

CITATION: *Dale Hart V Commissioner of Police [2023] NTLC 16*

PARTIES: *Dale Kurt Hart*

v

Commissioner of Police

TITLE OF COURT: Firearms Tribunal of the Northern Territory

JURISDICTION: Firearms Act (NT)

FILE NO(s): 2023-00664-LC

DELIVERED ON: 5 October 2023

DELIVERED AT: Darwin

HEARING DATE(s): 4 August 2023

DECISION OF: Deputy Chief Judge Fong Lim (Chairperson),
Mr Tony Orr, Commander James O'Brien

CATCHWORDS:

Fit and proper person - prior traffic infringements - familial connections with members of outlaw bikie gang - public interest

Firearms Act 1997 (NT)

Hoare v Commissioner of Police [2012] 10 August 2012 - Chairperson Loundes

Barlow v Commissioner of Police NSW Police Service [2003] NSWADT257

Elfalack v Commissioner of Police [2011] NSWADT 31

Wignall v Commissioner of Police [2006] WASAT 206

REPRESENTATION:

Counsel:

Appellant: Mr Lippert

Respondent: Mr Zichy

Solicitors:

Appellant: Grey and Associates

Respondent: Solicitor for the Northern Territory

Decision category classification: A
Decision ID number: [2023] NTLC 16
Number of paragraphs: 29

IN THE FIREARMS APPEAL TRIBUNAL
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2023-00644-LC

BETWEEN:

DALE KURT HART

Appellant

AND:

THE COMMISSIONER OF POLICE

Respondent

REASONS FOR DECISION

(Delivered 20 September 2023)

Tribunal

1. The appellant is a 22 year old man who had his application for a firearms licence refused by the respondent. The Respondent refused the licence on the basis that he was not satisfied the appellant is a "fit and proper person" pursuant to section 10(3)(b) the Firearms Act NT ("the Act") nor that it is in the "public interest" that a firearms licence be granted to the appellant (the Commissioner exercising his discretion pursuant to section 10(8) of the Act).
2. It is undisputed the Appellant has familial association with the Bandidos outlaw bikie club. His father is the president of the NT Chapter of that club, his brother was a probationary member and his mother's property and the family home is used as the clubhouse for that club. The Appellant accepted the Bandidos were a group of people who the general public and the police view as heavily involved in criminal activity and who are generally of concern for that reason. The Appellant says he never witnessed such activity and viewed the members of that club as "normal guys that like to ride bikes".
3. It is also undisputed that the Appellant has 10 traffic matters for which he was issued traffic infringement notices and for which he was been fined. The Appellant has no outstanding fines.
4. The appeal proceeded with evidence on chief by way of affidavit and the deponents being available for cross examination. The Appellant presented his own affidavits of 4 April 2023 and 16 May 2023. The Respondent relied on the affidavit evidence of Senior Sergeant Kennon of the 30 May 2023 and was granted leave to rely on a print out from IJIS of the Appellant's traffic history and the statement of facts relating to a drink driving matter (file 22101166)
5. Pursuant to section 52(1) of the Firearms Act the appeal proceeding by way of rehearing. The Tribunal has all powers and discretions that the Commissioner has in the original consideration of the application for licence (see section 52(2) of the Act) and can determine the appeal by either confirming the decision or action of the Commissioner or to substitute its own decision (section 54(1)(a) & (b) of the Act).

6. It is for the Appellant to prove on the balance of probabilities that he is a fit person and proper person to hold a firearms licence and for the Respondent to prove that it is not in the public interest for the Appellant to hold a licence.
7. *Fit and Proper person* - The Appellant submitted he is fit and proper person he has demonstrated he is aware of his obligations as a firearms licence owner and he should be granted a licence. He submitted he has a genuine reason for licence (s 11 of the Act) and has an appropriate storage proposal for the guns. It is undisputed that Appellant passed the licence test and has never been subject of any prosecution for firearms offending.
8. *Criminal history* - It is trite that an applicant's criminal history will be considered when considering whether they are a fit and proper person. The Appellant's traffic history (10 traffic infringement notices for various offences – speeding, driving without due care, driving without licence, driving without "P" plates) and a conviction for driving with high range alcohol indicates that he is a young man who is willing to not obey traffic regulations. When asked about his traffic offending the Appellant downplayed his involvement. In particular when questioned about the "road rage" incident on the 16 May 2022 where he apparently leaned out of the window and swore at an off duty police officer he said "I don't know how you can drive and lean out of the window at the same time". When asked about the failure to stop at a red light he said he didn't remember but then added "I think it was orange". When asked about failure to produce his licence he responded "I think I had lost it that day". He didn't recall leaving the scene of an accident after which he was issued a fine for driving without due care yet paid the fine for that offending.
9. In relation to the charge of driving high range with high range level of alcohol in his breath while the Appellant accepted he was found guilty after a hearing he did not accept he ought to have been found guilty because he was asleep in his car. The facts of that offending were tendered and in those facts the Appellant apparently admitted to driving whereas in his evidence before the tribunal he stated he was asleep in his car. He was disqualified from driving for 12 months and had not been charged with any further offences.
10. The Appellant was clearly attempting to downplay or excuse his actions even though he originally says he didn't recall he then suggested reasons why he should not have been issued with the infringement notices. He did pay the relevant fines relating to these traffic infringement notices but through his evidence before the tribunal still held a view that he was not in the wrong.
11. While it could be argued traffic offending is not directly relevant to the Appellant's ability to understand firearms regulations and adhere to them and while traffic offending is not disqualifying offending it is relevant to his character.¹ The Appellant's continued disobedience for traffic regulation over the years is an indication of his attitude that those rules do not apply to him. His actions by speeding, driving without due care, driving with high range alcohol in his body and leaving the scene of an accident all indicate he is either a person who does not recognise his actions could have serious consequences for others or is a person who recognises the risk and does not care. Either way the traffic history can be an indicator the Appellant is a person who has not matured enough in his thinking to be a responsible holder of a gun licence.

¹ Hoare v Commissioner of Police [2012] 10 August 2012.

He is a person who cannot be “trusted to home possession of firearms without danger to public safety or to peace”.²

12. *Storage* -The Appellant's evidence regarding proper storage of any guns he may keep is that he would keep the guns at the Coolalinga Gun shop because as a FIFO worker he was of the view that would be safer than at his residence when he was not present all of the time. The difficulty with that proposition is that storage is inconsistent with the Appellant's reason he wants a licence. He says he wants the licence so he can go hunting.
13. If the Appellant is intending to use the firearms for hunting and that hunting is likely to be on the weekends, given his work status, then it is quite possible that the storage of the guns would not be able to be accommodated by the gun shop. It is undisputed that the gun shop is not open 24 hours 7 days a week and it is quite possible the Appellant would be left with nowhere to properly store his firearms. It was suggested that the Appellant could temporarily store them with another licensee in their gun safe until the shop opened but there were no details of who that might be or how that would fit in with the Appellant's work roster. The Commissioner's delegate was asked if that was an acceptable solution and he expressed concerns that he would not be able to approve such temporary storage without notice because he would have to assess the capacity of the proposed safe and that would be unlikely able to be actioned at short notice.
14. The counsel for the Appellant then went on to suggest email notification should be enough for the Appellant to satisfy the Commissioner he was being responsible regarding the temporary storage of the Appellant's guns. That suggestion was considered unrealistic by the Commissioner's delegate given such emails if sent would unlikely be actioned straight away and given the resources it would take to provide such a service to the Appellant, one which is not available to other gun licensees. In other words the Commissioner's delegate considered it unreasonable for the Appellant to expect him to be available 24 hours 7 days a week to allow the Appellant flexibility at his choice.
15. It should be noted that the reason the Appellant says he wants to go hunting is to “assist in controlling the buffalo and wild cattle who are pests and to fill the fridges and freezers of the traditional owns to reduce their dependence on processed and pre-packaged foods”. Yet earlier in his affidavit he states he had never been shooting “as it was not a pastime that I wanted to pursue.”
16. The Appellant also makes a bald statement about his connection to an unnamed indigenous leader regarding permission to hunt on traditional lands however no weight can be placed on this assertion as there is no evidence from unnamed person.
17. *Familial connection to the Bandidos* -The Appellant denies any connection with the Bandidos Bokie club and asserts he has never been a member. While he accepts his father is the president of the NT chapter and his brother was a probationary member of the club he states he does not get on with his father and doesn't see him. He stated he did visit the “clubhouse” about once a month but that was to visit his mother and his baby brother and sometimes that might mean crossing paths with his father but they barely speak.

² Barlow v Commissioner of Police NSW Police Service [2003] NSWADT 254.

18. The estranged relationship between the Appellant and his father is in some way corroborated by the affidavit evidence of the Commissioner's delegate in paragraph 20. It was reported by police officers who attended to serve the Appellant with a TIN that the father had described the Appellant as out of control and the difficult to deal with. The father also stated the Appellant had nothing to do with the Bandidos and was he had no control over the Appellant.
19. The Appellant's counsel submitted these comments attributed to the father should be considered positively for the Appellant, that the Appellant does not accede to his father's wishes. The Respondent submitted if the President of the NT Chapter of the bikie club who is known for criminal activity is saying the Appellant is out of control and more likely to get into future trouble then there should be grave concerns held for the Appellant's ability to adhere to the law.
20. The delegate also stated that the attending officers described the Appellant as "extremely anti police" when they attended to serve him with a TIN for the road rage incident. The appellant didn't accept himself as particularly hostile to the police he says he just told them to leave because they had come onto the property uninvited. The Tribunal was of the view that it was unlikely the attending police officers would have noted the Appellant as "extremely anti police" he merely asked them to leave.
21. *Adherence to the requirements of a Licence holder* – while the Appellant has stated he would comply with all of the obligations required of a gun licence holder his actions in the past relating to his driver's licence would suggest otherwise. When asked why his driver's licence showed him as residing at the Virginia road address up until November 2022 when he claims he had moved to his address in Moulden in 2021 he gave the excuse that it was difficult to get into the Motor Vehicle Registry to change his licence because of his work. The Appellant chose to not comply with the requirement to keep his address on his driver's licence current because it was inconvenient. The Appellant could also choose to not comply with the storage requirements of his guns because it was inconvenient to him.
22. It is the view of the Tribunal the Appellant was not being honest about his attitude towards police and the adherence to regulations. His evidence showed him to be trying to mitigate his traffic behaviour and in relation to the road rage and high range drink driving no true remorse.
23. Taking into account all of the above the Tribunal is of the view that the Appellant is not a fit and proper person to hold a gun licence and confirms the Commissioners decision to refuse a licence.
24. *Public interest* - In relation to the public interest issue the Tribunal is also of the view that the Appellant's close familial ties with the president of the NT chapter of the Bandidos and his regular visits to his mother's house which doubles and the clubhouse for that club would open him to contact to criminal elements of that club and give those people knowledge of the Appellant's movements. It is also a possibility that the Appellant will reconcile with his father and the father's influence over the Appellant increases the Appellant acknowledges he will sometimes see his father on his visits to be with his mother and baby brother.
25. What is also of concern is the Appellant's view that the Bandidos are "normal guys who like riding bikes" he either has no insight into the true nature of the club and its activities or is trying to portray the members of that club as people who are not involved in criminal activity even

though he accepts that the Bandidos are a group of people some of whom have been involved in criminal activity.

26. The Appellant's connection to this club and his family creates a risk that any guns he purchases will end up in the hands of the Bandidos and its criminal associates. The Tribunal is of the view that risk is too high and finds that it is against the public interest to grant the Appellant a gun licence.
27. Even when a person is not a direct member of a club such as the Bandidos, other licencing authorities have found any connection with The Club although there is no evidence the applicant was a member is sufficient to cause concern. In *Elfalack v Commissioner of Police*³ the Higgins DP was satisfied though the applicant was not a member his brother was a member and there was concern family influences could be bought into play.
28. The concern in *Wignall v Commissioner of the Police*⁴ was the Tribunal were concerned "*We express that fear, not so much on the basis that we consider that the applicant himself would readily choose to provide the firearms to other club members to effect an unlawful purpose, but because [...] other members in a time of crisis, either might prevail upon him to "do the right thing" or otherwise overbear the applicant and gain access to his firearms.*"
29. Accordingly we confirm the decision of the Commissioner to refuse the grant of licence to the applicant.

DATED: 5 October 2023

Deputy Chief Judge Tanya Fong Lim

Chairperson

Mr Tony Orr and Commander James O'Brien

Tribunal Members

³ [2011] NSWADT 31.

⁴ [2006] WASAT 206.