

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CIV 2023-075-000097
[2023] NZDC 27512**

BETWEEN

EVAN JAMES DAVIES
Plaintiff

AND

TE TARI PUKERE
FIREARMS SAFETY AUTHORITY
Defendant

Hearing: 4 December 2023

Appearances: K Trotter for the Plaintiff
J Hamilton for the Defendant

Judgment: 11 December 2023

JUDGMENT OF JUDGE P R SPILLER

[1] This matter concerns an appeal by the appellant against the revocation of his firearm licence.

Background

[2] The appellant, currently 50 years of age, holds a firearms licence issued on 9 June 1995. The appellant uses firearms in the pursuit of hunting interests and for pest control and animal welfare issues (euthanising sick and injured stock) on the farm where he resides.

[3] Between 1996 and 2011, the appellant recorded the following driving incidents:

- 10 September 1996: exceeded 50 km/h in a Gazetted area;
- 04 November 2003: exceeded 100 km/h;

- 19 February 2005: excess speed (118 km/h in 100 km/h);
- 20 January 2007: excess speed (68 km/h in 50 km/h);
- 17 April 2009: excess speed (119 km/h in 100 km/h);
- 1 May 2009: not wearing seatbelt; failed to produce driver's licence;
- 30 December 2009: not wearing seatbelt;
- 18 October 2011: excess speed (72 km/h in 50 km/h).

[4] In 2013, the appellant was charged with injuring with intent to injure (maximum sentence: five years' imprisonment). The summary of facts which the appellant accepted as part of the criminal proceedings is as follows:

The defendant Davies and the victim have known each other since childhood. They went to school together in the Coromandel area and were good friends up until several years ago when a feud developed for reasons unknown.

Their meeting on the occasion that the incident occurred was the first time they had socialised for several years.

Circumstances

On Thursday the 2nd of May 2013 at about 7:30pm the defendant Davies was at a licensed premise in Coromandel town.

Also present was the victim in this matter and two associates.

They had met at the hotel as a mutual friend had travelled up from the South Island and a social get together had been arranged.

At one point the defendant and the victim were left at the table by themselves while further drinks were purchased.

An argument developed and the defendant has leaned across the table and punched the victim once in the head before getting to his feet and punching once more to the head.

This caused the victim to stumble backwards from his seat and almost fall over to the ground.

At this point the publican intervened and told the defendant to leave.

The defendant has gone out to the rear of the hotel.

The victim has walked out to the rear of the hotel to talk with the defendant.

While outside their mutual friend has gone out to see what was going on but then returned inside as the defendant and victim were in a heated discussion.

The defendant has then punched the victim multiple times to his head and at some point has kicked him to his right leg.

The victim has ended up on the ground and was unable to get back up due to the injury to his leg.

The defendant did not continue the assault at that point.

The publican became aware of the victim being outside on the ground and came out and assisted him until ambulance and police arrived at the scene.

As a result of the assault the victim received a spiral fracture to his fibia right leg and a spiral fracture to his tibia right leg. He also received bruising to his left eye and a cut on his left eyebrow which required stitches. He also received a cut left ear and a chipped front upper tooth.

The incident involved the appellant punching the victim in the head and kicking him in the leg. The victim received a cut above his eye and also received a broken tibia and fibia, requiring surgery.

The victim is a self employed fisherman.

As a result of the assault and the injuries sustained he has been advised that he could be off work anywhere from 6 to 12 months.

The full reparation is yet to be determined.

[5] The appellant entered a guilty plea to assault with intent to injure, and the offending was dealt with by way of a discharge without conviction.

[6] On 17 November 2013, the appellant received a warning letter in relation to the potential revocation of his firearms licence. He was advised that any other offending could result in revocation of the licence, that the police had a responsibility to ensure that firearms licences were to be issued only to fit and proper persons, and that the ownership and use of firearms was a privilege rather than an automatic right.

[7] Between 2020 and 2022, the appellant recorded the following driving incidents:

- 16 May 2020: excess speed (107 km/h in 100 km/h);
- 24 July 2020: failed to drive within a lane;
- 8 September 2022: excess speed (66 km/h in 50 km/h).

[8] On 27 December 2022, the appellant committed assault on a person in a family relationship (maximum sentence: two years imprisonment). The summary of facts which the appellant accepted as part of the criminal proceedings is as follows:

The first victim in this matter, [victim 1], is the father of the defendant Evan James Davies.

The second victim in this matter, [victim 2], is the brother of the defendant.

CIRCUMSTANCES

On the afternoon of Tuesday the 27th of December 2022 at about 3:00pm, both victims were at a beach location on private land owned by the Davies family. The second victim's son, then 12-years-old was also present.

Around this time, the defendant has also arrived at the location.

The defendant has approached his father who was sitting in a beach chair on a grassy area. He has grabbed his father's hair, pulled him to the ground, and then punched him in the face with his fist clenched.

The defendant's brother has intervened to prevent further harm to his father. As a result, the defendant has punched his brother to his head and body area.

A struggle has ensued before both parties have ended up on the foreshore, a short distance away, where they have separated.

However, a short time later, the defendant has returned to the grassy area above the shoreline and has again assaulted his father by punching him to the head.

The defendant's brother has attempted to intervene for a second time. As a result, the defendant has punched him in the head and kned him in his leg.

The defendant has left the scene shortly after.

The second victim's son had been standing nearby throughout and witnessed the assaults.

INJURIES TO VICTIM

The first victim did not provide a statement and gave no evidence of injuries.

The second victim sustained grazing to his left shin and left shoulder as well as grazing and swelling to his right temple.

DEFENDANT COMMENTS

The defendant declined to comment.

The defendant has previously appeared before the Court.

[9] The above offending resulted in two charges to which the appellant pleaded guilty. The appellant's offending was dealt with by way of diversion, in terms of which the appellant underwent counselling and an anger management course. The appellant also voluntarily attended further counselling.

[10] On 3 May 2023, following the conclusion of the diversion scheme, Sergeant John Taaka stated that, although the process of firearms revocation was not something that he was part of, given the lack of the appellant's offending with a firearm or his offences in total, he (Sergeant Taaka) would support the appellant keeping his firearms licence.

[11] On 29 March 2023, the appellant received a notice of temporary suspension of his firearms licence while revocation of his licence was considered. Police officer Jessica Barrett stated that the matters that formed the basis of the decision to suspend, based on section 60A(1) of the Arms Act 1983, were as follows:

- On 29 December 2022, your brother [victim 2] reported an assault on him and your father by yourself on 27 December 2022, in which you physically assaulted your brother and father multiple times.
- Of concern [victim 2]'s young son was present during this assault and was exposed to this family violence.
- Your actions give your family grounds to apply for a protection order.
- You were subsequently arrested and charged with two counts of "Assault of person in family relationship", both charges being punishable by a term of imprisonment.
- This brings attention to a previous conviction for assault with intent to injure in 2013, at which time your firearms licence was reviewed and after consideration you were warned that any future offending could result in the revocation of your firearms licence.
- Your violent conduct presents a risk of harm to others. Family violence is not tolerated by the Police where acts of violence or domestic abuse are reported. Every effort will be made to minimise harm to children, family members, and victims of such abuse.
- Pursuant to section 1 A of the Arms Act 1983 it is a privilege to possess and use firearms in New Zealand. As a firearms licence holder you have a responsibility to act in the interests of personal and public safety. It is also in the public (and the individual's) interest that a firearms licence holder can be trusted. Therefore, this privilege is for fit and proper persons who can be trusted.

- You have acted physically violent again, having already been considered for revocation after your violent actions in 2013. In my view, you have taken no cognisance of your previous consideration of revocation and have repeated your violent tendencies towards your family again.
- I consider your violent actions, leading to the charges against you are not consistent with the fit and proper criteria as outlined above.

[12] Police officer Barrett advised that the appellant could make submissions regarding the above consideration, and these were duly provided.

[13] On 26 June 2023, Inspector Trevor Pullen gave notice that he was revoking the appellant's firearms licence. Inspector Pullen repeated the grounds which had been provided for suspension of the licence, and also noted that the grounds for revocation were under section 24A(1)(a) and (e). Inspector Pullen also stated that he had considered the appellant's written submissions:

I have considered the submissions submitted by your counsel Karl Trotter. I also take note of the reference to the fact that both charges are being dealt with by way of by way of diversion – and this has been agreed to by police.

I have taken further cognisance of the fact that you have now been charged on two separate occasions with offending that has involved serious assaults and all 3 charges carry terms of imprisonment. Two of the charges, as reported, have their origins in family violence.

Being a licenced firearms holder is a privilege - Arms Act 1983 Section 1A (2)(a). Before an individual is charged with an offence, police are required to take into consideration the Solicitors General Guidelines to Prosecution and the weight of evidence. It follows that a decision to revoke a person's firearms licence does not hinge on the outcome of a prosecution. The decision considers all known information, including any information provided by the licence holder, and is judged on the balance of probability, not to a criminal standard of beyond reasonable doubt.

It is therefore not desirable nor necessary to base any decision to revoke an individual's firearms licence pending the outcome of a charge or any charges that an individual may be facing or has subsequently faced and been dealt with by the Court.

Importantly, the Court decision does not have a bearing when considering an individual's suitability to be fit and proper to retain their firearms licence. The fact that they have been charged with an offence, punishable by a term of imprisonment, is sufficient for them to be considered not fit and proper.

Whilst being fit and proper carries no precise meaning, it is a term that describes an assessment of an individual's competence and suitability to be the holder of a firearms licence. It also concerns being trustworthy enough to

exercise good judgment and ability to comply with the law - and not just simply confined to complying with the Arms Act 1983. An individual must be responsible enough to earn the privilege of holding a firearms licence.

Section 24A(1)(a) provides that if a person is charged with or has been convicted of an offence in New Zealand or overseas that is punishable by a term of imprisonment (including, but not limited to, an offence involving violence, drugs, or alcohol), they may be deemed to be not a fit and proper person.

It is acknowledged and commendable that you have sought professional help to address your issue in respect of the management and control of your anger. Given that you have attended sessions in only the past few weeks, and without the benefit of the passage of time, it is somewhat difficult to make a determination as to how effective such intervention has been.

[14] Inspector Pullen advised the appellant that he had the right to apply for a review of the decision to revoke his licence, and he duly lodged an application for review.

[15] On 20 July 2023, Inspector Kirsten Price reviewed and confirmed the decision of Inspector Pullen. Inspector Price stated that “offending involving family harm, in particular by firearms licence holders, are considered of the utmost seriousness due to the risk of, and potential for, significant harm”. Inspector Price also stated, *inter alia*:

Your infringement history, evidencing multiple occasions of non-compliance often involving high levels of excess speed, in addition to your failure to abide by basic road safety requirements, falls short of your responsibility to act in the interests of personal and public safety to the extent these offences demonstrate a disregard for your own safety, any passengers conveyed by you and other road users,

Relevant law

[16] Section 1A of the Arms Act 1983 provides:

- (1) The purposes of this Act are to—
 - (a) promote the safe possession and use of firearms and other weapons; and
 - (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.

[17] Section 24A provides:

(1) For the purposes of this Act, a member of the Police may find a person is not a fit and proper person to be in possession of a firearm or an airgun if the member of the Police is satisfied that 1 or more of the following circumstances exist:

- (a) the person is charged with or has been convicted of an offence in New Zealand or overseas that is punishable by a term of imprisonment (including, but not limited to, an offence involving violence, drugs, or alcohol):

...

- (e) the person has inflicted, or is inflicting, family violence against another person and that other person has grounds under the Family Violence Act 2018 to apply for a protection order in respect of that violence: ...

(2) In determining whether, for the purposes of this Act, a person is a fit and proper person to be in possession of a firearm or an airgun, the member of the Police may take into account—

- (a) whether the applicant—
 - (i) has a sound knowledge of the safe possession and use of firearms:
 - (ii) understands the legal obligations of a holder of a firearms licence, including the endorsements that may be made on a firearms licence; and
- (b) any other criteria prescribed in regulations made under section 74(1)(bc); and
- (c) any other relevant matters the member of the Police considers appropriate.

(3) The member of the Police may, for the purpose of determining whether a person is a fit and proper person to be in possession of a firearm or an airgun,—

- (a) seek and receive any information that the member of the Police thinks appropriate; and
- (b) consider information obtained from any source.

(4) If the member of the Police proposes to take into account any information that is or may be prejudicial to an applicant's application, the member of the Police must, subject to subsection (5), disclose that information to the

applicant and give the applicant a reasonable opportunity to refute or comment on it. ...

[18] Section 27(2) of the Act provides:

A commissioned officer of Police may, by written notice, revoke a firearms licence if, in the opinion of the officer,—

- (a) the holder of the licence is not a fit and proper person to be in possession of a firearm or an airgun; ...

[19] Section 62 of the Act provides:

(1) This section applies to a decision to refuse an application for, or to revoke, a firearms licence.

(2) A person who is the subject of a decision to which this section applies may apply in the prescribed manner to the Commissioner for a review of the decision. ...

[20] Section 62B of the Act provides:

(1) A person who is the subject of a decision referred to in paragraph (a) or (b) or is a person described in paragraph (c) may, by way of originating application, appeal to a District Court Judge against the decision as follows:

...

- (b) a decision to issue subject to conditions imposed by a member of the Police, or to revoke, any of the following:

...

- (iii) a firearms licence: ...

(3) On hearing an appeal under subsection (1), the District Court Judge may, subject to subsection (5), confirm, vary, or reverse the decision appealed against.

(4) Subsection (5) applies if—

...

- (b) a firearms licence has been revoked on the ground set out in section 27(2).

(5) If this subsection applies, the District Court Judge may, even though the Judge finds that ground established, vary or reverse the decision appealed against if satisfied that, since the decision was given, adequate measures have been taken to deny access to the firearm to the person whose likelihood of access to it was the basis of the refusal or revocation.

[1] In *Kacem v Bashir*,¹ Tipping J stated in the Supreme Court:

[32] ... a general appeal is to be distinguished from an appeal against a decision made in the exercise of a discretion. In that kind of case the criteria for a successful appeal are stricter: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong.

[21] In *Moosman v Police*,² Hinton DCJ stated:

[31] ... Holding a firearms licence is a privilege reserved for those who can be trusted. ...

[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.

[22] In *Hurley v Police*,³ Tuohy DCJ stated:

[22] ... Mr Hurley's alcohol-related offending indicates a propensity to undertake high risk behaviour while under the influence of alcohol, which renders Mr Hurley not fit and proper to hold a firearms licence.

Counsel submissions

[23] Mr Trotter, for the appellant, submits as follows. The decision of Inspector Pullen was wrong in that: (a) undue weight was placed on the appellant's violence charges; (b) insufficient consideration was given to the views of the appellant's father and the experienced Police Prosecutor, Sergeant Taaka; (c) little or no consideration was given to the appellant's efforts at rehabilitation; and (d) undue weight was placed on the appellant's traffic infringement history. Inspector Price also gave undue weight to the appellant's traffic infringements, the cumulative effect of which has resulted in an unfair decision which breaches natural justice principles. Proper consideration of the appellant, and the extenuating circumstances surrounding his previous matters before the Court, leads to the conclusion that he is a fit and proper person. There is no question that the appellant has a sound knowledge of the safe possession and use

¹ *Kacem v Bashir* [2010] NZSC 112; [2011] 2 NZLR 1.

² *Moosman v Police* [2021] NZDC 23700.

³ *Hurley v Police* [2022] NZDC 7713.

of firearms and understands the legal obligations of such, and his numerous references in support testify to his good character.

[24] The respondent opposes the appeal on the ground that the appellant is not a fit and proper person to be in possession of firearms, particularly that the repeated offences show significant anger management and impulse control issues.

Discussion

[25] The appellant has held a firearms licence issued on 9 June 1995. On 26 June 2023, his licence was revoked by the Police on the basis that he is not a fit and proper person to be in possession of a firearm (in terms of section 24A of the Arms Act 1983). The issue in this appeal is whether the revocation of the appellant's licence was correct.

[26] This Court acknowledges that the appellant has held a firearms licence for a lengthy period, and that the revocation of his licence does not relate to misuse of his firearm. The Court also acknowledges that the offences committed by the appellant resulted in low-level sentencing outcomes, and that his traffic infringements have not had serious consequences. The Court recognises that the appellant underwent counselling and anger management following his recent offending, and then voluntarily attended further counselling. The appellant has noted that he is now better able to respond to triggers in a calm and appropriate way rather than just react to the triggers. He also notes that fully participating in hunting trips has been a significant part of his life, with social, recreational and emotional benefits.

[27] This Court also acknowledges that the retention/restoration of the appellant's licence is supported by a references from a considerable number of persons, who have noted his good character. In particular, his father (a victim of the appellant's offending) strongly supports the appellant's application. The father states that he would very much wish the appellant to be able to retain the recreational, social, and emotional benefits of being able to participate fully in activities as a hunter in his own right. Further, the Sergeant who certified the conclusion of the diversion scheme following the appellant's December 2022 offending noted that he would support the appellant keeping his firearms licence.

[28] However, this Court refers to the following considerations.

[29] First, section 1A(2) of the Arms Act 1983 provides that the possession and use of arms is a privilege, and that persons authorised to possess or use arms have a responsibility to act in the interests of personal and public safety.

[30] Second, the revocation of a firearms licence by a Police officer involves the exercise of a discretion, as indicated by the words “may” and “in the opinion” in the relevant sections of the Arms Act (see sections 24A(1) and 27(2)). The Supreme Court has stated that, in relation to an appeal against a decision made in the exercise of a discretion, the criteria for a successful appeal are stricter. The appellant is required to establish: an error of law or principle, taking account of irrelevant considerations, failing to take account of a relevant consideration, or that the decision is plainly wrong.⁴

[31] Third, a Police officer may, in terms of section 24A(1)(a) and (e) of the Arms Act, find that a person is not a fit and proper person to be in possession of a firearm or an airgun if the Police officer is satisfied that (*inter alia*) one or more of the following circumstances exist:

- (a) the person is charged with of an offence in New Zealand that is punishable by a term of imprisonment;
- (b) the person has inflicted family violence against another person and that other person has grounds under the Family Violence Act 2018 to apply for a protection order in respect of that violence.

[32] Fourth, this Court finds that both of the above circumstances apply to the appellant. Both the 2013 offending and the 2022 offending involved charges punishable by imprisonment. The 2022 offending was family violence against other persons (the appellant’s father and brother), who had grounds under the Family Violence Act 2018 to apply for a protection order in respect of that violence.

⁴ *Kacem v Bashir*, above note 1, at [32].

[33] Fifth, this Court finds that the Police decision to revoke the appellant's firearm licence, essentially on the basis of the appellant's offending, was justifiable in the light of the seriousness of his repeat, violent offending. The 2013 offending involved twice punching to the head of the victim, repeated later in the evening, and kicking to the leg, resulting in multiple fracture of the victim's right leg, bruising to the left eye, a cut on the left eyebrow, a cut left ear, and a chipped upper tooth. The December 2022 offending involved the appellant grabbing his father's hair, pulling him to the ground, punching him in the face with clenched fist, punching his brother (who intervened to protect his father) to his head and body area, returning and punching the father to the head, and again punching the brother (who again tried to protect the father) in his head and kneeing him in his leg. The brother sustained grazing to his left shin and left shoulder as well as grazing and swelling to his right temple. The brother's 12-year-old son stood nearby throughout and witnessed the assaults. The fact that the appellant committed the serious violent offending in December 2022 is aggravated by the fact that he had been given clear notice that his firearms licence would be at risk of revocation if he committed further offending.

[34] Sixth, this Court finds that the Police, in revoking the appellant's licence, acted in accordance with the Arms Act 1983 and the principles of natural justice:

- (a) Following the appellant's offending in 2013, the Police sent the appellant a warning letter in relation to the potential revocation of his firearms licence.
- (b) Following the appellant's offending in 2022, a Police officer sent the appellant a notice of temporary suspension of his firearms licence while revocation of his licence was being considered, outlined the legal and factual matters (notably his serious, repeat offending) which formed the basis of the decision to suspend, and gave the appellant the opportunity of replying.
- (c) Three months after the notice of temporary suspension, a Police Inspector revoked the appellant's firearms licence, giving reasons based on those outlined earlier. The Inspector also had regard to submissions

made by the appellant. The Inspector noted that the appellant's offending had resulted in diversion, and that he had engaged with a counsellor to address anger management issues following the 2022 offending. The absence of any reference to a Sergeant's expression of support was not a serious omission in view of the Sergeant's acknowledgement that he was not part of the process of firearms revocation. The Inspector also advised the appellant that he was entitled to apply for review of the revocation decision.

- (d) Over three weeks after the revocation of the appellant's firearms licence, the matter was reviewed by another Police Inspector, who confirmed the decision. This Inspector emphasised the appellant's offending involving family harm. The Inspector also referred to the appellant's infringement history as an additional factor, which the Inspector was entitled to do, but this factor was not determinative of the revocation decision.

Conclusion

[35] In light of the above considerations, this Court finds that the Police decision to revoke the appellant's licence was not based on an error of law or principle, taking account of irrelevant considerations, or failing to take account of a relevant consideration; and that the decision was not plainly wrong. The appellant's repeat offending shows a propensity to undertake impulsive, angry behaviour harmful to others, and leaves a lack of trust in him regaining the privilege of holding a firearms licence at this stage. The appellant's efforts towards rehabilitation are noted, but are too recent to negate the impact of his offending committed less than a year ago. While the revocation of the appellant's licence is a source of considerable personal loss for him, the safety of members of the public must be of central concern to the Court.

[36] The appeal by the appellant against the revocation of his firearms licence is therefore dismissed.

[37] Should the respondent seek costs, memoranda will need to be filed by 22 December 2023. In the absence of an application by the respondent, the Court will make no order as to costs.

P R Spiller
District Court Judge