the fact that the appellant had been before the court twice for previous offending (including drug driving) and been given the benefit of no convictions having been recorded. He also said that the appellant's offending on 8 June 2021 was committed whilst he was subject to a Notice to Appear. Those features meant that in his view it was appropriate that a conviction should be recorded.

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[18] Hearing Transcript, 1-6, line 16.

[50] The appellant was not in fact subject to a Notice to Appear as he had already been sentenced approximately two hours earlier for the very same offence.

[51] The material tendered and submissions made on behalf of the appellant before the learned Magistrate concerning the appellant's not appearing, in my view, lack candour. The learned Magistrate did not refer to the references provided by the appellant in his reasons, however that may be because he considered them to be of limited weight given the writers seem to be unaware and indeed misled by the appellant as to his previous convictions. The weight that can be attributed to them is limited.

[52] The commission of the offence of failing to take appropriate precautions with respect to a needle/syringe on 8 June 2021 considered in the context that the appellant was on that very day sentenced for the very same offence, is a serious example of that offence.

[53] In terms of the appellant's character and age, he presented at the time, as a man addicted to heroin. He had a previous conviction for drug driving. He had a previous conviction for failing to take appropriate precautions with a syringe or needle. There is no material before me, other than the letter of 12 August 2021 indicating that the appellant had recommenced on the methadone program, to indicate what steps the appellant has taken over the last 12 months to demonstrate what action he has taken to rehabilitate and from which I could make a finding that the appellant has good prospects of rehabilitation. The appellant attended upon a psychiatrist in India on 30 August 2021 in relation to a "nervous disorder". The letter provided by the psychiatrist indicates that the appellant was under his care until 28 February 2022. It does not at all refer to any drug addiction or treatment for a drug addiction. The appellant's character and age does not favour the non-recording of a conviction.

[54] I accept that the appellant's conviction for the offence committed on 8 June 2021 has impacted upon his economic well-being in that he has lost his security provider's licence and is unable to work as a delivery driver. Balancing those features against the seriousness of the offence and the appellant's character in my view results in the balance favouring the recording of a conviction. It seems to me that it is appropriate for the Office of Fair Trading to be aware of the appellant's conviction on 8 June 2021 in determining the appellant's suitability to hold a security provider's licence.

[55] My orders are:

(1) Leave to adduce new evidence is granted;
(2) Appeal number 2357/21 is allowed;
(3) The sentence imposed on 8 June 2021 is set aside to the extent that convictions were recorded;
(4) No convictions are recorded for the offences of possession of tainted property and failing to take reasonable precautions with a syringe or needle on 17 May 2021;
(5) Appeal number 2356/21 is dismissed.