

# DISTRICT COURT OF QUEENSLAND

CITATION: *McMaster v Commissioner of Police* [2023] QDC 197

PARTIES: **SCOTT WILLIAM MCMASTER**  
(Applicant)  
v  
**COMMISSIONER OF POLICE**  
(Respondent)

FILE NO/S: 182/23

DIVISION: Appellate

PROCEEDING: Application for Extension of Time/Appeal pursuant to section 222 *Justices Act 1866* (Qld)

ORIGINATING COURT: Magistrates Court at Southport

DELIVERED ON: 8 November 2023 (*ex tempore*)

DELIVERED AT: Southport

HEARING DATE: 8 November 2023

JUDGE: Holliday KC DCJ

ORDER: **1. Application for extension of time to apply for leave to appeal refused.**  
**2. The applicant pay the costs of the respondent fixed in the sum of \$1800.00.**

CATCHWORDS: APPEAL – where the appeal was brought pursuant to s 222 of the *Justices Act 1886* (Qld) – where the applicant applies for extension of time within which to appeal – where the applicant appeals against his conviction for contravening regulation 20 of the Transport Operations (*Road Use Management – Road Rules*) Regulation 2009 (Qld) – whether there was evidence that the applicant was the driver of the vehicle – whether the correct legislation was applied – whether evidence was overlooked – whether the photograph of the applicant’s vehicle was such that it should have been rejected as evidence

LEGISLATION: *Justices Act 1886* (Qld) ss 222 and 223  
*Transport Operations (Road Use Management) Act 1995* (Qld) s 113, s 114 (1), s114 (3)(b)  
*Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010* (Qld) s 20

- CASES: *Allesch v Maunz* (2000) 203 CLR 172  
*Forge v ASIC* (2006) 228 CLR 45  
*R v Tait* (1999) 2 Qd R 667  
*Robinson Helicopter Co Inc v McDermott* [2016] HCA 22  
*Saba v Department of Transport and Main Roads (No 2)*  
 [2013] QDC 128  
*White v Commissioner of Police* [2014] QCA 121
- COUNSEL: The applicant appeared on his own behalf  
 A Buckby for the respondent
- SOLICITORS: The applicant appeared on his own behalf  
 Office of the Director of Public Prosecutions for the  
 Respondent

### **Background**

- [1] On 12 May 2023 the applicant was convicted after a summary trial of contravening regulation 20 of the Transport Operations (*Road Use Management – Road Rules*) Regulation 2009 (Qld). He was fined \$350.00 and ordered to pay the costs associated with the issue of the summons in the amount of \$103.95.
- [2] The applicant, who is self-represented on this appeal, filed a Notice of Application for Extension of Time and Notice of Appeal in the District Court registry at Southport on 22 June 2023. The Notice of Appeal states the grounds of appeal as “my documentation was overlooked in Court and High CA case overlooked and ignored. Copy of Qld legislation was ignored. No evidence was brought by Police Prosecutor to prove I was driving vehicle at time”. The Notice of Application for Extension of Time lists the grounds of application as “I have been doing fifo work and have been offshore and unable to file within the time frame.”
- [3] On 14 August 2023 the applicant filed a one-page document headed “outline of argument” which contains contentions under ten dot points. Documents are attached to the outline including an unsigned “Notice of Private Settlement Agreement”, an unsigned “Notice of Default”, an unsigned letter to the Queensland Revenue Office and documents related to Queensland Treasury (first outline of argument).
- [4] On 12 September 2023 the respondent filed an outline of submissions.
- [5] On 8 October 2023 the applicant filed a further one page document headed “outline of argument” which appears to contain two additional contentions to that set out in the first outline of argument. A photograph is attached (second outline of argument).
- [6] On 13 October 2023 the matter was mentioned before His Honour Judge Jackson KC. The applicant indicated that he wished to pursue the appeal as “a piece of evidence that was actually used in the case by the prosecution was actually classed as invalid by the Vitronic manual, which is the Vitronic speed camera manual, because the photo, it doesn’t include the numberplate within the box where it should be according to the manual”.<sup>1</sup>

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<sup>1</sup> Transcript of mention before Jackson KC DCJ on 13 October 2023 at page 2 lines 19-22.

### **The Nature of the Appeal**

[7] The applicant has brought an application for an extension of time within which to appeal as his appeal is out of time. I have a discretionary power to extend the time within which the applicant can appeal. Relevant to the exercise of the discretion to extend time is –

- (a) whether there is a good reason for the delay; and
- (b) whether it is in the interests of justice to grant the extension.

[8] In *R v Tait* (1999) 2 Qd R 667 at 668, the Court stated the approach, when considering whether to extend time in criminal appeals, is to:

“examine whether there is any good reason shown to account for the delay and consider overall where it is in the interests of justice to grant the extension. That may involve some assessment of whether the appeal seems to be a viable one. It is not expected that in all such cases the Court will be able to assess whether the prospective appeal is viable or not, but when it is feasible to do so, the Court will often find it appropriate to make some provisional assessment of the strength of the applicant’s appeal and take that into account in deciding whether it is a fit case for granting the extension”.

[9] The applicant’s appeal, if an extension is granted, is pursuant to section 222 of the *Justices Act 1886* (Qld). Subject to an application being made pursuant to s 223 of the *Justices Act*, such an appeal is by way of rehearing on the evidence below. In order to succeed on such an appeal, the applicant must establish some legal, factual or discretionary error.<sup>2</sup> I am required to conduct a real review of the evidence and the learned Magistrate’s decision and make my own determination giving due deference and placing a good deal of weight on the learned Magistrate’s view.<sup>3</sup>

### **The applicant’s position on appeal**

[10] The applicant submits that his application for extension of time should be granted and the appeal against conviction allowed.

[11] In the applicant’s Notice of Appeal he appears to state his grounds of appeal as:

- (i) his “documentation was overlooked in court”;
- (ii) a High Court case was “overlooked and ignored”;
- (iii) Queensland legislation was ignored;
- (iv) it could not be proved he was driving the vehicle at the time.

[12] In the applicant’s first outline of argument he appears to raise the following additional contentions:

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<sup>2</sup> *Allesch v Maunz* (2000) 203 CLR 172; *White v Commissioner of Police* [2014] QCA 121 at [6]-[8].

<sup>3</sup> *Robinson Helicopter Co Inc v McDermott* [2016] HCA 22; (2016) 90 ALJR 679, 686 at [43].

- (i) The wrong legislation was applied to the proceeding and other legislation/case law operated including “3ZZIA Crimes Act 1914”, “George v Rockett (1990) HCA 26-170 CLR 104”, “R v Kirby HCA 10; 94 CLR 254”, “Imperial Applications Act 1980 Sect8 Par12 fines and forfeitures”, “Sect 15 Crimes Act 1914”, “SPER owned by Equifax an American Company...Foreign Corporation also not Judicial Power...Cannot use State Law. TORUM Act 1995 is a Qld state law.”
- [13] In the applicant’s second outline of argument the applicant appears to raise the following additional contentions to those contained in his Notice of Appeal and first outline of argument:
- (i) “the image of my vehicle [registration number] is not within the parameters of the evaluation Template according to page 8.5, 8.6 and 8.7 of the “Vitronic Poliscan Manual”. The picture clearly shows that my numberplate is outside of the “Template frame.” As the Manual states “this photo evidence cannot be used and is invalid!””
- (ii) “As Stephen Simons Principal Advisor (operations) Road Safety Camera office has certified on the 21<sup>st</sup> December 2022 that this image has been properly taken, he is under perjury for making a false statement.”

### **Discussion**

- [14] The applicant is self-represented on the appeal. The delay in this case in filing the Notice of Appeal is minimal.
- [15] It is unnecessary to detail with any further precision the reasons provided by the applicant for the delay, as, if this appeal was a viable one, I would have granted the extension of time in all the circumstances.

### The appeal is not a viable one

- [16] Given that the applicant is self-represented, I propose to address each of the applicant’s contentions as if they are grounds of appeal in all the circumstances:
- (i) The applicant contends that his “documentation was overlooked in court” and that the matter was “closed and settled as per acquiescence”. This appears to relate to the documentation which is attached to the applicant’s first outline of argument. These documents were not overlooked below. They were before the learned Magistrate and she referred to these in her decision.<sup>4</sup> The learned Magistrate has not erred. Those documents have no bearing on the outcome of the matter at first instance or on appeal. They appear to be documents prepared by the applicant and appear to rely on the “Queensland Revenue Office” allegedly not responding to a letter of 13 March 2022 as grounds for there being finalisation of the “alleged infringement.” They are of no legal effect.
- (ii) The applicant contends that a “high CA case [was] overlooked and ignored”. This appears to relate to the decision of *Forge v ASIC* (2006) 228 CLR 45

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<sup>4</sup> Decision at page 2 line 30- page 3 line 5.

which the applicant drew to the attention of the Magistrate. The applicant relied on this authority to submit to the learned Magistrate that “there be two magistrates”<sup>5</sup> and that it must be “a court that conforms to chapter 3 of the Commonwealth Constitution Act”. The High Court authority was expressly considered by the learned magistrate including in her decision.<sup>6</sup> The submissions of the applicant are not supported by the High Court authority. This was a charge brought pursuant to Queensland legislation and was properly heard at first instance before the learned Magistrate. I note that the applicant has (correctly) filed the Notice of Appeal pursuant to s 222 of the *Justices Act* which, implicitly, recognises that it was an order of a justice in a summary way on a complaint for an offence.

- (iii) The applicant contends that “a copy of QLD legislation was ignored”. This appears to relate to section 7.2.4 of the Queensland Legislation Handbook (Handbook). It is unclear how the applicant contends that this was ignored. Section 7.2.4 of the Handbook is headed, “Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?” The learned magistrate did not err. She expressly considered each of the elements of the offence and detailed how the evidence proved each of those elements.
- (iv) The applicant contends that there is no evidence he was driving at the time. There is no merit in this ground. The magistrate did not err. The relevant legislative provisions were set out and correctly applied to the evidence in the present proceedings.<sup>7</sup> There was evidence as to the registration number and exhibit 8 proved that the vehicle is registered to the applicant. Pursuant to s 113 of the *Transport Operations (Road Use Management) Act 1995* (Qld) (Act), the applicant is the person in charge of the vehicle as he is the registered operator of the vehicle and no notice was given by him pursuant to s 114 (3)(b) of the Act naming another person as the person in charge of the vehicle. Pursuant to s114(1) of the Act, he is taken to have committed the offence.

[17] There is no merit in any of the additional matters raised in the first outline of argument. The learned magistrate set out and applied the relevant legislation. The Commonwealth legislation detailed by the applicant has no application to the matter at first instance or on appeal.

[18] I will turn finally to consider the second outline of argument which includes an attached photograph. I note that no application for leave to adduce fresh or new evidence was filed pursuant to s 223 of the *Justices Act*. If an application was properly made, I would have refused it. There is no merit in the applicant’s contention that “the picture clearly shows that my numberplate is outside of the “Template Frame” and “the manual states this photo evidence cannot be used and is invalid”.

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<sup>5</sup> Transcript of proceedings on 6 March 2023 at page 2 line 25 – page 4 line 35; Transcript of proceedings on 12 May 2023 at page 3 line 27 – page 4 line 15.

<sup>6</sup> Decision at page 3 lines 5-10.

<sup>7</sup> Decision at page 4 lines 10-30.

- [19] On the evidence and certificates before the Magistrate the device being utilised was a Vitronic speed camera. The Vitronic Poliscan Manual provides at 8.2 that:

“at least one front wheel (in case of front measurement) respectively one rear wheel (in case of rear measurement) **and/or** the license plate of a vehicle must at least in part be visible within the template. Other road users travelling on the same lane or an adjacent lane must not be visible within the template. Moreover, the lower end of the template frame must be beneath the wheels. Otherwise, the photo must be rejected as evidence (emphasis added).”

The photograph attached to the second outline of argument, is one of rear measurement and one rear wheel is at least in part visible within the template. No other road users are visible and the lower end of the template frame is beneath the wheels. As such, the photograph was not to be “rejected as evidence”. The pages of the manual referred to by the applicant in his second outline of argument contain figures and commentary as to whether the vehicles in those figures are “valid evidence photos”. Those are no more than examples applying the criteria set out in 8.2.

- [20] I have determined that there is no merit in the applicant’s contentions. The appeal is not a viable one and it is, therefore, not in the interests of justice to grant the extension of time to apply for leave to appeal.

### **Costs**

- [21] The respondent sought statutory costs in the sum of \$1800.00 for the day of the hearing. The applicant opposed or at least indicated orally that he was concerned as to costs being awarded, because there was no invoice in relation to the sum.
- [22] I accept that it is not the law that costs need follow the event and there will be cases where, in the exercise of discretion, costs will not be awarded.<sup>8</sup> However, this is a case where, in my view, in the exercise of discretion, statutory costs should be awarded given the outcome of the application and the points advanced by the applicant. The applicant was put on notice that costs would be sought in that sum including in the respondent’s outline of submissions and by his Honour Judge Jackson KC on 13 October 2023. His Honour indicated to the applicant that he was “at some risk of having the appeal dismissed and such a costs order made against you.” The applicant persisted with the appeal which did not raise arguable points and has been unsuccessful.

### **Order**

- [23] The orders of the court are as follows:
1. Application for extension of time to apply for leave to appeal refused.
  2. The applicant pay the costs of the respondent fixed in the sum of \$1800.00.

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<sup>8</sup> See, for example, *Saba v Department of Transport and Main Roads (No 2)* [2013] QDC 128.