

CITATION: *Johnson v Northern Territory Licensing Commission* [2006] NTMC 010

PARTIES: BRADLEY JAMES JOHNSON
Appellant

v

NORTHERN TERRITORY LICENSING
COMMISSION
Respondent

TITLE OF COURT: Local Court

JURISDICTION: Private Security Act (NT); Local Court Act
(NT)

FILE NO(s): 20526686

DELIVERED ON: 6 February 2006

DELIVERED AT: Darwin

HEARING DATE(s): 9 January 2006

JUDGMENT OF: Jenny Blokland SM

CATCHWORDS:

APPEAL – WHETHER APPELLANT A SUITABLE PERSON

Private Security Act (NT) ss15, 30, 34

REPRESENTATION:

Counsel:

Appellant: Self
Respondent: Ms Monaghan

Solicitors:

Appellant: N/A
Respondent: Northern Territory Licensing Commission

Judgment category classification: C
Judgment ID number: [2006] NTMC 010
Number of paragraphs: 15

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

No. 20526686

BETWEEN:

BRADLEY JAMES JOHNSON
Applicant

AND:

**NORTHERN TERRITORY LICENSING
COMMISSION**
Respondent

REASONS FOR DECISION

(Delivered 6 February 2006)

Jenny Blokland SM:

Introduction

1. This is an appeal brought pursuant to *s 30 Private Security Act (NT)* against a decision of the Northern Territory Licensing Commission to refuse the Appellant a *Provisional Security Officer License* pursuant to *s 15(7) Private Security Act (NT)*. Generally, *section 15* of the *Private Security Act* provides for entitlement to the grant of a provisional licence. The section gives certain specifications to the Licensing Commission concerning whether a person is “*an appropriate person*” to hold a license. Section 15(7) provides: *A person is not an appropriate person to hold a licence if the person, within ten years of applying for a licence, has been convicted of (a) a disqualifying offence in relation to such a licence.* The relevant disqualifying offence is a conviction for assault imposed on 12 March 1998 by the Court of Summary

Jurisdiction at Darwin. At the same time the Appellant was convicted of one count of unlawful use of a motor vehicle.

2. Despite the assault conviction being a disqualifying offence, *s 30 Private Security Act* provides for a right of appeal against the Licensing Commission's decision even though the Licensing Commission has no power to grant the licence in circumstances where a disqualifying offence. Section 30 (3) provides that notwithstanding *s 15(7)*, the affected person may appeal *on the grounds that there are adequate grounds for the Local Court to exercise its power under s 34 to grant the licence*. Section 34 permits the Local Court to confirm the decision, set aside the decision and substitute another decision or set aside and return the matter to the Licensing Commission. The Local Court may only substitute its own decision to grant a licence in these circumstances, *if it is satisfied that, notwithstanding the offence, the appellant is, on the balance of probabilities, a suitable person to be granted such a licence. :(s 34(4) Private Security Act) .*

Summary Of The Material Before This Court

Details of the Disqualifying Offence

3. There is no significant dispute over the material before the court. The relevant offence was committed on 18 October 1997. From the prosecution précis of the facts presented to the court of summary jurisdiction it would appear the Appellant was involved in a single vehicle accident on the Stuart Highway near Palmerston . The accident occurred sometime before 2.15am. The Appellant left the scene and walked to Palmerston; he went to the Ampol Service Station and went to a car that had its doors and boot open; the victim was sorting newspapers. The victim asked the Appellant if he was all right. The Appellant replied that he was. The Appellant then stood next to the driver's seat with the door between himself and the victim. Without warning the Appellant punched the victim in the jaw, forcing him to take a

step backwards. The Appellant got into the driver's seat, started the vehicle and drove off. He then had another single vehicle accident and jumped out of the vehicle before it came to a stop. He then returned home. He reported the first accident to police after receiving legal advice some eight hours after its occurrence. The précis states he declined to be interviewed by police. The victim collapsed as a result of shock and received treatment for shock and a sore jaw at the hospital.

4. Despite the précis stating he declined to be interviewed by police, there is, in the documents before this Court a transcript of a Record of Conversation between the Appellant and police dated 22 October 1997. It would appear from reading that transcript the Appellant was advised by his lawyer to make a statement to police. In that Record of Conversation the Appellant tells police *"I can't tell you anything about the assault, or the stealing of the person's car, except for the fact that I can't believe I could do something like- so its really up to you to tell me."* He gives the name of the friend he was with before 2.15am; he gives various details of his movements before the first accident; he tells police he remembers hitting something (in his vehicle) and "that's it"; he says he remembers going home when the sun was up and then there's bits he doesn't remember; he told police he didn't remember anything else; he told them he hadn't been drinking; he told police he couldn't believe he would commit the offence as alleged; he told police he had one beer after all of this at his friend Michele's place; police suggested that he smelt of alcohol when they first spoke to him and suggested that the doctor at the hospital thought he had been drinking because of his breath. He decided he had been drinking apart from the one beer.
5. The Appellant was sentenced to two months imprisonment on the assault, suspended after 14 days on condition he be of good behaviour for 12 months and was sentenced to 14 days concurrent for the unlawful use of a motor vehicle. He was ordered to pay \$3,689.86 restitution. Before this Court the

Appellant said he accepted the facts as part of a “plea bargain” as he couldn’t remember what happened and he said he received the 14 days imprisonment because it was during mandatory sentencing. I can’t place any weight on the “plea bargaining” aspect. In this jurisdiction I must accept what the court imposing the disqualifying offence would have accepted. I am not prepared to go behind the established facts. There was never mandatory sentencing for specific periods of imprisonment for offences against the person, although for the unlawful use there would have been a mandatory sentence of 14 days. I am aware that at that time sentencing practice meant that often it would be expedient if other offences which were not mandatory sentencing offences were dealt with by the same concurrent period.

6. The sentencing court at that time may well have accepted the Appellant’s explanation that he was concussed and had no memory of the events as without that mitigation, the appellant may have received a much more significant penalty. It was a serious assault, although not accompanied by circumstances of aggravation such as causing bodily harm or use of a weapon. Lack of memory in itself is no mitigation, but the possible concussion may have been. It is a bizarre sequence of events. The concerns around the offending on the part of the Licensing Commission is whether the Appellant has a problem with alcohol, whether this offence was alcohol related and whether the Appellant has been entirely frank about his various explanations for the offending and the circumstances around it.
7. In his evidence before this Court the Appellant said the offence was totally out of character; he states he still does not have a proper memory of it. Ms Monaghan raised the issue that the Appellant had never produced medical records tending to support his claims. The Appellant responded that he was not aware that it would be helpful in this hearing. He was not represented at this hearing but had previously been represented. He said he was not hiding anything but didn’t realise their significance. He said he was also aware of

photos of himself with injuries that may be with his previous lawyer but he did not think they would be significant in this appeal.

The Findings of the Agents Licensing (Real Estate) Board

8. The Appellant asks the Court to place some weight on the fact that on 19 February 2001 the Agents Licensing Board of the Northern Territory declared him to be a fit and proper person pursuant to the *Agents Licensing Act*. At that time, (although I am advised the legislation has now been amended), the offence of assault was not a *disqualifying offence* for the purposes of the *Agents Licensing Act*. The Board did however hold an inquiry and accepted the Appellant's explanation of the offending and his previous offending that I will discuss later in these reasons. The transcript before the *Agents Licensing Board* is not completely clear. In fact a number of the Appellant's responses are not transcribed. It does appear he has given a similar explanation. He was asked by a member of the *Agents Licensing Board* whether he had any medical records or whether his solicitor had tried to obtain some for him. I see the Appellant told the Board "*I called Peter Maley, my lawyer over that and he said no that we didn't end up getting any medical um, I ended up in the hospital, the next day they took me to the hospital for a check and left me there but there was no um, they didn't have any written case to back me up. So I couldn't get hold of any.*"
9. I place some, but not a significant amount of weight on the view of the *Agents Licensing Board*. They did not appear to have the full précis of information before them about the offences. The considerations concerning a possible tendency to violence, although of course relevant to that Board, are not quite as immediate as in the case of someone who may work very closely with people such as a *crowd controller*. In my view this type of employment requires the closest scrutiny of any history of violent behaviour.

Other Factors Bearing on the Appellant's Character

10. The Appellant has not committed any offences since the disqualifying offence of 18 October 1997 and obviously has not been before the Courts since his conviction for that offence. He does also have traffic offences in 1987 and 1989, two of those being for exceed .08. The 1989 conviction is a high reading (.239). He was also convicted of an assault police charge in 1990 and was fined \$350. He said this resulted from leaving the Casino after his brother's bucks party. He told the Agents Licensing Board that he was in an argument in the taxi line, police attended and there was a scuffle between some of the other persons in the group and police and he ended up in the fight with police. Assault police is also a serious matter but I note in the Appellant's favour it was dealt with by a moderate fine, hence it is safe to conclude it would not have been in the more serious examples of that type of offending. I think the Appellant would have been about twenty years of age at the time of offending.

11. I have concentrated thus far on most of the features that would tend to militate against the Appellant being successful in this appeal, however, to the Appellant's credit he has genuinely re-established his good character. He was open and not defensive to scrutiny when he gave evidence in the appeal. He told this Court he is soon to be 35 years of age, he was 26 at the time of the disqualifying offence. Since then he went through a difficult period when he worked on rigs as a dogman and suffered a crushed disk. He was on Worker's Compensation for four years. To his credit he re-trained as a Real Estate Agent. Upon his Workers Compensation matter being finalised he worked in a bottle shop for some time and found he could physically cope with the work. He would like to pursue work in security and crowd controlling. He told the court he had worked in security previously driving for MSS Security and Armaguard. He lost that position when he had previously lost his driver's licence.

12. He said of his drinking levels he now considers himself not to be a heavy drinker as he does not drink during the week. He keeps fit and either goes to the gym or rides his bike nearly every day. He also water skis and plays a lot of golf. He is engaged to marry in September and his fiancé has a ten year old daughter. He told the court he has his own unit, some investments and he has been careful with the lump sum payment he received through worker's compensation. He told the court he does not break laws and doesn't call fights.

13. Mr David Loy, the Managing Director of LJ Hookers gave evidence in these proceedings. He said he had known the Appellant for seven years and was involved in granting him the Land and Business Agents License. He said he knew about the assault but that he considered the Appellant a gentleman. He said he had observed the Appellant working for LJ Hookers until a year ago when he left of his own accord. He said Real Estate has a lot of *highs and lows* and that people can be easily demoralised. He said that the Appellant had a good temperament and could manage conflicting issues and negotiate outcomes. He said he regarded the Appellant as having a calming demeanour and he would employ him again. He agreed with Ms Monaghan that he did not have a detailed idea of the offences when he was on the *Agents Licensing Board*; he said the Registrar would have presented the material. Ms Monaghan asked about the Appellant's reliability. Mr Loy said the Appellant had been involved in dealing with funds such as deposits and he had never had any concerns with regard to his honesty and integrity; he said he had no concerns about the Appellant handling the property and money of other people and ensuring the safety of their property. He spoke favourably of the Appellant's personal circumstances and that he did not have concerns about the Appellant's drinking, stating that "he usually drives me home."

Conclusions

14. In considering whether the Appellant is a suitable person to hold a Provisional Security Officer License I have significant regard to the fact that prima facie a person in the circumstances of the Appellant would not be eligible for a license for another year. However, the legislation does allow this Court to grant the license if it is satisfied that regardless of that factor the person is a suitable person. I also have regard to the fact that a major purpose of this licensing regime is to ensure that people prone to violence are not placed in situations where they are likely to resort to it. Given the time that has elapsed without any further offending, the evidence of positive good character before this court, the change in lifestyle and drinking habits, the positive work record and the ability to overcome difficulties such as a work place injury, I am persuaded the Appellant is a suitable person. I note the concerns about the explanations given for the offending in 1997 and the suspicion that it was alcohol related. In my view there are strong indications that the offending was alcohol related but it is virtually impossible to inquire properly into that given the amount of time that has passed. The hospital records may or may not help with those issues. Despite these issues being problematic in the past, the evidence is overwhelming that the Appellant now is a suitable person.
15. I will check with counsel for the Commission on the appropriate orders to make as a consequence of these findings.

Dated this 6th day of February 2006.

Jenny Blokland
STIPENDIARY MAGISTRATE