CITATION:	*Drewitt v Firth* [2019] NTSC 66
PARTIES:	DREWITT, John James v FIRTH, Justin Anthony
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 23 of 2019 (21836477)
DELIVERED:	23 August 2019
HEARING:	23 August 2019
JUDGMENT OF:	Riley AJ

REPRESENTATION:

Counsel:

Appellant:	S McMaster
Respondent:	M Seiler

Solicitors:

Appellant:	Maleys
Respondent:	Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	Ril1903
Number of pages:	4

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

Drewitt v Firth [2019] NTSC 66
No. LCA 23 of 2019 (21836477)

BETWEEN:

JOHN JAMES DREWITT
Appellant

AND:

JUSTIN ANTHONY FIRTH
Respondent

CORAM: RILEY AJ

REASONS FOR JUDGMENT

(Delivered 23 August 2019)

[1] On 25 October 2018 the appellant pleaded guilty in the Local Court sitting at Darwin to having driven a motor vehicle on a public road with a medium-range breath alcohol content, namely 0.086 g of alcohol per 210 litres of exhaled breath. He was convicted and fined $500 and ordered to pay the appropriate levy. His license to drive was disqualified for a period of 12 months and it was directed that an alcohol ignition interlock order be in place for a further 12 months.

[2] The circumstances of the offending were not in dispute. The appellant had been drinking at the Humpty Doo Hotel before driving home. Police conducted a road side breath test on the appellant which produced the result to which he has pleaded guilty.

[3] The criminal history of the appellant was placed before the Local Court Judge and included a conviction from 22 August 1991 for "exceed .08" that is driving with a concentration of alcohol in his blood equal to 80 mg or more of alcohol per 100 ml of blood, namely 0.117%.

[4] In sentencing the appellant the Local Judge remarked:

> It was a lapse of judgment on your part this time and obviously those four beers that you had are too many for the present purposes and I note that prior conviction, although it is 27 years ago, it still triggers the alcohol ignition interlock legislation.
>
> …
>
> You are disqualified for 12 months which is the minimum period for a second offence and thereafter a further 12 months on an alcohol ignition interlock.

[5] It is readily apparent that the Local Court Judge regarded the 1991 offence as a prior conviction for the purposes of the *Traffic Act* and applied the mandatory minimum period of disqualification applicable to a "second or subsequent offence" in accordance with s 22(3)(b) of that Act.

[6] The appellant appeals on the sole ground that, in so doing, the Judge failed to apply the law as stated by the Full Court of the Supreme Court of the Northern Territory in *Jeffrey v Rigby*[1] which led to "a manifestly excessive mandatory disqualification period." Of course, the decision of the Full Court is binding on both the Local Court and upon this Court.

[7] Section 22(1) of the *Traffic Act* creates the offence of driving with a medium-range breath alcohol content. Section 22(2) then goes on to provide

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for the consequences of second or subsequent offences. The subsection provides:

> (2) An offence against subsection (1) (a ***relevant offence***) is a second or subsequent offence if the person has previously been found guilty of any of the following offences:
>
> (a) driving with:
>
> (i) a high range breath or blood alcohol content; or
>
> (ii) a medium range breath or blood alcohol content;
>
> (b) driving under the influence of alcohol or a drug;
>
> (c) failing to provide a sufficient sample of breath for a breath analysis;
>
> (d) failing to give a sample of blood for analysis;
>
> (e) driving with alcohol in the breath or blood (if the person, at the time of the previous offence, was of a class mentioned in section 24(1)).

[8] The Full Court, in *Jeffrey v Rigby*, considered the history of the legislation, analysed the wording of the relevant sections and concluded that, in the circumstances in that case, where the appellant had a prior conviction in 1976 for "exceed .08" under the *Traffic Ordinance* and one in 1979 for "exceed .08" under the *Traffic Act (1978)*, he had not previously been convicted of driving with a medium range breath or blood alcohol content as described in s 22(2) of the Act. This was because an offence of driving with a medium range breath or blood alcohol content is, in the circumstances, a reference to an offence committed contrary to s 22(1) of the Act. There was no such offence of driving with a medium-range breath or blood alcohol content when the appellant in that case, and similarly the appellant in the present case, were convicted.

[9] The reasoning in *Jeffrey v Rigby* is directly applicable to the circumstances of this matter. Consistent with the decision in that case the learned Local Court Judge should not have treated this as a second or subsequent offence and should not have regarded himself as bound by the mandatory minimum period contained in s 22(3)(b) of the *Traffic Act*. As the Crown correctly concedes error occurred and the appeal must be allowed. The sentence is set aside.
