

**IN THE DISTRICT COURT
AT HASTINGS**

**I TE KŌTI-Ā-ROHE
KI HERETAUNGA**

**CIV-2021-020-000362
[2022] NZDC 15686**

BETWEEN

JAMES ANDREW FULFORD
Plaintiff

AND

NEW ZEALAND POLICE
Defendant

Hearing: 17 August 2022

Appearances: R Phillip for the Plaintiff
M Blaschke for the Defendant

Judgment: 17 August 2022

ORAL JUDGMENT OF JUDGE R J COLLINS

[1] Mr James Andrew Fulford has appealed the decision of the New Zealand Police to revoke his firearms licence. The relevant determination of the police was contained in a notice of revocation of firearms licence dated 13 July 2021 and was given by Inspector Pennell.

[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):

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 - (i) whose firearms licence has been revoked on the ground that they are not a fit and proper person to be in possession of a firearm or airgun; or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 commissioned officer of Police, is not a fit and proper person to be in possession of a firearm or airgun.

[4] Mr Fulford was convicted and sentenced by me on 13 September 2021. He was sentenced to 12 months' supervision with conditions and he was also sentenced to six months' community detention. He has served the sentence of community detention without breach. Two weeks remain of his sentence of supervision.

[5] The actual sentencing notes have not been transcribed. What has been transcribed is the decision I gave refusing Mr Fulford's application to be discharged without conviction. The offending was serious. Mr Fulford acknowledges that and Mr Phillip has not shied away from that for a moment.

[6] The police revocation letter records the inspector's view of the offending in this way:

The grounds supporting my intention to revoke your firearms licence were as follows:

- (a) That between [dates deleted] you sent sexually explicit Snapchat messages to a 15-year-old female, whom you knew, she was a dancer and you were the stage manager in a local theatre production.
- (b) That on [date deleted], the same female was with two of her friends and contacted you, by Snapchat message, asking you to buy her alcohol. You agreed and met with her to get the money and returned a short time later with five bottles of Nitro Vodka alcohol.
- (c) As a result of these acts you have been charged with and pleaded guilty to the imprisonable offence of meet young person following sex grooming and the offence of supply alcohol to a minor.
- (d) The police consider that your actions as outlined above are not consistent with the criteria of a fit and proper person.

[7] At the time of considering the application for a discharge without conviction and sentencing, I recorded this in terms of the facts.

“[5] The summary of facts sets out what occurred. I am not going to go through that in detail. You know what is in it. Mr Phillip, Mr Manning, they know what is in it and a full copy will be available to Mr Sharp if he wishes as well.

[6]: “You were 25 and your victim was 15,” and I use the word victim deliberately Mr Fulford because she was your victim. The critical point is that she was under 16 and through the theatre and a production in [year deleted] you met her. The production finished in [date deleted]. It seems that your relationship really was not a great deal more until the end of the production other than to simply greet each other when you would see each other around the set.

[7] Thereafter, by text messaging and other social media platforms you commenced that social media text messaging relationship with her. You made it abundantly clear in very explicit terms you wished to have a sexual relationship with her. She made a lot of excuses over the period of time but this conduct continued, but you were persistent in the social media communication where you are expressing your sexual interest in a 15-year-old is highlighted by the volume of the messaging involved and the explicit sexual nature of what you wanted to do.”

[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:
 - (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*:¹ 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*² 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

¹ *Barrett v Police* [2022] NZDC 9189 at paragraph [43].

² *Moosman v Police* [2021] NZDC 23700 at paras [23] at [24].

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.

[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.³ 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.

[18] Operating against a finding of good character is the fact of the offending. Underlying that is the concern whether somebody can claim good character for offending of that nature and there is always a concern that somebody who may have a predilection to aberrant sexual conduct will never be free of that predilection. I am not satisfied that there is sufficient here to conclude that Mr Fulford has that enduring predilection.

[19] Inherent in such offending is a concerning attitude to women and young women. That attitude has no place in a civilised society. I suspect though that for reasons I will come to in a moment, that Mr Fulford has heard much about that and his mindset in that regard would have been subject to serious correction over the last couple of years.

[20] On the other side of the balancing exercise in determining whether he is of good character are the following. He was 25 years of age at the time of the offending and he had no previous convictions of any sort at that point. He is now 27 years of age, is in a relationship and has a young child. The fact that he is in a relationship and has a young child may not necessarily in itself mean that someone is of good character or support a proposition of good character, but a commitment to a relationship and a commitment to parenthood are certainly positive things.

[21] Mr Fulford pleaded guilty to the charges. He accepted his offending. He listened to a victim impact statement read on behalf of the victim and that would have been an extremely hard thing for him to sit and listen to at sentencing.

³ *Z v R* [2012] NZCA 607.

[22] As a part of his supervision sentence he has been screened for alcohol abuse or dependency and I understand that no further steps were deemed necessary to take following that assessment. He was screened as to whether a WellStop intervention was needed and I understand that was not considered compulsory, though counselling would have been provided to him should he have wished to take that up.

[23] Mr Fulford has a supportive family. That should not be misinterpreted. Somebody of extremely poor character and a sustained course of conduct over many years may retain the support of good people. But the fact remains he retains the support of his family. His parents have always been in court for him, including this application. If what underlay his offending, as it must have done, was poor judgment and some misguided attitudes, then I have no doubt that the support of his family would have worked to correct that poor decision making and attitudinal adjustment.

[24] Ironically, this offending occurred in a situation where Mr Fulford was making a community contribution through voluntary membership and voluntary contribution at a local theatre. Importantly, he is a good worker, has good employment and that is clearly a factor that operates to his advantage.

[25] In addition, he was refused an application to be discharged without conviction. He took that decision with good grace and then proceeded to comply with his sentence.

[26] It is highly likely that some people in the community would struggle with the concept that somebody who committed these offences can be of good character, but as I stressed at the start, it is a balancing exercise and it is whether on balance that determination can be made.

[27] In my view, when all matters are balanced, despite what was a serious fall from grace, but when all matters are brought to bear, a determination that Mr Fulford is of good character can be made and I do make that. I make it because I accept that he is honest, he is hardworking and but for this incident he has no previous convictions, he contributes to the community and he clearly maintains good family relationships.

[28] So, returning then to Judge Hinton's test, he is of good character and then no issue is taken regarding the fact that he can be relied on to possess and use a firearm safely and responsibly, so the appeal is allowed.

[29] I decline to make any award of costs.

Judge R J Collins

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: ...29/08/2022