Hales v Horton [2002] NTSC 60

PARTIES:	PETER WILLIAM HALES
	v
	GLENN ANTHONY HORTON
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA 43/02 (20112145)
DELIVERED:	10 October 2002
HEARING DATES:	8 October 2002
JUDGMENT OF:	GALLOP AJ

REPRESENTATION:

Counsel:

Appellant:	B. Harris
Respondent:	H. Spowart

Solicitors:

Appellant:	Office of the Director of Public Prosecutions
Respondent:	Northern Territory Legal Aid Commission

Judgment category classification:	C
Judgment ID Number:	Gal200201
Number of pages:	6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Hales v Horton [2002] NTSC 60
No. JA 43/02 (20112145)

BETWEEN:

PETER WILLIAM HALES
Appellant

AND:

GLENN ANTHONY HORTON
Respondent

CORAM: GALLOP AJ

REASONS FOR JUDGMENT

(Delivered 10 October 2002)

[1] This is an appeal by the complainant in a traffic matter in the Court of Summary Jurisdiction Darwin, heard on 20 March 2002.

[2] On 4 April 2001, the respondent to this appeal was arrested and charged with a drink driving offence contrary to s 19(2) of the Traffic Act and was provided with a notice pursuant 20A(2) of the Act. Section 20A of the Traffic Act reads:

> "20A. **Immediate suspension offence**
>
> (1) In this section, "immediate suspension offence" means –
>
> (a) a second or subsequent offence against section 19(1) or (2);

(b) an offence against section 19(2) for which the penalty is that specified in section 19(3)(a)(ii); or

(c) an offence against section 20.

(2) If a person is charged with an immediate suspension offence, any member of the Police Force may, after charging the person but before the charge is determined by a court, give to the person a notice in the form approved by the Director informing the person that he or she is disqualified from driving a motor vehicle until the charge is determined and requiring the person to surrender immediately to the member giving the notice any licence document held by the person.

(3) For the purposes of this section a person is charged with an immediate suspension offence when a copy of the charge signed by a member of the Police Force is given to the person.

(4) Immediately on the giving of the notice under subsection (2) the accused person is by force of this section disqualified from driving a motor vehicle and any licence held by the person is suspended until the charge is determined by a court.

(5) A member of the Police Force who gives a notice under subsection (2) shall cause notice of that fact to be sent immediately to the Registrar.

(6) A person who, without just cause or excuse (the onus of proving which lies on the person), refuses or fails to surrender a licence document as required by a notice under subsection (2) is guilty of an offence.

(7) If a person is disqualified under this section from driving a motor vehicle, the person is, during the period of disqualification, disqualified from holding or obtaining a further licence.

(8) A person shall not, while he or she is disqualified from obtaining a licence, apply for a licence.

(9) A person to whom a notice is given under subsection (2) may appeal against the notice to the Local Court.

(10) A person who appeals under subsection (9) shall give 14 days written notice of the appeal to the Registrar and to the clerk of the Local Court setting out the particulars of the alleged exceptional circumstances justifying the cancellation of the notice.

(11) In determining the appeal the Local Court shall hear any relevant evidence tendered by the applicant and by or on behalf of the Registrar and any evidence of a medical practitioner required by the court.

(12) On an appeal under subsection (9) the Local Court may make an order –

(a) confirming the notice; or

(b) cancelling the notice.

(13) The Local Court shall not make an order under subsection (12)(b) unless it is satisfied that exceptional circumstances exist which justify the making of the order.

(14) An order of a Local Court under subsection (12) is final and conclusive and has effect accordingly."

[3] The respondent was granted bail to appear in the Court of Summary Jurisdiction at 9.00 am on 17 April 2001.

[4] The respondent appeared before the Criminal Registrar of the Court of Summary Jurisdiction in answer to his bail on 17 April 2001. There was no formal charge before the court in the form of a complaint and the prosecutor had nothing with which to proceed against the respondent. The following exchange took place:

> Prosecutor: "Police have failed to provide the prosecution unit with a file, it's possible something may happen under summons at a later day but I just don't know."
>
> Registrar: "Mr Horton, what they're saying is that the police can't provide at the moment – can't proceed at the moment, so you're released from your bail. Your bail will no longer apply. You're at large. Your free to go and if the police wish to proceed in this matter they will summons you at a later date. Do you understand that?"
>
> Respondent: "Yes."

[5] On 10 August 2001 the respondent was again arrested while driving and charged with, amongst other things, driving whilst disqualified contrary to the notice issued on 4 April 2001. He appeared before the Court of Summary Jurisdiction on 20 March 2002. He argued that the proceedings

before the Registrar on 17 April 2001 had determined the drink driving charge for purposes of s 20A(4) and he was therefore not disqualified on 10 August 2001.

[6] The learned magistrate upheld this argument and dismissed the complaint of driving whilst disqualified which had issued on 1 May 2001.

[7] It was of course an element of the offence of driving whilst disqualified that on 10 August 2001 the respondent was disqualified. Although the magistrate did not express it in such terms, the effect of his decision on 20 March 2002 is that he was not satisfied beyond reasonable doubt of that element of the prosecution case. In dismissing the complaint for driving whilst disqualified the magistrate said:

> "… given that the charge of driving while disqualified is an extremely serious charge, given that disqualification is an extremely serious business, and given that a right of a person to drive is a valuable, prized and important right which ought to be protected by the Court unless explicitly taken away by law, then it seems to me I should give words – the phrase 'until the charge is determined' some meaning in a situation where there is no charge on complaint to be determined.
>
> It seems to me that the justice Ms Goodsell did every thing she could to determine the proceedings such as they were before the court and in my view her actions do amount to, within the meaning – very uncertain meaning of subsection 4 of the Traffic Act, a determination of whatever was before her on that day."

[8] On the hearing of the appeal to this Court, it was submitted on behalf of the appellant that the effect of a notice pursuant to s 20A of the Traffic Act is that the accused person is disqualified from driving a motor vehicle and any licence held by that person is suspended until the charge is determined by a

court. Further, it was submitted that there had been no determination of the charge by a court pursuant to s 20A as of 10 August 2001 when the appellant was caught driving again.

[9] The respondent on the other hand submitted that the charge was determined by the court on 17 April 2001 when the Registrar discharged the respondent from it.

[10] It is important in the chronology of events to note that on 1 May 2001 a complaint was laid against the respondent charging him with an offence of exceeding .15 on 4 April 2001. In other words, the prosecution instituted another set of proceedings for the offence of exceeding .15 on 4 April 2001. That would have been an unnecessary step if the charge in similar terms had not been determined by the court on 17 April 2001.

[11] It was common ground on the hearing of the appeal that the respondent had been validly charged with "an immediate suspension offence" on 4 April 2001 and had been issued with a notice under s 20A(2) of the Traffic Act. Accordingly, the respondent was disqualified from driving a motor vehicle until the charge was determined by a court. Furthermore, it was common ground that the Registrar of the Court of Summary Jurisdiction was a Justice of the Peace and that she would have had the power to dismiss any complaint against the respondent for exceeding .15 contrary to the Traffic Act.

[12] Having considered the legislative provisions, I have come to the view that this appeal should be resolved on the facts. As stated earlier, the magistrate who heard the charge of driving whilst disqualified on 20 March 2002 had to be satisfied beyond reasonable doubt that on 10 August 2001 when the appellant was arrested for driving whilst disqualified, amongst other things, the respondent was disqualified. He was not satisfied beyond reasonable doubt about that. I am not persuaded that his finding in that respect was wrong. There was some evidence to support a view of the facts that the Registrar determined the charge of exceeding .15 and accordingly when the respondent was driving on 10 August 2001 he was not disqualified from driving or, put the other way, the prosecution had failed to prove beyond reasonable doubt that he was disqualified from driving.

[13] In the circumstances, the appropriate order for this Court is to dismiss the appeal. I order accordingly.

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