

SUPREME COURT OF QUEENSLAND

CITATION: *Anderson v Commissioner of Police* [2021] QSC 254

PARTIES: **TONY KRISTEN JOHN ANDERSON**
(Applicant)
v
COMMISSIONER OF POLICE
(Respondent)

FILE NO/S: BS 9181 of 2021

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 12 October 2021

DELIVERED AT: Brisbane

HEARING DATE: 21 September 2021

JUDGE: Bowskill SJA

ORDERS: **Pursuant to s 131(10) of the *Transport Operations (Road Use Management) Act 1995*, the disqualification from holding or obtaining a Queensland driver licence imposed on the applicant on 22 November 2013 be removed.**

CATCHWORDS: TRAFFIC LAW – LICENSING OF DRIVERS – QUEENSLAND – DISQUALIFICATION, CANCELLATION OR SUSPENSION OF LICENCES – where the applicant was convicted of malicious act with intent, serious assault of a police officer and dangerous operation of a vehicle, in circumstances where he fired a rifle at and hit a police car as it was in pursuit of the vehicle he was a passenger in – where the applicant was sentenced to 10 years imprisonment on the most serious offence and absolutely disqualified from holding or obtaining a driver licence – where the applicant applies for the disqualification to be removed

Transport Operations (Road Use Management) Act 1995 (Qld), s 131
Burton v Commissioner of Police (Qld) (1990) 10 MVR 329
Kennedy v Queensland Policy Service [2009] QDC 181
Slivo v Commissioner of Police [2016] QDC 46
Tabakovic v Commissioner of Police [2009] QDC 191

COUNSEL: L Borgert (*sol*) for the applicant
R Fogarty (*sol*) for the respondent

SOLICITORS: Corney & Lind Lawyers for the applicant
Queensland Police Service Legal Unit for the respondent

- [1] Mr Anderson applies under s 131(10) of the *Transport Operations (Road Use Management) Act 1995* (Qld) for an order that the absolute disqualification from holding or obtaining a driver licence imposed on him, by order made by this court on 22 November 2013, be removed. The application is opposed by the respondent, essentially on the basis that it is premature because the applicant has not been subject to a sufficiently lengthy period without a licence, following his release from custody.
- [2] Section 131(10) of the Act provides:
- “A person who has been disqualified, by operation of law or an order, from holding or obtaining a Queensland driver licence absolutely or for a period of more than 2 years, may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.”
- [3] The applicant was disqualified from holding or obtaining a driver licence absolutely when he was sentenced in this court on 22 November 2013. He is therefore eligible to make the application under s 131(10).
- [4] Section 131(14) relevantly provides that:
- “Upon hearing any such application the judge of the Supreme Court 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.” [underlining added]
- [5] The applicant is currently 39 years of age. He says of himself, “I have not led a great life”, having committed a number of serious offences.
- [6] In April 2001, he was convicted of attempted murder, committed on his 17th birthday. He was sentenced to 12 years imprisonment. The offence was described, by a later sentencing judge, as “a violent and protracted act”.
- [7] In June 2001, the applicant was convicted of other offences of violence, including robbery with actual violence, committed prior to the attempted murder, whilst he was a juvenile.
- [8] In about August 2009, he escaped (or attempted to escape) from custody. He was convicted of that offence in August 2009 and sentenced to a further cumulative period of three months’ imprisonment.
- [9] He became eligible for parole in November 2009. Although the applicant says he was not released until November 2011, it appears from his criminal history that he committed further offences in August 2011, so I assume he was released earlier. He committed further, fairly minor, offences in February 2012.
- [10] On 5 April 2012 (then aged 29), only a matter of months after his release from custody, he committed further offences, including malicious act with intent, serious assault of a police officer and dangerous operation of a vehicle. The applicant was convicted of those offences following a trial and, on 22 November 2013, he was sentenced in this

court to 10 years' imprisonment on the most serious offence, malicious act with intent. An appeal against conviction and application for leave to appeal against his sentence were refused.

- [11] The factual circumstances of the April 2012 offending are set out in the sentencing remarks of Martin J delivered on 22 November 2013. The offence of malicious act with intent was constituted by the applicant leaning out of a car that he was a passenger in, driven by his co-accused, as they drove away from police at high speed, and firing a rifle in the direction of and striking the police vehicle which was pursuing them. The sentencing judge recorded that the jury's finding of guilt indicated a conclusion by them that the bullet was aimed towards the police vehicle, it was not an accident, and the firing of the rifle was done with intent. His Honour noted that it was "purely luck that no one was injured or killed" and described the conduct as "an act of extreme danger". The applicant was declared to have been convicted of a serious violent offence. The applicant was also disqualified absolutely from holding or obtaining a driver licence.
- [12] The applicant's co-accused, the driver of the car, pleaded guilty to a range of offences, including two counts of serious assault on police officers (the first involved striking a police officer with the vehicle, before taking off at high speed; the second involved the pointing of the weapon by the applicant from the car she was driving) as well as two counts of dangerous operation of a vehicle. She was sentenced, on the dangerous operation of a vehicle charges, to 18 months' imprisonment, with an absolute disqualification from holding or obtaining a driver licence; and to two years, and two years and nine months, respectively, on the serious assault charges. She was described by the learned sentencing judge as having an "appalling history with respect to the operation of motor vehicles, amongst other things".
- [13] The applicant's traffic history, apart from the serious offending on 5 April 2012, is minor. He has, however, spent most of his life since the age of 17 in custody.
- [14] The applicant was released to parole on 23 July 2020. His parole was suspended a month later, on 24 August 2020, in circumstances where, as the applicant says, "due to anxieties in relation to dealing with 'life on the outside', I reverted to drug use".
- [15] He was released to parole again on 14 December 2020. He has not committed any further offences since that time, which is now a period of about ten months.
- [16] While in custody, from May 2015, the applicant completed various courses and programs and, from late 2018, commenced university studies, starting a business degree and later transferring into a dual degree in Arts/Business at the University of Southern Queensland, which was later transferred to Curtin University in Perth. He expresses an intention to continue with these studies.
- [17] The applicant attended a prison counsellor on a regular basis whilst in custody, and is continuing to see a psychologist on a regular basis, to assist him to re-adjust to his new life and develop coping mechanisms for his anxiety. He is on a methadone program, but says he has recently halved his dosage as he is "eager to become independent of this medication".

- [18] Following his release from custody in December 2020, in February 2021 he obtained a licence to operate a forklift truck.
- [19] The applicant says that he is now trying to live in a way that would make his family proud of him, and hopes to be a productive member of the community. He says he does not wish to make excuses for his past actions, and knows he cannot change them; but he does want to change what the future holds for himself and his family. He has the support of his mother and step-father, both of whom have been helping him since his release in December 2020 to get to and from work. This is described by his mother as “logistically hard” sometimes. He also has the support of his two sisters, and helps them in looking after their children, his nieces and nephew.
- [20] The applicant describes how, when he was 17, he did not care about the consequences of his actions and the impact they had on his family. He says, when he committed the April 2012 offences, at age 29, “I believe I was still 17 years of age psychologically”. He is now 39, and is “sincerely trying to start my life again”.
- [21] The applicant obtained work shortly after his release as a cleaner for a family friend. Having obtained the forklift driving qualification, he was then able to get a full time job as a forklift driver. Unfortunately, in August 2021 he injured his hand at work while operating a machine and had to take two weeks off work. When he was ready to return to work, his employer advised they had found someone else. The applicant says in his affidavit “I am aware my replacement had a drivers’ licence”. Having a driver licence may not have been an essential requirement for the job, given that the applicant had worked there up until injuring his hand. However, a letter from his previous employer, dated in May 2021, states that if the applicant had a driver licence “his value to the business would increase immensely”, because he could be asked to do additional things. This letter also describes the applicant as motivated, capable of working autonomously with minimal direction, as having an “upbeat/can do attitude” and as a “strong asset for the business”.
- [22] Recently, on 15 September 2021, the applicant obtained a new job, at a supermarket distribution centre. He is a casual employee, working six days a week, and at present expects the position to continue only until the end of the year. He says he was lucky to find this role, as many of the roles that he has found as a forklift labourer are at the Port of Brisbane or in rural Queensland, which he would not be able to take up without a driver licence.
- [23] The applicant wishes to obtain an order removing the disqualification from obtaining a driver licence, so that he can start his life afresh and have greater employment opportunities. He remains reliant on his parents to drive him to and from work and is conscious of the burden that poses for them. It is also a limiting factor in terms of where he can look for work.
- [24] It has been observed that “[l]ong periods of disqualification from driving may prove a very severe handicap to a 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”.¹ That hardship, and the interests of an offender in having their licence restored must, however, must be

¹ *R v Shirley* [1969] 1 WLR 1357 at 1358; referred to in *Burton v Commissioner of Police (Qld)* (1990) 10 MVR 329 at 333.

balanced against the interests of the community both in terms of ensuring an offender is appropriately punished and “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”,² in this case, including police officers who were carrying out their lawful duty, in service of the community, at the time.

- [25] As observed by Farr SC DCJ in *Slivo v Commissioner of Police* [2016] QDC 46 at [9], on an application such as this:

“Ultimately the court must be satisfied, on the balance of probabilities, that it is appropriate to dispense with the original judicial officer’s finding that a disqualification was appropriate. The onus of proof is upon the applicant to demonstrate that it is proper to remove the disqualification. If the applicant cannot satisfy the court that it is proper to do so, the application ought be refused.”

- [26] In *Tabakovic v Commissioner of Police* [2009] QDC 191, Robin QC DCJ, described the purpose of the provision as being to provide:

“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”. [underlining added]

- [27] In that regard, it has been accepted as appropriate, in some cases of this kind, for the disqualification to extend beyond the expiration of the term of imprisonment³ – on the basis that, as Robin QC DCJ said in *Kennedy v Queensland Policy Service* [2009] QDC 181 at p 5, “[t]he disqualification is hardly a punishment to a person in custody”.⁴

- [28] But as his Honour also said in *Kennedy*, at p 3, “the proper approach ... is that the courts ought to be open to assisting an offender to resume a place in society with the ordinary privileges most of us enjoy, and, indeed, need”.

- [29] Relevantly, in *Burton v Commissioner of Police (Qld)* (1990) 10 MVR 329 at 332, Williams J observed that, “[w]hen a major offence is committed through the driving of a motor vehicle then the period of imprisonment must, in my view, represent the significant penalty imposed by the courts”. In this case, that penalty was imprisonment for 10 years.

- [30] The offender in *Burton* was also sentenced to 10 years imprisonment, for two counts of manslaughter arising out of a motor vehicle collision which occurred when he was aged 23 and drove a loaded prime mover through three intersections, each time against a red traffic light, blowing his horn “as a warning to all other drivers to keep out of his way”, eventually colliding with another vehicle and killing a mother and her infant son. He served five years of the sentence before being released on parole, and sought the removal of the absolute disqualification about two years after his release.

² *Morgan v Commissioner of Police (Qld)* [2007] QDC 10 at [31].

³ *Burton v Commissioner of Police (Qld)* (1990) 10 MVR 329 at 334, referring to *R v Calder* (1986) 4 MVR 1 at 9.

⁴ See also *Slivo v Commissioner of Police* [2016] QDC 46 at [41].

[31] In *Burton*, Williams J said:

“... it is in the interests of the community that this young man, he is still only 31 years of age, be able to continue a law abiding, self-sufficient lifestyle and do not become a further burden on the public purse. He can best do that if he is able to retain his employment and provide for his wife and family. In my view he has been punished enough and ought to be given the opportunity of driving a motor vehicle again so that he can further his law abiding, self-sufficient lifestyle. I would quote with respectful approval the words of Sachs LJ (with whom Karminski LJ and Lawton J) agreed in *R v Shirley* [1969] 1 WLR 1357 at 1358: ‘Long periods of disqualification from driving may prove a very severe handicap to a 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.’⁵”

[32] The conclusion that the offender in *Burton* had already been adequately punished for his crime was found to be supported by reference to other cases, in which the driving and the consequences were comparable, and in which a sentence of much less than 10 years imprisonment (with a set disqualification period) had been confirmed.

[33] The present case is somewhat unusual, in contrast to the other cases dealing with applications under s 131(10) of the Act, because the applicant was not driving the vehicle. He was a passenger. He was, appropriately, punished severely for his extremely dangerous conduct in firing a rifle at a police car whilst a passenger in the fleeing vehicle, by being imprisoned for 10 years. But like *Burton*, that period of imprisonment should be regarded as the significant penalty for his offending.

[34] It is relevant to take into account the effects of the penalty already imposed on the applicant.⁶ The applicant has served a lengthy term of imprisonment as punishment for his serious offending.

[35] In terms of the observation made in some of the cases, about the appropriateness of the period of disqualification extending beyond the expiration to the term of imprisonment, I note that the applicant has been affected by that for the 10 months since his release from custody in December 2020 (following an initial hiccup, after his release in July 2020). I also note that in the cases in which this observation has been made, much shorter periods of imprisonment were imposed.⁷

⁵ *Burton v Commissioner of Police (Qld)* (1990) 10 MVR 329 at 332-333.

⁶ *Lolagis v Chief Executive Officer Queensland Transport* [2002] QDC 162 at [12] per Alan Wilson SC DCJ (as his Honour then was).

⁷ For example, in *R v Calder* (1986) 4 MVR 1, the offender was sentenced (following an appeal), for dangerous driving, whilst affected by alcohol, causing the death of two people, to imprisonment for four years, with a disqualification from holding a driver licence of five years; and in *Kennedy v Queensland*

[36] In the present case, there are a number of factors which support the exercise of the discretion to remove the disqualification now, namely:

- (a) the particular nature of the offending behaviour;
- (b) the absence of traffic history otherwise;
- (c) the lengthy period of imprisonment the applicant has already served, which is the significant punishment for his offending, and should be seen to satisfy the community's demand for punishment;
- (d) that the applicant has not reoffended, or acted in breach of the disqualification, since his release from custody, and has been curtailed by the disqualification for 10 months since his release from custody;
- (e) the efforts the applicant has already made, since his release from custody, to obtain employment, including by obtaining a qualification in order to do so, which demonstrate a good work ethic, and a willingness to put into action his words about wishing to make a better life for himself and his family, and become a productive member of the community;
- (f) that the applicant's efforts in that regard are all the more commendable, given the significant periods of time he has spent in custody since he was 17 years of age;
- (g) the evidence of the applicant's engagement in education programs, whilst in custody, which is consistent with the applicant's description of himself as having matured since he committed the 2012 offences which lead to the disqualification;
- (h) the practical reality that the applicant will be impeded in the range and type of work he is able to obtain, and keep, without the ability to obtain a driver licence;
- (i) that the community's demand for punishment is appropriately to be balanced with the community's interest in facilitating the rehabilitation of offenders; and
- (j) to that end, that it is in the interests of the community that the applicant be able to work, so that he has the opportunity and incentive to be and remain a self-sufficient, law abiding and productive member of the community.

[37] In the circumstances, I do not consider the application to be premature. I am persuaded, having had regard to the character of the applicant and his conduct subsequent to the disqualification order, the nature of the offence, and the circumstances of the case as presented by the evidence, that it is appropriate to exercise the discretion under s 131(14) to remove the absolute disqualification at this time. I will hear the parties as to the costs of the application.

Police Service [2009] QDC 181, the offender was sentenced, for dangerous driving causing death, to four and a half years' imprisonment (suspended after 15 months), and disqualified from holding a driver licence for four years. Compare *Burton v Commissioner of Police (Qld)* (1990) 10 MVR 329, discussed above.