

**IN THE DISTRICT COURT  
AT WHANGANUI**

**I TE KŌTI-Ā-ROHE  
KI WHANGANUI**

**CIV-2021-083-000062  
[2021] NZDC 23700**

BETWEEN

KURTIS JAMES MOOSMAN  
Applicant

AND

NEW ZEALAND POLICE  
Respondent

Hearing: 13 October 2021

Appearances: Mr Copeland for Applicant  
Mr Bennic for Respondent

Judgment: 2 December 2021

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**RESERVED DECISION OF JUDGE L I HINTON**

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[1] Mr Moosman has appealed the decision of the New Zealand Police to revoke his firearms licence. The relevant determination of the Police was contained in the notice of revocation dated 23 February 2021 (the “notice of revocation”) issued by Inspector Peter Thurston under s 27(2)(a) of the Arms Act 1983 (the “Act”).

[2] An appeal against the revocation of a firearms licence is a hearing *de novo*, with the appellant having the onus of satisfying the Court that it should differ from the decision under appeal. The Court will approach the matter afresh and come to its own decision as to whether satisfied the appellant is a fit and proper person to be in possession of a firearm in terms of s 24(1)(b) of the Act.

[3] The purposes of the Act are stated in s 1A:

(1) The purposes of this Act are to—

(a) promote the safe possession and use of firearms and other weapons;

(b) impose controls on the possession and use of firearms and other weapons.

(2) The regulatory regime established by this Act to achieve those purposes reflects the following principles:

(a) that the possession and use of arms is a privilege; and

(b) that persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety

[4] In the notice of revocation Inspector Peter Thurston states that the grounds for revocation of Mr Moosman's firearms licence arose out of an incident on 18 September 2020 when Mr Moosman was stopped by Police and subsequently arrested and charged with assault and driving with excess breath alcohol.

[5] The brief facts in relation to that incident, as described in the Police summary of facts, are that the Police were called by a member of the public concerned about Mr Moosman's driving. Mr Moosman was stopped and required to undergo a breath screening test without delay, he refused, and was told he was under arrest. He attempted to get back into his vehicle but was prevented from doing so and pushed the Police officer in the chest, causing him to stagger backwards slightly. Mr Moosman was warned that that was an assault and Mr Moosman responded by punching the Police officer with a closed fist in the right eye. The Police officer was knocked backwards with some force, causing him to turn away and his spectacles to fly from his face and land on shell rock, deeply scratching both lenses. He was then subdued with OC spray by a second officer, but still tried to grab the original Police officer who was himself disabled by the OC spray as well.

[6] The question in this appeal is, as Judge Spear pithily put it in the *Ries*<sup>1</sup> decision, whether Inspector Thurston was correct in his opinion that the appellant is not a fit and proper person of good character who can be trusted to use firearms responsibly.

### **Mr Moosman's position**

[7] For Mr Moosman, Mr Copeland submitted that the single incident in September 2020 could not properly form the basis for the requisite assessment by the Police. Mr Copeland indeed referred to the *Ries* decision, noting that Mr Moosman fitted the description of good character to which I have referred. In particular, Mr Copland noted that in the *Ries* case, in relation to two earlier convictions which were relevant, there had been warnings given to the Appellant.

[8] Mr Copeland submitted that in Mr Moosman's case there was no previous issue in relation to firearms or firearm related offending or warnings, that Mr Moosman had originally been issued a firearms licence despite previous convictions for drink driving, and that the September 2020 assault charge had been amended to a lower charge with no violence that was obstructive to the Police. Further, it was submitted that the Police could not make an independent assessment of Mr Moosman's fit and proper status given his offending involved a Police officer, and that overall, Mr Moosman's general character, occupation and family history did not suggest he was unfit to hold a firearms licence.

[9] Mr Copeland invited the Court to make its own independent assessment of the appellant, independent of Police bias.

[10] Mr Moosman filed two affidavits in support of his application. In the first affidavit, dated 6 April 2021, he annexed letters between himself and the Police which he said best identified his personal circumstances at the time of the September offending.

[11] Mr Moosman noted that he had been the primary caregiver for his grandmother from March 2015 until 28 June 2020. He would organise her hospital and doctor visits

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<sup>1</sup> *Ries v New Zealand Police* [2019] NZDC 11626 [20 May 2019]

weekly, sometimes twice weekly for blood tests and other medicals. He would administer and ensure medication was taken twice daily. He would do her grocery shopping and help with her day-to-day household duties. He discovered on a visit to his grandmother on 28 June 2020 that she had died in her home and organised her affairs following her passing. He said that he was not himself in the months following her passing.

[12] Mr Moosman advised in his first affidavit that he does not have any issues with alcohol and that he was engaging with his GP at that time to provide evidence of this after being assessed. He advises he has been a member of a shooting range club for four years, observing all club rules around safety, placing red flags while on site, tidying up on departure, observing other club members and ensuring compliance with safety rules while on site.

[13] Mr Moosman's caregiver role for his grandmother was described in his letter of apology to the Police officer dated 6 October 2020 and in his letter to the District Firearms Licensing Officer dated 8 October 2020.

[14] Mr Moosman filed an updating affidavit dated 9 July 2021. This contained two character references and a medical certificate. The first character reference, dated 25 June 2021, is from two persons for whom Mr Moosman has worked as a gardener/handyman for the last three years. The reference is a good one and refers to Mr Moosman's honesty and his being hard-working, and a reliable young man. It is stated to be a high recommendation of Mr Moosman to any future employer or in any future vocation.

[15] The second reference, dated 28 June 2021, is from a person who has known Mr Moosman for a long period and who has since September 2020 employed Mr Moosman as an assistant plumber and drainlayer. The reference refers to Mr Moosman's care of his grandmother and acknowledges his fine character and the respectful manner in which he relates to others. He is said to be a good co-worker who takes particular care of work vehicles and associated machinery and is the only staff member to hold a First Aid certificate for the company.

[16] The medical certificate is dated 8 April 2021 and refers to Mr Moosman having been seen by the doctor on 8 April. The certificate advises that Mr Moosman drinks up to 12 beers a week, does not drink every night, does not binge drink and that what he does drink is considered to be within NZ guidelines for healthy consumption. The opinion is given that Mr Moosman is not dependent on alcohol. There is no reference to any other assessment and the doctor's report is presumably based on a personal report of Mr Moosman.

### **The Police submissions**

[17] Mr Benic for the Police centred the Police position around the nature of Mr Moosman's offending. This was stated to include an unprovoked attack against a Police officer by an intoxicated person which must raise serious issues. Mr Moosman thus poses a risk to the community and his criminal history indicates also, it was submitted, that he has repeatedly had issues with alcohol and poor decision making.

[18] Mr Benic submitted that it is not possible to interpret the violence, as characterised by Mr Copeland, as not obstructive to Police duties, having regard to the summary of facts. Violence against Police officers is particularly serious.

[19] Mr Benic's submission noted that s 24A(1)(a) indicates that where there is a new offence committed or charged, the person's character must then be re-evaluated considering the new charge or conviction. The central concern for the Police arising from the new convictions is a capacity to be violent and to be violent when confronted by Police. A person who has demonstrated a tendency to be violent towards Police officers should not be allowed access to firearms for the safety of Police officers.

[20] The Police submissions note that both the *Ries* case and Mr Moosman's involve offenders with criminal histories of low-level offending and a gap in time between their last previous conviction and the conviction which led to the revocation of the firearms licence. However, the offending in this case was significantly more serious, in the Police view.

[21] The submissions echo the observation of Inspector Greenhalgh that the lapse in time between the death of Mr Moosman's grandmother and the offending indicate that the excuse (of a momentary lapse in judgement spurred by the death of his grandmother) is not credible.

[22] In any event, whether motivated or influenced by emotional instability or poor decision making, the Police submit that Mr Moosman's offending when viewed in light of his criminal history indicates that more time should lapse before his licence is returned.

### **Discussion**

[23] Mr Moosman must satisfy the Court that he is a fit and proper person to be in possession of a firearm.

[24] Such a person will be one who is of good character and can be relied on to possess and use a firearm safely and responsibly. It is manifestly in the public interest, and in an individual's interest, including Police officers, that a holder of a firearms licence can be so trusted.

[25] Mr Copeland centred Mr Moosman's case significantly on Mr Moosman's role as primary care-giver for his grandmother, which showed good character, which following the sad loss of his grandmother contributed to his lapse in September 2020. Moreover, the argument was that it cannot be determinative of the relevant test to judge Mr Moosman by this one incident anyway.

[26] Mr Moosman has, I accept, acted admirably in the role he took on in relation to his grandmother. His actions would have given her security and comfort and he deserve credit. Equally, I do not doubt that Mr Moosman was affected by his grandmother's passing.

[27] Mr Moosman's offending was serious and in my view is *prima facie* capable on its own of constituting an adverse assessment of Mr Moosman for firearms licensing purposes. First, drink driving is serious – the level was reasonably serious.

It is more serious, self-evidently, given Mr Moosman's history, which includes drink driving (one under 20) and careless use convictions in 2001 and 2007, and dishonesty offending in 2002.

[28] These previous convictions are relevant in relation to a current assessment irrespective of the original grant of the firearms licence notwithstanding the convictions and whether or not Inspector Thurston took them into account on the revocation decision.

[29] As well, the offending here included an assault on the Police in circumstances where Mr Moosman was rather intoxicated. The circumstances are not good and reflect poorly on Mr Moosman – he had an opportunity to retreat, did not and persisted, and aggressively delivered a nasty blow.

[30] It is germane that this was an assault on a Police officer. I agree with Mr Benic on this. I do not accept Mr Copeland's view that Mr Moosman's conduct was not obstructive of the Police or that the Police view is tainted by bias. I believe any observer would find Mr Moosman's actions unacceptable and obstructive.

[31] So Mr Moosman's history is not good for purposes of the present assessment. Holding a firearms licence is a privilege reserved for those who can be trusted.

[32] The question arises whether Mr Moosman can be excused for a lapse which has arisen owing to his, as he puts it, not being himself following his grandmother's death. I think one must allow that Mr Moosman may well have not been himself. But the combination of the drink-driving and wanton violence against a Police officer cannot be excused on that basis, on the information available to the Court. And nor in my view can it be ameliorated sufficiently for present purposes.

[33] I am not second-guessing the medical report – but it is said to constitute the assessment referred to in Mr Moosman's first affidavit. It is dated at that time and I presume is based on self-reports from Mr Moosman. My understanding is the report is from a doctor Mr Moosman had only recently engaged. I have no additional information or assessment in relation to Mr Moosman's overall situation.

[34] The references are positive, and I do not doubt Mr Moosman has performed well for the respective employers. The first reference appears directed to future employment prospects. The second I do not overlook notes as well the support given by Mr Moosman to his grandmother.

[35] The assessment the Court must make is at least conservative in relation to what is a distinct privilege and where obvious issues of personal and public safety are in play. I am unable to assess Mr Moosman as qualifying as a fit and proper person at this time.

[36] The appeal must be dismissed accordingly.

L I Hinton  
District Court Judge