MAGISTRATES COURTS OF QUEENSLAND

CITATION:	*Police v Stewart* [2014] QMC 18
PARTIES:	**POLICE** (prosecution) **v** **BEVERLY MAY STEWART** (defendant)
FILE NO/S:	MAG210787/13(5)
DIVISION:	Magistrates Courts
PROCEEDING	Charge - Sentence
ORIGINATING COURT	Magistrates Court at Brisbane
DELIVERED ON:	2 May 2014
DELIVERED AT:	Brisbane
HEARING DATE:	30 April 2014
MAGISTRATE:	Callaghan CJ
ORDER:	**Defendant is convicted and fined $200 for not displaying "L" plates whilst driving; and convicted and fined $200 and disqualified from holding or obtaining a driver licence for a period of one month for driving under a "State Penalties Enforcement Act 1999" suspension; and convicted and ordered to perform 100 hours of unpaid community service and disqualified from holding or obtaining a driver licence for a period of two years for failing to stop when required to do so by police contrary to s 754 of the "Police Powers and Responsibilities Act 2000". Convictions recorded.**
CATCHWORDS:	TRAFFIC LAW – OFFENCES - SENTENCE – failing to stop motor vehicle when directed INTERPRETATION OF SENTENCING PROVISION – use of extrinsic material – amending legislation - mandatory sentencing – probation and community service sentencing options when a provision prescribes imprisonment as a punishment *Police Powers and Responsibilities Act 2000* (Qld), s 754 *Penalties and Sentences Act 1992* *Acts Interpretation Act 1954*

COUNSEL:	KR Burnett (senior constable) for the prosecution
	TJ Schafer (solicitor) for the defendant
SOLICITORS:	Prosecution on their own behalf
	Howden Saggers solicitors for the defendant

[1] Beverley May Stewart pleaded guilty on 30 April 2014 to three offences committed on 28 October 2013: failing to display her L plates whilst a learner licence driver; riding a motor scooter whilst suspended under the *State Penalties Enforcement Act 1999*; and failing to stop that motor scooter when required, contrary to section 754 of the *Police Powers and Responsibilities Act 2000*.

[2] She is 60 years of age and on a disability support pension. She has been receiving methadone on and off for some 40 years now and on 28 October 2013, the day of these offences, she wanted to change her medication from methadone to suboxone, however her treating medical practitioner at Biala, the drug rehabilitation clinic that has been servicing her, refused to give her suboxone, presumably as the methadone in her system would need to dissipate from her system prior to ingesting the suboxone otherwise it would cause danger to her. She was not thinking clearly as a result of this. She has a criminal history, rather typical for a person with a long term drug addiction, with some offences of dishonesty and some drug related offences. The last criminal offence of possessing drugs and a pipe, so it was presumably cannabis, was committed on 12 March 2012. She was convicted, a conviction was recorded but she was not further punished. It seems to show the level of that offending but apart from that I know nothing further about that matter. She has a minimal traffic history and she only holds a learner licence.

[3] On 28 October 2013 she was riding her motor scooter, which I am told is a 50cc, so not a very powerful scooter. Police indicated for her to pull over and she didn't. She rode off. Police pursued her. They called off the pursuit shortly after but noticed that she turned left into another road where they ultimately found her hiding.

[4] The most serious offence before the court today is the offence of failing to stop when required by a police officer. The history of that section is relevant. The Parliament, that is the current Parliament of the State of Queensland, amended that section after the election in March of 2012, from providing as subsection 2 provided, that the driver of a motor vehicle must stop the motor vehicle as soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances; maximum penalty 200 penalty units or three years imprisonment to provide:

> *The driver of the motor vehicle must stop the motor vehicle as soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances: minimum penalty 50 penalty units, maximum penalty 200 penalty units or three years imprisonment.*

[5] The amended legislation went on to provide in subsection (3) that if the court convicts a person of an offence against subsection (2) the court, in addition to imposing a penalty, must disqualify the person from holding or obtaining a Queensland driver licence for two years.

[6] Subsequent to that Justice Henry in the Supreme Court in Cairns considered the section as then amended in the case of the Commissioner of Police Service v Magistrate Spencer and others1. At paragraph 15 and following His Honour said:

> *"[15] A breach of section 754 is punishable with imprisonment. Section 91 of the Penalties and Sentences Act 1992 (Qld) provides a probation order may be made if "a court convicts an offender of an offence punishable by imprisonment".[2] It follows that probation could be imposed by way of penalty under s 754.*
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> *[16] That possibility is not excluded simply because the maximum penalty is said to be a fine or imprisonment. Section 180A of the Penalties and Sentences Act explains such provision means the sentencing court" may" impose a fine or imprisonment or both. That section's language is permissive. It does not prescribe that a fine or imprisonment or both are the only forms of sentence that can be imposed under such provision.[3] It leaves alive the characterisation of s 754, that it is an offence punishable with imprisonment and thus does not exclude the availability of probation under s 91.*
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> *[17] What though, of s 754's reference to a "minimum penalty" of 50 penalty units? Where, as here, a minimum as well as a maximum penalty is specified then the penalty must not be less than the minimum and not more than the maximum[4]. However there appears to be no reason grounded in statute or principle why a period of probation ought to be regarded as a lesser penalty than a fine. They are inherently different forms of penalty and their relative harshness will vary subjectively, depending on their duration or amount and on the individual circumstances of the offender. Further, the fact that probation arises as a sentencing alternative to imprisonment, whereas a fine is a sentencing option even for offences that are not punishable with imprisonment suggests as a matter of principle, that probation should not be regarded as a lesser sentencing option than a fine.*
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> *[18] Section 754's reference to a minimum penalty of 50 penalty units requires that where a fine is imposed it must be at least 50 penalty units. However, it does not require that a fine must be imposed. To construe the penalty provision for the offence in that way would be to ignore that it is also an offence punishable with imprisonment and it follows, with probation. The wording of s 754 does not inevitably require the imposition of a fine or exclude the availability of a sentence of probation."*

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[1] [2013] QSC 202
[2] Also see s 101, which is of similar effect in respect of community service.
[3] See Acts Interpretation Act 1954 (Qld) s 32CA(1)
[4] Acts Interpretation Act 1954 (Qld) s 41,s 41A.

[7] Some time after this decision, on 12 September 2013, the Minister for Police, introduced a Bill to Parliament to amend s 754 and other legislation. The Bill was entitled "The Police Powers and Responsibilities and Other Legislation Amendment Bill of 2013". After that Bill was introduced to the Parliament it went before the appropriate Parliamentary Committee for its consideration. However events overtook it through an incident that occurred at Broadbeach involving some alleged members of some alleged motorcycle gangs.

[8] On 15 October 2013, some 13 days before these offences, the State's Attorney-General and Minister for Justice presented to Parliament a Bill entitled "The Criminal Law (Criminal Organisation Disruption) Amendment Bill 2013". That Bill was passed by the Parliament on 17 October 2013 and it amended s 754 to its current form which is, in subsection (2):

> *"(2) The driver of a motor vehicle must stop the motor vehicle as soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances.*
>
> *Minimum penalty –*
>
> > *If the driver is a participant in a criminal organisation within the meaning of the criminal code section 60A – 100 penalty units or 100 days imprisonment served wholly in a corrective services facility or,*
> > *Otherwise – 50 penalty units or 50 days imprisonment served wholly in a corrective services facility.*
>
> *Maximum penalty – 200 penalty units or three years imprisonment."*

[9] And so the amendment added (a) to the minimum penalty, by providing that if you're a participant in a criminal organisation the minimum penalty is increased to 100 penalty units or 100 days in jail and in (b) added to the minimum penalty the words "or 50 days imprisonment served wholly in a corrective services facility".

[10] The defence here argues that this court has power to order probation and community service when sentencing a person for an offence against s 754 as it currently is and as it was on 28 October 2013. The prosecution argues that there is no such power, that the minimum penalty is either 50 penalty units, namely a fine of $5,500 or 50 days in prison, which must be served. The prosecution, in support of that argument, tendered to me the explanatory notes to the "Police Powers and Responsibilities and Other Legislation Amendment Bill of 2013". Of course they're not the explanatory notes to this amending legislation. They're the explanatory notes to the legislation that was placed before a Parliamentary Committee which was overtaken by those events in Broadbeach. But for the sake of completeness I'll indicate what it said. On page 5 of that explanatory note of the Minister for Police the heading is "Evade Police". The note then says:

> *"Clause 39 of the Bill amends section 754 "Offence for driver of motor vehicle to fail to stop motor vehicle" of the PPRA in relation to the offence for failing to stop a motor vehicle when the driver of the vehicle has been directed to do so by a police officer.*

> *Clause 39 amends section 754 of PPRA to provide that the only alternate minimum penalty that a court can impose instead of 50 penalty units is 50 days imprisonment, to be served wholly in a correctional services facility. The amendment specifically excludes the imposition of alternate penalties or sentencing options such as probation or a suspended sentence in lieu of the minimum penalty. Furthermore, the amendments also expressly overrides* (sic) *the discretion of the court under section 160B of the Penalties and Sentences Act 1992 to order the release of a person on parole earlier than the minimum period of 50 days if the person is sentenced to a period of imprisonment. Whilst the amendment may be seen as potentially interfering with the rights and liberties of individuals it is justified and proportionate when considered against the background of the harm caused by those who evade police. The amendment supports the government's commitment of ensuring that penalties for offenders that evade police are commensurate with the risk posed to the community.*

[11] That was the explanatory note to the "Police Powers and Responsibilities and Other Legislation Amendment Bill 2013", which was not the piece of legislation which ultimately amended section 754. The explanatory notes to the Bill that did amend section 754 to its current form, namely the "Criminal Law (Criminal Organisation Disruption) Amendment Bill 2013" provide on page 3. The explanatory note of the Attorney-General and Minister for Justice reads:

> *"Amend the Police Powers and Responsibilities Act 2002:*
>
> *Provide additional police powers to search without a warrant a person reasonably suspected of being a participant in a criminal organisation and/or a vehicle in that person's possession or use.*
> *Require a person who is reasonably suspected of being a participant in a criminal organisation or a person found at a prescribed place or event to state their name and address to police.*
> *Expand the vehicle impoundment regime to incorporate the new Criminal Code offences of section 60A, 60B and 60C of the Criminal Code. An offence of affray with new – with the new circumstance of aggravation to be inserted by the bill enabling a vehicle used in the commission of these offences to be impounded and forfeited to the State upon conviction."*

[12] And, and this is the relevant dot point, concerning section 754:

> *"Increase the mandatory minimum penalty for the offence in section 754 (an offence for driver of motor vehicle to fail to stop motor vehicle) to 50 penalty units or 50 days imprisonment to be served wholly in a correctional services facility or, for an offender who is a participant in a criminal organisation, 100 penalty units or 100 days imprisonment to be served wholly in a corrective services facility."*

[13] The explanatory note does not go any further to explain the amendments to section 754. And, as I say, it is the explanatory note of the Bill which was introduced by the Attorney-General and Minister for Justice and which ultimately amended section 754.

[14] Section 14B(1) of the Act's Interpretation Act provides that

> *"...in the interpretation of a provision of an Act consideration may be given to extrinsic material capable of assisting in the interpretation –*
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> *if the provision is ambiguous or obscure, to provide an interpretation of it; or*
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> *if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable - to provide an interpretation that avoids such a result; or*
>
> *in any other case - to confirm the interpretation conveyed by the ordinary meaning of the provision."*

[15] Counsel for the defendant argues that section 91 of the *Penalties and Sentences Act 1992*, that is, the section allowing a Court to order probation where there is imprisonment as a penalty or for a regulatory offence, and section 101 of that Act, which allows the Court to order community service in similar circumstances, are not ambiguous or obscure.

[16] Whilst I agree that they are not ambiguous or obscure, that misses the point. The question is whether section 754, as it is now, is ambiguous or obscure so that reference to extrinsic material is needed. In my view, section 754 is neither ambiguous nor obscure. Nor does my view of its ordinary meaning – and that meaning, as it will become apparent in these reasons, is that probation and/or community service are still available when sentencing a defendant for an offence against this section – leads to a result that is manifestly absurd or is unreasonable. The explanatory notes to the *Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013* simply say what the provision is and don't say any different. Thereby it confirms my interpretation.

[17] Nothing has been achieved by this amending legislation to change the view that Justice Henry expressed in *Commissioner of Police Service (Qld) v Magistrate Spencer and ors*[5] . His Honour said that a breach of section 754 is punishable with imprisonment. That is still the case. His Honour said section 91 of the *Penalties and Sentences Act 1992* provides a probation order may be made if a Court convicts an offender of an offence punishable by imprisonment. That is still the case. His Honour said that probation could be imposed by way of penalty under section 754. That is still the case. The same comments equally apply to section 101: the community service section.

[18] His Honour said that the possibility is not excluded simply because the maximum penalty is said to be a fine or imprisonment. That's still the case. His Honour explained that Section 180A of the *Penalties and Sentences Act 1992*, means that the sentencing Court "may" impose a fine or imprisonment or both. He said that section's language is permissive. It does not prescribe that a fine or imprisonment or both are the only forms of sentence that can be imposed under such a provision. That is still the case, in my view. It leaves alive the characterisation of section 754 that it is an offence punishable with imprisonment and thus does not exclude the availability of probation under section 91, his Honour said. And I would add to that community service under section 101. His Honour then questioned what, though, of section 754's reference to a minimum penalty of 50 penalty units. His Honour

[5] [2013] QSC 202 at [15] and following

went on to say where, as here, a minimum as well as a maximum penalty is specified then the penalty must not be less than the minimum and not more than the maximum. That follows in logic and it is still the case. His Honour went on to say:

> *"However, there appears to be no reason grounded in statute or principle why a period of probation ought to be regarded as a lesser penalty than a fine. They are inherently different forms of penalty and their relative harshness will vary subjectively depending on their duration or amount and on the individual circumstances of the offender. Further, the fact that probation arises as a sentencing alternative to imprisonment, whereas a fine is a sentencing option even for offences that are not punishable with imprisonment, suggests as a matter of principle that probation should not be regarded as – as a lesser sentencing option to a fine."*

[19] And I would add to that, that community service, for the same reasons, ought not to be regarded as a lesser sentencing option than a fine. Similarly their relative harshness will vary subjectively. One can easily envisage situations where the rich person would say, "Well, it's a lot easier to pay a $5,500 fine than go along with the great masses and do landscaping or washing of ambulances on a Saturday morning. I'd much rather pay the fine." To the mythical rich person, how could it possibly be regarded as a lesser penalty than the fine?

[20] Does the addition of the words "or 50 days imprisonment served wholly in a correctional centre" change this view? To my view, it doesn't. If the Parliament had wished to specifically exclude the availability of a sentence of probation or community service, it could easily have done so. It has chosen not to do so. One could easily envisage the words of the Parliament amending this legislation to specifically exclude probation and community service as a sentencing alternative. It has not done it. In my view, the wording of section 754 as it now is, doesn't inevitably require the imposition of a fine or the imposition of jail. Nor does it exclude a sentence of probation or community service.

[21] This defendant couldn't pay a fine of $5,500 and counsel conceded the same. When sentencing a person, one must have regard to the objects of sentencing, the principles of sentencing, and the matters set out specifically in section 9, subsection (2) of the Penalties and Sentences Act 1992. I've had regard to those principles. I've taken into account the maximum and the minimum penalties prescribed for the offence. And the maximum penalty is, for a person in the defendant's circumstances, 200 penalty units or 3 years imprisonment. The minimum penalty is 50 penalty units or – or 50 days imprisonment which must be served wholly in a corrective services facility.

[22] I've taken into account the nature of the offence and how serious the offence was. Failing to stop a motor vehicle when directed by a police officer, is a serious offence. There have been many deaths on the roads arising out of police pursuits and a Coronial Inquiry into a number of deaths over a period of 10 years underlined that particular aspect. It is a serious offence. However, one must bear in mind this particular example of it. This 60 year old pensioner was on a 50 cc motor scooter. I've got to take into account the extent to which she's to blame for the

offence. And, yes, she's wholly to blame for the offence. I've got to take into account any damage, injury, or loss caused by her. None was.

[23] I've got to take into account her character, age and intellectual capacity. I've already made mention of those and I've taken them into account. I've got to take into account the presence of any aggravating or mitigating factor concerning her. There are none. I've got to take into account the prevalence of the offence. And, yes, it is an offence which is prevalent. I've got to take into account how much assistance she gave the law enforcement agencies. Well, she ran away from them, so there's little to no assistance initially. But once caught she was reasonably cooperative. I've got to take into account time spent in custody by her for the offence. I don't know. None has been placed before me, so I take it that if she did spend any time in custody it was minimal.

[24] I've got to take into account sentences imposed upon her committed at the same time. That's irrelevant. I've got to take into account sentences already imposed on her that have not been served. That's irrelevant. There are none. I've got to take into account sentences she's liable to serve because of the revocation of orders. There are none. She's not subject to a community-based order. And the other matters in paragraphs (o), (p), and (q) of Section 9(2) are not relevant. There is no other relevant circumstance in this. Her reason for evading the police was an ill-founded fear that, if she was caught unlicensed driving on the motor scooter, the motor scooter would be impounded and crushed. As I may have mentioned, people do not normally carry their lawyers around with them on motor scooters to advise them.

[25] Therefore, I sentence the Defendant as follows:

For charge 1, the charge of driving the motor scooter without her L plates showing, she is convicted and fined $200. For charge 2, that is riding whilst on a SPER suspension, she is convicted and fined a further $200 and she is disqualified from holding or obtaining a driver licence for a period of one month from today. For charge 3, that is the fail to stop charge, I offer the defendant community service. The amount of community service will be 100 hours. It will need to be performed within a period of 12 months and the defendant is disqualified from holding or obtaining a driver licence for a period of 2 years from today. Convictions are recorded.

C Callaghan

Magistrate