

Sang Fu Lim v Hales [2004] NTSC 18

PARTIES: SANG FU LIM

v

PETER WILLIAM HALES

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: RESERVED QUESTION OF LAW PURSUANT
TO S 162 OF THE *JUSTICES ACT*

FILE NO: 10 of 2004 (20401643)

DELIVERED: 8 April 2004

HEARING DATE: 3 March 2004

JUDGMENT OF: BAILEY J

CATCHWORDS:

Criminal Law – Appeal – Supreme Court Procedure – Judicial Discretion –
Statutory Interpretation of *Justices Act* – Traffic Offence – Whether Supreme
Court has power to determine issues of law where no plea has been taken and
no facts have been received or admitted before the Court – Case stated failed to
comply with Justices Regulations Form.

Justices Act s 162(1)

Director of Public Prosecutions Reference No 1 of 1999 (2000) 10 NTR 1 - followed

REPRESENTATION:

Counsel:

Appellant: D Lewis
Respondent: R Jobson

Solicitors:

Appellant: DPP
Respondent: Rob Jobson

Judgment category classification: C
Judgment ID Number: Bai04002
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Sang Fu Lim v Hales [2004] NTSC 18
No. 10 of 2004 (20401643)

BETWEEN:

SANG FU LIM
Appellant

AND:

PETER WILLIAM HALES
Respondent

CORAM: BAILEY J

REASONS FOR DECISION

(Delivered 8 April 2004)

- [1] This matter concerns a number of questions of law purportedly reserved for the consideration of this Court pursuant to s 162 of the *Justices Act*.
- [2] At the hearing of this matter, I was provided with two documents entitled: “Chronology in support of reservation of question of law pursuant to s 162(1) of the *Justices Act*” and “Questions of law reserved pursuant to s 162(1) of the *Justices Act*”.
- [3] The “Chronology” is in the following form:
- “1. At all relevant times the defendant in this matter, (Kathy) Sang Fu Lim, was and remains a permanent resident of the State of Victoria.

2. At all material times the defendant was and remains the holder of a valid driving licence issued by the State of Victoria.
3. On or about 23 December 2002 the defendant arrived in the Northern Territory as a visitor accompanied by friends from Victoria.
4. On 30 December 2002 the defendant was the driver of a hire car travelling towards Darwin along the Stuart Highway. Her friends were passengers in the vehicle.
5. At about 5.15pm on 30 December 2002, in a monsoonal downpour, the defendant began driving across the Manton Dam bridge. The vehicle encountered a large sheet of water flowing across the Stuart Highway.
6. The defendant's vehicle was travelling at approximately 100-kms per hour at that stage.
7. Shortly before clearing the bridge, the vehicle aquaplaned and the defendant lost control of the car, which then spun off the Stuart Highway. In the course of spinning, the vehicle impacted against a tree and came to a standstill approximately 6-metres from the edge of the Stuart Highway.
8. As a consequence, the defendant was charged with driving at a speed and in a manner dangerous to the public contrary to s 30(1) of the *Traffic Act*.
9. The charge carries a maximum fine of \$2,000 or imprisonment for 2 years and pursuant to s 30(3) the driving licence shall, by force of the finding of guilt, be cancelled and that person shall be disqualified from holding a licence :
 - (a) for a first offence – for a period of 6 months; and
 - (b) for a second or subsequent offence – for a period of 12 months,or such longer period as the Court thinks fit.

10. The defendant responded to the summons and has offered a plea of guilty to the charge in the Court of Summary Jurisdiction in Darwin. The defendant has opted to dispose of the matter in her absence and by way of appearance of her Counsel on her behalf.
11. The defendant does not wish to deliver her Victoria driving licence to her Counsel for delivery to the Court.
12. The Court of Summary Jurisdiction is concerned whether it should proceed in the absence of the defendant, given the penalty that applies, and the disqualification of licence which must be imposed.
13. ***No plea has yet been taken and no facts have been received or admitted before the Court.***” (emphasis added)

[4] The “Questions of Law Reserved” are:

- “1. Is the Court of Summary Jurisdiction obliged to hear and determine a charge on Complaint when :
 - the defendant appears through Counsel in answer to a Summons;
 - the defendant is not personally present in Court; and
 - The Court must disqualify the defendant from driving (if guilty)?
2. If ‘no’ to Question 1 :
 - can the Court of Summary Jurisdiction proceed as contemplated in Question 1; and
 - when should it do so?

3. Is the Court of Summary Jurisdiction obliged to hear and determine a charge on Complaint under the circumstances outlined in paragraph 1 above where the possibility exists of the defendant being imprisoned?
4. If 'yes' to Question 3, how should the Court proceed?
5. If 'no' to Question 3 :
 - can the Court of Summary Jurisdiction proceed as contemplated in Question 3; and
 - if 'yes', when and how should it do so?
6. Does Regulation 94 of the Traffic Regulations only apply to a Northern Territory driving licence?
7. What effect, if any, would an order of disqualification (firstly, for the minimum period and, secondly, for any period in excess of the minimum period) have upon the defendant if it is made only in the presence of the defendant's Counsel appearing for the defendant?
8. What discretion, if any, does the Court of Summary Jurisdiction have to require a defendant to appear either personally, or by way of video-conferencing, before an order for disqualification of licence is made, and how should any such discretion be exercised?"

[5] Section 162(1) of the *Justices Act* provides:

“(1) The Court may, at discretion, reserve any question of law arising on or out of the hearing or determination of any information or complaint for the consideration of the Supreme Court, and state a special case or cases for the opinion of the Court.”

[6] The Justices Regulations provides a prescribed form – Form 61 – to initiate a case stated under s 162. The prescribed form requires, in summary, the following information to be set out and signed by the reserving magistrate:

- (i) details of the complaint;
- (ii) the date and result of the hearing of the complaint;
- (iii) the facts proved or admitted by the parties;
- (iv) the magistrate's findings upon the proved and admitted facts;
- (v) the complainant's contentions;
- (vi) the defendant's contentions;
- (vii) the magistrate's opinions in point of law;
- (viii) the questions of law upon which the case is stated for the opinion of the Supreme Court; and
- (ix) a copy of the evidence upon the hearing of the complaint.

[7] It is apparent that the chronology and list of questions reserved for the opinion of this court do not amount to compliance with Form 61 of the Justices Regulations. More importantly, however, no plea has yet been taken and no facts have yet been received or admitted before the Court of Summary Jurisdiction.

[8] In *Director of Public Prosecutions Reference No 1 of 1999* (2000) 10 NTLR 1 at para [11] the Court of Appeal summarised the nature of the case stated procedure. The Court held that a statutory provision for such a procedure:

- “(a) ‘...is a standard procedure for correcting error of law in criminal proceedings without exposing the accused to double jeopardy’: per Mason CJ, Deane, Dawson, Gaudron and McHugh JJ in *Mellifont v Attorney-General (Qld)* (1991) 173 CLR 289 at 305;
- (b) does not enable a ‘judicial roving commission’: per Lord Mustill in *Attorney-General's Reference (No 3 of 1994)* [1998] AC 245 at 265, and approved: *Director of Public Prosecutions (Cth) Reference No 1 of 1996* [1998] 3 VR 217 at 226: per Winneke P, *Director of Public Prosecutions Reference No 1 of 1996* [1998] 3 VR at 352 (CA) at 356 per Callaway JA;
- (c) does not permit the Court to entertain hypothetical or academic questions: *Bruce v Commonwealth Trade Marks Label Association* (1907) 4 pt2 CLR 1569 at 1571; *In re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265-267;
- (d) does not permit the Court to deliver advisory opinions: per Gaudron, Gummow and Hayne JJ in *Director of Public Prosecutions v B* (1998) 72 ALJR 1175 at par [25];
- (e) provides jurisdiction for the Supreme Court to determine only questions of law: in refusing to answer a reference by the Attorney-General (Qld) under section 669A of the *Criminal Code (Queensland)*, Sheperdson J observed in *R v Douglas, ex parte Attorney-General* [1991] 1 Qd R 386 at 389:

I would add, however, that while I recognise that this Court is obliged to answer questions on points of law properly brought before it under s669A, the Court cannot be required to answer questions which are not pure points of law, but are rather questions of mixed law and fact.”

[9] Section 162 of the *Justices Act* is limited to questions of law “arising on or out of the hearing or determination of any information or complaint”. In the present case, there has been no hearing or determination of the complaint from which any such questions could arise. In the circumstances, the stage has not been reached where any case stated could be made arising from the

complaint laid against Sang Fu Lim. The purported case stated is not in a form which enables this court to answer the questions posed, nor is the case such that it might be amended or sent back for amendment.

[10] I therefore decline to answer the questions that have been referred to this court and make no orders. However in the hope that this matter can be laid to rest sooner rather than later I would offer the following brief observations concerning some aspects of the questions sought to be reserved:-

- (a) Counsel is entitled at law *to enter a plea* on behalf of a defendant charged on complaint : s 29 *Justices Act* and see *Sesar v Haymon* (1987) 34 A Crim R 188 at 190;
- (b) There is no provision in the *Road Traffic Act*, *Justices Act* or *Sentencing Act* that requires a person to be present in court when an order is made disqualifying that person from holding a driver's licence;
- (c) The power of a Northern Territory magistrate to disqualify a person from holding a driver's licence is restricted to the holding of a Northern Territory licence. It is of no concern to a Northern Territory magistrate what effect, if any, such a disqualification has on a driving licence issued to a person outside the Northern Territory.

- (d) Regulation 94 of the Traffic Regulations applies only to a Northern Territory driving licence : see definition of ‘licence’ in s 3(1) *Traffic Act* and s 5(1) *Motor Vehicles Act*.
- (e) A court of summary jurisdiction may adjourn the hearing of a complaint and require a defendant to appear in person : s 65 *Justices Act*.
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