

B. Woods

SC 845

IN THE SUPREME COURT) CORAM: RAINE, J.
OF PAPUA NEW GUINEA) Thursday,
5th June, 1975.

DAN MON v. MATTHEW
(App. No. 21 of 1975 (P))

1975
May 9
June 5
PORT
MORESBY

RAINE, J.

This appeal raises questions of interpretation that I have found very difficult, and I do not pretend to be quite as confident as I would wish to be, in coming to a decision.

The learned magistrate, in his report to the Supreme Court, uttered something of a 'cri de coeur', because he, and, I gather, his colleagues, would wish for some guidance.

After I have set out the facts I intend to quote the magistrate's report, and this for two reasons. Firstly, so it seems to me, it poses the dilemma. Secondly, it indicates the view His Worship would have taken, qua penalty, if I hold that he was wrong in his interpretation of the relevant provisions.

If I might say so, the report was singularly helpful and sensible, something I must say I always appreciate, as magisterial records are rather sparse, and one is somewhat in the dark with some appeals from lower courts.

This is a case where the appellant was convicted of being the driver of a motor vehicle, an Isuzu truck, registered number 98395, upon a public street, Woodcock Road, Gordons, on the 12th day of December, 1974 in which passengers were being carried for reward, and for which a public motor vehicle licence had not been issued in respect of that vehicle, thereby contravening Section 11 of the Motor Traffic Act, and he was sentenced to be imprisoned with hard labour for one (1) month. It was also ordered that his

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driver's licence be cancelled.

The appeal is against that part of the sentence relating to the cancellation of the appellant's driving licence. To cancel means to obliterate, or render void. And see s.21(6) of the Motor Traffic Act.

It is now appropriate to set out the report of the magistrate. It reads:-

"I welcome this appeal on the grounds that a Supreme Court Judgement now appears to be necessary to redefine the situation in relation to cancelled drivers' licences.

2. The reading of those sections and regulations of the Traffic Act and Regulations which refer to the issue, cancellation, disqualification and the re-issue of drivers' licences appears to be open to several interpretations.

3. At the Boroko Court House, we have always assumed that once a Court has simply cancelled a licence, without stating any period of disqualification, then the matter of re-issue or non re-issue of another licence to the same person is one solely within the discretion of the Police, and that where a Court is definitely interested in a period of disqualification, then that Court must say so.

4. In the particular case now under appeal, no period of disqualification was stated by the Court at the time the sentence was imposed, and it was my understanding at that time that the Appellant could have been re-issued with another

licence if the police so chose, or may not have been likely to have been re-issued with another licence if the police so decided, having regard to the Appellant's history of illegal operation of public motor vehicles. In this and other similar matters, we have always taken the view that the police, with their more intimate knowledge of the activities of various vehicle operators are in a better position to decide the question of re-issue.

5. I was therefore surprised to see the grounds of appeal in this case, since according to our interpretation, the only imposition of this part of the sentence was the necessity of asking the police for another licence. If the Supreme Court therefore rules that simple cancellation imposes a greater burden than this, then I ask that my decision in relation to the cancellation, be reversed.

6. If however, the Supreme Court rules that our interpretation of cancellation is correct, then I suggest with respect that the original sentence imposed by me was not excessive, for the reasons I gave at the time."

The relevant provisions are as follows:-

Motor Traffic Act, 1950-1970

"11. A person who causes or permits a motor vehicle to be used for carrying passengers for hire or reward, unless a public motor vehicle licence issued in pursuance of the Regulations is in force in respect of that motor vehicle, shall be guilty of an offence."

"21. (1) The Court before whom a person is convicted of an offence against or contravention of any provision of this Ordinance may, in addition to any other punishment to which he may be liable

under this Ordinance in respect of the offence or contravention -

(a) if the person convicted holds a licence or permit under the Regulations or a permit under Section 19A of this Ordinance -

(i) suspend that licence or permit for such time as the Court thinks fit, and if the Court thinks fit, also direct that no licence or permit shall be issued to that person during such further time after the expiration of the licence or permit as the Court thinks fit; or

(ii) cancel the licence or permit and, if the Court thinks fit, declare the person convicted to be disqualified from obtaining a licence or permit for such time as the Court thinks fit;

.....
.....
.....

(4) A licence or permit suspended in accordance with this section shall, during the term of suspension, be of no effect and a person whose licence or permit is suspended or who is declared by the Court to be disqualified by the Court from obtaining a licence or permit shall, during the period of suspension or disqualification, be disqualified from obtaining a licence or permit.

(5) If a person who, under the provisions of this Ordinance is disqualified from obtaining a licence or permit applies for or obtains a licence or permit or a renewal of a licence or permit while he is so disqualified or if a person whose licence or permit has been endorsed applies

for or obtains a licence or permit or a renewal of a licence or permit without giving particulars of the endorsement, that person shall be guilty of an offence and a licence or permit so obtained shall be of no effect.

(6) A licence or permit cancelled under the provisions of this section shall be of no effect.

.....
....."

(The underlining is mine.)

"Licence" is defined in s.6 as being "a licence under the Regulations".

"7.(1) A person who drives a motor vehicle upon a public street negligently, furiously, or recklessly or at a speed or in a manner which is dangerous to the public, shall be guilty of an offence.

(1A) A person convicted of an offence under Subsection (1) of this section is liable to a penalty not exceeding Two hundred dollars or imprisonment not exceeding six months, or both, and the Court before which the person is convicted shall disqualify him from holding and obtaining any licence for such period as the Court thinks fit, not being less -

(a) in the case of a first offence under this section - than three months; and

(b) in the case of a second or subsequent offence under this section - than twelve months."

The licence held by the appellant was simply an ordinary driver's licence, not for a P.M.V. It had about

six months to run. The order made by His Worship, qua the licence, was "Licence cancelled."

The relevant Regulations under the Act are:-

"3. (inter alia) 'Public motor vehicle' means a motor vehicle used for carrying passengers for hire or reward," and

"'Public motor vehicle licence' means a public motor vehicle licence under these Regulations."

"5. (1) Driving licences shall be classified into Class 1, Class 2, Class 3, Class 4, Class 5 or Class 6 driving licences.

(2) Subject to this regulation and to any other law in force in the Territory or a part of the Territory, the Superintendent may grant a driving licence of Class 1, Class 2, Class 4, Class 5 or Class 6, as the case may be, to a person who satisfies him -

(a) that he is capable of driving the class of motor vehicle specified in the licence with safety to the public;

(b) that he has previously held either a licence or provisional licence, or a foreign licence or provisional foreign licence, for twelve months, to drive the class of motor vehicle specified in the licence, and that licence has not been cancelled; and

(c) in the case of Class 1 and Class 5 driving licences that he is not less than seventeen years of age, or in the case of Class 2, 3, 4 or 6 driving licences that he is not less than twenty-one years of age.

(3) The Superintendent may, from time to time, renew a licence issued under Subregulation (2)

of this regulation for twelve months.

(4)

(5)

(6)

(7)

(8) Notwithstanding the preceding provisions of this regulation, the Superintendent may grant a licence, or renew the grant of a licence, to a person who is under the relevant age prescribed by paragraph (c) of Subregulation (2), or paragraph (b) of Subregulation (4), of this regulation but who is otherwise qualified to hold a licence of the relevant class if in his opinion special circumstances exist which justify the granting of the licence to the person concerned.

(9) A licence to which Subregulation (8) of this regulation applies may be made subject to such conditions and restrictions as the Superintendent thinks fit to impose in any particular case in the interests of safety."

(The underlining is mine.)

At first blush, Regulation 5(2)(b) seems to inhibit the grant of any licence that has ever been cancelled. But read again, it might be said that the words "and that licence has not been cancelled" have no application to the old licence once the time is up, the period of twelve months, when the old licence would have expired in any event, leaving aside any question of cancellation or suspension.

Regulations are the offspring of statutes. Thus, it is now necessary to look at s.21(1)(a)(i) and (ii), and then turn back to the regulation just adverted to.

Section 21 seems to me to provide three suspensory type punishments. Firstly, the court may, in a proper case, suspend the licence for a portion of its remaining life. Secondly, and I imagine this was designed to deal with situations where the licence did not have long to run, or in the case of rather a bad offence, the court can suspend the licence, and say, in effect, "Well, that means you cannot drive on your present licence, which expires in two months, but, in addition, I direct that no licence shall be issued to you for four months after that." Thirdly, under (ii), the licence may be cancelled, and, instead of a mere direction that a licence be not issued, the convicted person may "be disqualified from obtaining a licence or permit for such time as the Court thinks fit."

As a matter of practical politics the same effect is achieved where either of the latter two courses are adopted. I have come to the view that the Legislature intended to give courts the power to differentiate between serious and less serious offenders, and impose a stigma in more serious cases. Thus, if I drive at 10 k.p.h. above the speed limit, in a non-dangerous way, my record will only show that I was suspended, whereas, if I drive at 50 k.p.h. above the limit, and this whilst affected by liquor, my record, doubtless, would mirror the gravity of my offence, and a cancellation, and/or disqualification would be recorded. Thus, if I offended again, another magistrate would be alerted.

I believe, doing my best to make the statute work, and work sensibly, that the suspension in s.21(1)(a)(i) must envisage a suspension for a part of the unexpired portion of the licence, with, of course, if deemed proper, the right to add a bit on, and delay the grant of a fresh licence.

So far as s.21(1)(a)(ii) is concerned, although, as I have said, in most cases (subject to the condemnatory aspects of cancellation and/or disqualification) the effect is much the same as under the second branch of (i), I am of opinion that the cancellation of the licence means that it

is, in effect, torn up. It is extinct, and this whether it has 364 days or 4 days to run.

What occurs, therefore, in a case such as this, where the licence was cancelled, although it was never intended by the magistrate that the offender should be barred for life? This brings me back to Regulation 5(2) (b). As I read this provision it places a total embargo on the issue of a licence where the previously held licence had been cancelled. I would certainly prefer to hold the view held by His Worship, and I do not think for a moment that my interpretation of the Regulation could have possibly been envisaged by whomsoever framed it. All drivers have a bad day, or, it might be more to the point to say, a bad night. By all means let them be "warned off" for a time, but only in the case of persistent, wicked offenders would it be contemplated that they should never be allowed to drive again.

I take the view that Regulation 5(2)(b) must be held to be 'ultra vires' section 21(1)(ii), to the extent it absolutely constrains the issue of a licence, the earlier licence having been cancelled, because the court is given the power in the section to limit the period of disqualification. I gain support for this view from the terms of sub-sections (4) and (5) of s.21. Of course, there could be cases where the magistrate, shocked by the instant offence, and by prior offences, simply cancelled the licence. That, so it seems, would be that.

With great respect to the draftsman of Regulation 5(2)(b) I think he should have concluded it as follows:-

"and that licence has not been cancelled, or the time limited for its cancellation by reason of the disqualification of the offender has not expired."

Counsel will observe that I set out s.7(1) and (1A). This was in deference to the argument on the guiding effects of the section, and, if this judgment is appealed, I thought

it would assist to include s.7 in my reasons. However, all in all, I do not feel I need refer to it any more.

In view of the dire effects an order for cancellation of licence will have, if I am correct, it is clear that there was a substantial miscarriage of justice.

Of course, His Worship will appreciate that there is no sting in this so far as he is concerned. He did not intend to prevent the appellant from ever driving again. As his report indicated, he assumed, on his interpretation of the statute and the regulations, that the police would issue another licence to the appellant in due course, provided that the appellant had, as it were, pulled his socks up, and been in no more trouble.

Thus, I allow the appeal, insofar as the cancellation is concerned. I vary the learned magistrate's order in that regard, and I order that as and from the 12th day of December, 1974 the driving licence of the appellant shall be suspended for a period of six (6) months.

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