

**IN THE DISTRICT COURT  
AT NAPIER**

**I TE KŌTI-Ā-ROHE  
KI AHURIRI**

**CIV-2022-020-000397  
[2023] NZDC 8306**

BETWEEN  
  
AND

MITCHELL WOELFEL CURRAN  
Plaintiff

THE NEW ZEALAND POLICE  
Defendant

Hearing: 1 May 2023

Appearances: L Lafferty for the Plaintiff  
M Blaschke for the Defendant

Judgment: 1 May 2023

---

**ORAL JUDGMENT OF JUDGE R J COLLINS**

---

[1] Mr Mitchell Woelfel Curran has appealed the decision of the New Zealand Police to revoke his firearms licence. Following all the necessary procedural and statutory steps, the relevant determination of the police was contained in a notice of revocation of firearms licence dated 6 July 2022.

[2] The Arms Act 1983 provides that for someone to have a firearms licence they have to be a fit and proper person. Section 24(1) states:

Subject to subsection (2), a firearms licence must be issued by a member of the Police to an applicant if the member of the Police is satisfied that—

- (a) the applicant—
  - (i) is of or over the age of 16 years; and
  - (ii) is a fit and proper person to be in possession of a firearm or an airgun; and
- (b) either—

- (i) the applicant's storage facilities for their firearms and ammunition have been inspected by a member of the Police and are compliant with the requirements for the secure storage of firearms and ammunition; or
- (ii) if the applicant is a visitor, a member of the Police is satisfied with the arrangements made by the applicant for the storage of the firearms and ammunition they will possess while in New Zealand.

[3] The police can revoke the earlier issuing of a licence if certain conditions are met. Section 27(2) 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; or
- (b) the holder of the licence has failed or refused to secure any arms item or ammunition in the person's possession, in accordance with regulations made under this Act; or
- (c) access to any firearm or airgun in the possession of the holder of the licence is reasonably likely to be obtained by any person–
  - (i) whose firearms licence has been revoked on the ground that they are not a fit and proper person to be in possession of a firearm or airgun; or
  - (ii) who, in the opinion of a commissioner offer of Police, is not a fit and proper person to be in possession of a firearm or airgun.

[4] Mr Curran, whose date of birth is 6 June 2002, and who is therefore currently 20 years of age, has the following driving record:

- (a) 25 September 2019 (while on a restricted licence) speeding – 70 kilometres per hour in a 50 kilometre per hour zone – infringement notice, 20 demerit points.
- (b) 14 November 2020 – drive with an excess breath alcohol level being 462 micrograms of alcohol per litre of breath. The appellant was convicted for the offence, fined and disqualified for six months from 22 December 2020.

- (c) On 19 October 2021, travelled at 109 kilometres per hour in an 80 kilometre per hour zone. He was issued with an infringement notice and incurred 35 demerit points.
- (d) On 3 November 2021, the appellant drove but caused sustained loss of traction. He was convicted and disqualified for six months from 26 April 2022 (26 April 2022 appears to have been the sentencing date).
- (e) On 27 November 2021, he committed the infringement offence of aiding and abetting a restricted driver. He incurred 25 demerit points. That was a situation where Mr Curran and his friends who both had full licences consider that they had consumed too much alcohol to safely drive and committed the infringement offence by having a young person who had a restricted licence drive for them.
- (f) On 7 December 2022, committed the infringement offence of speeding and that was driving at 123 kilometres per hour in a 100 kilometre per hour zone.
- (g) The police also refer to the fact that on 11 March 2023 Mr Curran was given a written warning for driving and following another vehicle too closely.

### **The legal test to be applied**

[5] While I have no wish to refer to any previous decisions of my own the approach that I have taken previously to the applicable legal principles came in the case of *Fulford v New Zealand Police*.<sup>1</sup>

“[8] Section 24A of the Act provides as follows:

- (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:

---

<sup>1</sup> *Fulford v New Zealand Police* [2022] NZDC 15686.

- (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):

...

[9] Mr Blasckhe, in his submissions, points to the recent legislative change on the question of whether somebody is a fit and proper person. Firstly, he helpfully points to the legislative amendment in s 1A of the Act, that is the purposes of the Act, and he has drawn the Court's attention to the inclusion of the following. Subsection (2) of that section reads: "The regulatory regime established by this Act to achieve those purposes reflects the following principles:

- (a) That the possession and use of firearms is a privilege."

[10] Mr Blaschke then helpfully points to two decisions of his Honour Judge Hinton. The first is *Barrett v Police*:<sup>2</sup> Paragraph [43] reads:

- [43] Quite obviously, the firearms licencing function undertaken by the police is critically important. It involves the taking by the police of thorough and careful steps and the making of careful judgments in the interests of the public. The umbrella considerations of "public safety" and in the interests of the public "promoting safe use and control of firearms", and crucially whether an applicant can be trusted to use firearms responsibly, self-evidently are significant.

[11] Mr Blaschke's submissions go on to refer to Judge Hinton's decision in *Moosman v Police* <sup>3</sup> at paras [23] and [24]:

- [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.

[12] Mr Blaschke says that the test of fit and proper person combines dual concepts and is in a sense disjunctive and he points to Judge Hinton's test that an applicant must be first of good character and then secondly, can be relied on to possess and use a firearm safely and responsibly. Mr Blaschke's submission is that this appeal fails at the first limb of good character because Mr Fulford's conviction for the offending and the facts of that offending mean that he cannot meet the good character test. Effectively, Mr Blaschke took no issue with the second limb, that Mr Fulford could be relied on to possess and use a firearm safely and responsibly.

---

<sup>2</sup> *Barrett v Police* [2022] NZDC 9189 at paragraph [43].

<sup>3</sup> *Moosman v Police* [2021] NZDC 23700 at paras [23] at [24].

[13] With respect, I consider that Judge Hinton has most helpfully and admirably captured the approach that needs to be taken to the amending legislation.

[14] Therefore, the conviction here is one where Mr Fulford committed an offence which was punishable by imprisonment. It was not one of the offences which would automatically disqualify him. Mr Blaschke points out though that if the course of conduct between Mr Fulford and the victim had continued to what Mr Fulford intended, he would have committed a disqualifying offence. He says that is a relevant factor to be thrown into the discretionary decision making mix.

[15] However, while the police may find a person is not a fit and proper person because of an imprisonable offence per se, Parliament has not made that conclusive. The conviction and the facts which support that conviction go into the mix for a determination to be made as to whether Mr Fulford is a fit and proper person.

[16] As I have already stated, the offending was serious. The behaviour is not consistent with good character, but in my view the proper interpretation of the law is that need not necessarily be exclusive and while the extent to which someone's prior bad acts can be visited upon them later in life is topical at the moment, that broader question does not play any part in this case. This case falls to be determined on the statutory provisions in the Arms Act.

[17] So, the conviction and the surrounding facts must go into the mix. But I consider that the approach of the Court of Appeal in *Z v R* (a decision dealing with the approach to be taken on a discharge without conviction) provides a helpful analogy.<sup>4</sup> There the Court has held that all matters which bear on culpability come, or are brought to bear in deciding upon gravity. So, by analogy here, all matters which bear on Mr Fulford's character have to be brought to the determination. “

## **The issue**

[6] The issue in this case is whether the appellant, in the context of the Arms Act 1983 and its applicable principles and purposes can be said to be a fit and proper person. The issue refined further really is whether the appellant's cumulative driving history is such that he fails the good character test as referred to by Hinton DCJ in the *Barrett v Police* and *Moosman v Police* decisions.<sup>5</sup> Here the issue is whether the police are correct in asserting that he has failed that good character test by his repeated failure to have proper regard to the driving laws of the land and has thereby repeatedly not displayed good judgment.

---

<sup>4</sup> *Z v R* [2012] NZCA 607.

<sup>5</sup> *Barrett v Police* [2022] NZDC 9189; and *Moosman v Police* [2021] NZDC 23700.

[7] This case is different from *Fulford v New Zealand Police* in that in *Fulford v New Zealand Police* accepted that Mr Fulford was someone who could be relied upon to act safely and responsibly in the possession of firearms. The police position in *Fulford v New Zealand Police* is that he failed at the first limb, that of good character.

[8] In Mr Curran's case, the police as the respondent, assert that his driving record as set out above means that he fails both the good character test and his disregard of his legal obligations when in charge of a dangerous object, a motor vehicle, means that he is not someone who can be safely relied upon to responsibly and safely conduct himself with firearms particularly in any circumstances where alcohol may be involved.

### **The respondent's position**

[9] This is set out by Inspector Kirsten Jane Price in her affidavit. She states:

(45) When all of this has occurred in the short period of time the appellant has had a licence, and he has been disqualified from driving twice during that period, it reflects, in my assessment, a clear pattern of repeated poor driving behaviour. I also place weight on the fact that the speed levels involved have been relatively high ones.

(46) The appellant places reliance on the fact that he was granted a limited (work) licence following his disqualification for the sustained loss of traction, and the fact that was not opposed by police. The police did not oppose, so that the appellant could continue his employment, does not reflect of whether he is fit and proper to possess firearms. There is a greater degree of "necessity" to driving, especially for work, than for the possession of firearms, which is a privilege. The fact of firearms possession and use being a privilege is now legislatively recognised by the 2020 Arms Act amendments.

(47) I do not agree that the appellant's behaviour should be downgraded in seriousness by references to traffic "convictions, "or can be considered "minor" matters. While individually that may be so, on a collective or cumulative basis, they are of considerable concern to me when considering the behaviour of this young man, at the age of just 20.

(48) It is also clear to me, whether the writers of the various character references the appellant relies on, have been made aware of his driving behaviour, or the full extent of the driving behaviour, as opposed to "just" being traffic convictions.

(49) ...

(50) While the appellant places significant weight on the fact he has no history of incidents which directly involve firearms, that does not, in my assessment, outweigh the impact of his driving behaviour as on his fit and proper status. My assessment of fit and proper is a holistic one, and includes how likely a person is to comply with the rules and laws around the safe possession and use of a firearm.

(51) The appellant has repeatedly demonstrated he cannot be trusted to obey the road rules. I consider the decision-making and the risk taking this driving behaviour represents makes the appellant unfit to possess firearms. That is on both a general level, and in that the extent of his driving offending reflects a tendency to not comply with the law, which undermines a person's fit and proper standing, and on a firearms specific level.

### **The appellant's response**

[10] Mr Lafferty in a thorough and comprehensive way has put forward everything for the appellant that he can. He refers to the matters in the appellant's own affidavit which contain matters really in the sense of an absence of any other additional matters of concern has not been significantly challenged by the police as respondent.

[11] There are affidavits from obviously other good people that speak generally to the appellant's character. A large part of that is his involvement with the shooting club at the Napier Boys' High School when he was a student there and in that context, responsible use of firearms.

[12] Mr Lafferty also has stressed that neither of his two driving convictions nor any of the infringement matters on their own would see his firearms licence being revoked.

### **Decision**

[13] In the context of a firearms licence and safety around firearms I consider the appellant's driving history serious and material. It clearly displays his immaturity. In that sense I find it difficult to accept the courts can take a different approach to sentencing of young offenders, ie, the approach dictated by *Churchward v R* and multiple decisions of the higher courts which have followed that where sentencing judges are required to give effect to the proposition that young people and young men act with immaturity.<sup>6</sup>

---

<sup>6</sup> *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446.

[14] Here Mr Curran's bad driving record contains six matters which I have placed reliance on and disregard the warning for following too closely. It is unclear whether he accepted that that was the case or not, so I put that to one side.

[15] The driving with excess breath alcohol on 14 November 2022 clearly involves road safety. Having been sentenced and disqualified for that matter, less than a year later he drove at 29 kilometres an hour above the legal speed limit. Fourteen days after that speeding offence he committed the offence of causing sustained loss of traction. There has been argument today that I should disregard the fact that 13 days later his vehicle was involved in another incident of the same loss of traction at the very same place that Mr Curran had offended on 3 November 2021. The police did not charge him with driving causing sustained loss of traction on 16 November because they considered they had insufficient evidence to prove that he was the driver. He asserted that he was not the driver and was not present on when the offence on 16 November 2021 occurred.

[16] He accepted in cross-examination today from Mr Blaschke that it was his car but he was not present when the offending occurred. It is also clear from all of the evidence that he did not assist the police at all in identifying who the actual driver was. Mr Lafferty is correct to protest that he was not charged with not providing that information but it is still nevertheless a factor when the issue of good character is under assessment.

[17] The infringement offence of aiding and abetting a restricted driver occurred some three weeks after the offence of sustained loss of traction.

[18] Also of particular concern and particularly in the assessment of the appellant's attitude to his responsibilities is that on 7 December 2022 he drove at 123 kilometres per hour in a 100 kilometre per hour zone. That was said to be driving home from work after a long day at work. But highly relevant to this offence is that his firearm licence had already been revoked and the reasons why it had been revoked were abundantly clear to him. If anybody whose firearms licence was important to them was on notice that their driving needed to be unimpeachable on 7 December 2022, it



was Mr Curran. In all of those circumstances I cannot fault, and nor do I and nor do I disagree with the reasons of Inspector Price.

[19] Mr Blaschke submits that this simply is not a matter of the police deciding that Mr Curran fails at the first limb, that of good character, but that when looking at s 24A(2)(c) that the pattern of driving and the pattern of offending and the pattern of offending when in control of a dangerous object relevantly falls into s 24A(2)(c): “Any other relevant matters the member of the Police considers appropriate.” Here the police, through Mr Blaschke argue that this pattern of behaviour around the use of a motor vehicle and the consistent failure to meet his obligations in that regard mean that Mr Curran is not someone who at this age and stage in life can be relied upon to possess and use firearms safely.

### **Other matters**

[20] A number of decisions have been referred to me. Some of those being the case of *Peterson v Police* was a case prior to the 2020 amendments.<sup>7</sup> *Hore v Police* was also prior to the amendments as was *Innes v Police*.<sup>8</sup> Also referred to me was the case of *Hurley v Police*.<sup>9</sup> That decision clearly postdates the amendments. In that decision the District Court judge did not refer to the decisions of *Barrett* and *Moosman*, but there is nothing I see in *Hurley v Police* which contradicts in any way the two limb approach which I have applied following *Moosman* and *Barrett*.

[21] In addition, Mr Blaschke has referred to the decisions of *Wallace v Police* and *Tito v Police*.<sup>10</sup> Those latter two cases clearly postdate the amendments and the approach there can be considered to be quite consistent with the test that I have extracted from *Barrett* and *Moosman*.

[22] In any event, all cases will differ on their facts. It is the application of principle that can be taken from earlier cases which is important.

---

<sup>7</sup> *Peterson v Police* [2016] NZDC 8923.

<sup>8</sup> *Hore v Police* [2017] NZDC 5263; and *Innes v Police* [2016] NZDC 4538.

<sup>9</sup> *Hurley v Police* [2022] NZDC 7713.

<sup>10</sup> *Wallace v Police* [2022] NZDC 20154; and *Tito v Police* [2022] NZDC 16431.

[23] Finally, as Mr Blaschke points out, revocation of a firearms licence is not a lifetime ban. Mr Curran is 20 years of age. He will soon be 21. After five years he can reapply for his licence. That ability to reapply is his statutory right. In that period, if he has a clean driving record, that is within that five year period if he does not drive in a way which puts other road users at risk, then I would consider that any application by him would inevitably be successful. But for the reasons stated above, this appeal is dismissed.

---

Judge R J Collins

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: ...27/06/2023