

**IN THE DISTRICT COURT
AT HASTINGS**

**CIV 2015-020-000097
[2016] NZDC 8923**

IN THE MATTER OF An Appeal Pursuant to S 62 of the Arms
 Act 1983 against a decision to revoke a
 Firearms Licence

BETWEEN LUKE THOMAS PETERSON
 Appellant

AND NEW ZEALAND POLICE
 Respondent

Hearing: 28 April 2016

Appearances: Mr M J Phelps for Appellant
 Mr N L Wolland for Respondent

Date of Decision: 23 May 2016

RESERVED DECISION OF JUDGE G A REA

[1] On 23 December 2014 the Appellant was convicted in the Hastings District Court on a charge of driving under the influence of drink or drug or both. As I understand it the summary of facts presented to the Court stated that on 19 August 2014 the Appellant attended a party in Palmerston North where he had smoked an unknown amount of cannabis and consumed a small amount of alcohol. He drove back to Hastings later that night. At about 11.50pm he was driving south along Riverslea Road and lost control of his vehicle before crashing into a letterbox and landing in a hedge. The Appellant was returned to the Hastings Police Station for assessment by a doctor and he appeared to be extremely “high” and his demeanour was very inconsistent.

[2] When the Police attended the accident they located a .308 hunting rifle and bolt unsecured in the rear of the crashed vehicle. In his evidence the Appellant advised me that the car he had been driving was a Toyota Corolla hatchback with a

parcel tray and that the rifle and bolt could not be seen from outside the vehicle. He also stated that he was the one who drew the Police's attention to the rifle and the bolt.

[3] At the time of the accident the appellant admitted to consuming cannabis earlier in the day and stated that he had crashed his vehicle because he had been checking his phone. In addition to being charged with driving under the influence of alcohol or drugs or both the Appellant was originally charged with being in charge of firearm while under the influence of drink or drug. This charge was either later withdrawn or dismissed and not proceeded with.

[4] Sometime later in the day on 19 August 2014 after the accident the Appellant went to the front counter of the Hastings Police Station and spoke with Ms Miriama Mataroa, a Police employee, working as an arms officer at the Hastings Police Station. In her evidence Ms Mataroa said that she had previously dealt with the Appellant prior to August 2014 and she was aware that his behaviour at times could be agitated due to a head injury he had received some years earlier.

[5] The Appellant had gone to the Police Station to pick up some of his property that had been recovered from the crash site. Ms Mataroa was aware that the crash had occurred. She said that when she spoke to him he was quite agitated. She told him that due to his actions she would be recommending a review of his Firearms Licence based on the fact that he had admitted to consuming cannabis while in possession of the rifle. During their conversation she asked him about driving under the influence of drugs and he told her "it was just a tinnie. I only use it for medicinal reasons for chronic back pain."

[6] Ms Mataroa said that his conversation at times was all "over the place". He would talk about corrupt Police, that towies had taken thousands of dollars worth of his property and that he believed that 80% of people used cannabis. At one point he stated to her:

"So I am going to have to use firearms illegally then?"

[7] Ms Mataroa told him that that kind of comment was stupid and did not help his situation. She pointed out to him on a number of occasions that using cannabis was illegal and that the quantity and frequency was irrelevant.

[8] She said that the Appellant tried to make comparisons with alcohol. She replied to him that consuming alcohol was not illegal but if he did consume alcohol and was in control of firearms while intoxicated then that would be an issue. She said she tried explaining to him that the continual illegal use of cannabis was what raised concerns as to whether he was a fit and proper person to hold a firearms licence. She said that he became emotional and cried on a number of occasions during their conversations and that his mood changed frequently and rapidly from between being angry and being upset.

[9] Ms Mataroa asked the Appellant why he had the firearm in the car the previous night. He explained to her that he had just bought it and had been sighting it in and he had finished doing that at about 6pm. She asked him why there was a six hour difference between the time he finished sighting it in and the time when he was located by Police after the crash. He said that he called in to visit a friend whose surname he could not remember at an address in Ellison Road at a number he could not remember. He told Ms Mataroa that his gun had been locked up safely in the car, out of view, with the ammunition separate and that he held the keys to the car.

[10] Ms Mataroa pointed out to him that he was not supposed to leave a firearm unattended in a vehicle. He told her that his friend had come out to the car and that he had never left the car. He said that he had talked to his friend through the open car window. Ms Mataroa stated that she questioned this explanation with him because she did not believe that he and his friend would talk for six hours with him in the car and his friend outside the car. She said this annoyed the Appellant and he accused her of judging him.

[11] The conversation then turned to items that had been in his car and how he could get them back. She showed him the exhibit sheet for the firearm, scope and tripod that had been documented by attending Police. The Appellant then starting making accusations about theft of money and property by the towies. Ms Mataroa

referred him to Hawke's Bay Towing and said that if anything was missing he could look at making a theft complaint to the Police which would be followed up.

[12] Ms Mataroa said in evidence that during her dealings with the Appellant at this time he was fixated on losing his Firearms Licence. He wanted the opportunity to speak with an Inspector of Police who normally dealt with these matters but that Officer was unavailable.

[13] On the following day, 20 August 2014, Ms Mataroa completed her report for a review of the Appellant's Firearms Licence and recommended that it be revoked as she did not consider he continued to be a fit and proper person to be in possession of firearms.

[14] Ms Mataroa's report went to Inspector Andrew Sloan. It was his job to review whether the Appellant was still a fit and proper person to retain a Firearms Licence or whether his Firearms Licence should be revoked. In evidence Inspector Sloan said that in addition to the report from Ms Mataroa he took in to account other information he had available from Police sources as well. He noted that the Appellant had a criminal history which included the following convictions:

- (a) Disorderly behaviour in 2006;
- (b) Driving with excess blood alcohol on 31 January 2008; and
- (c) A charge of theft from a car in 2009.

[15] In addition he took into account other circumstances which he believed were relevant to the case. Those were:

- (a) That on 15 December 2005 the Appellant had his vehicle impounded due to the fact that he was operating that vehicle on a road in a manner that caused the vehicle to undergo sustained loss of traction;
- (b) That on 22 August 2011 the Appellant was involved in a suicide attempt where he took a large number of sleeping pills and drove off

in a vehicle telling his parents that he wanted to drive in front of a truck. He then drove erratically through Hastings, colliding with another vehicle, and causing minor damage. The Appellant was later found by Police at a nearby address, unwell, due to the drugs that he had taken and he was taken to hospital where he was under police guard due to his aggressive behaviour.

[16] The Inspector was also of the view that as a result of the vehicle crash incident on 19 August 2014 the Appellant had broken two of the seven basic rules in the Arms Code 2013 namely:

- (a) Rule 6 – store firearms and ammunition safely; and
- (b) Rule 7 – avoid alcohol and drugs when handling firearms.

[17] Inspector Sloan came to the view that the cumulative effect of the Appellant's previous convictions, his drug use, his mental health issues and his explanations to Ms Mataroa when challenged about the retention of the firearm in his vehicle meant that he was no longer a fit and proper person to retain a Firearms Licence. As a result on 21 August 2014 the Appellant was served with a notice of consideration to revoke his firearms licence.

[18] The Inspector said that on 12 September 2014 he received a letter from the Appellant's lawyer, Mr Phelps, requesting that any decision in relation to revocation of the Firearms Licence be deferred pending the outcome of matters then before the Court arising from the crash on 19 August 2014. The Inspector agreed to await the outcome of the Court hearing before making a final decision.

[19] Inspector Sloan said that he did not hear back from either Mr Phelps or from the Appellant but became aware that on 3 December 2014 the Appellant was convicted in the Hastings District Court of driving under the influence of drink or drug or both. He said that on 29 December 2014 he completed the review process and made the decision to revoke the Appellant's Firearms Licence. He said that on 12 January 2015 the Appellant was served with a letter advising him that his

Firearms Licence was revoked. That notice was served on him at the Police Station in Hastings. The letter containing that information was dated 29 December 2014 and the Inspector records his reasons for the revocation of the Firearms Licence as follows:

“My reasons for revoking your Firearms Licence include and are not limited to:

1. That on 19 August 2014, you were involved in a motor vehicle incident on Riverslea Road South, Hastings where you lost control of your vehicle and crashed. At the time Police attended and located a .308 hunting rifle and bolt unsecured in the rear of your crashed vehicle.
2. You admitted to having consumed cannabis earlier in that day on 19 August 2014.
3. You were in control of a firearm while under the influence of drugs, an offence under Section 47 of the Arms Act 1983.
4. That on 4 December 2014 you were convicted in the Hastings District Court on a charge of driving under the influence of drink/drugs or both in relation to the accident on 19 August 2014.

(NB it would appear the date of conviction was actually 3 December 2014)

5. It is incumbent on a Firearms Licence holder not to mix alcohol, drugs and firearms.
6. You have broken two of the seven basic rules of the Arms Code 2013.
 - Rule 6: Store firearms and ammunition safely
 - Rule 7: avoid alcohol and drugs when handling firearms.
7. Your behaviour is such that I do not consider you to be a fit and proper person to retain a Firearms Licence or be in possession with firearms.”

[20] As a result this appeal was lodged. In his evidence the Appellant said that he has had a Firearms Licence since he was about 19 years of age. He has been and remains an avid outdoors person, a keen hunter and duck shooter and has been involved in those activities regularly over the years that he has had a Firearms Licence.

[21] He said that in 2005 he was involved in a nasty car accident where he sustained significant injuries including multiple fractures, spinal injuries and a mild traumatic brain injury. He said that this accident left him with chronic back pain and the medication he used for it did not always help. He accepted that he had used cannabis in the past to deal with back pain and that at the time of the accident on 19 August 2014 he was still smoking cannabis. He said that the end of September 2015 he underwent a significant spinal operation which has significantly reduced the amount of pain he experiences and that he is no longer on any medication and deposes that he has not used cannabis since shortly after he was charged in August 2014.

[22] The Appellant said that on 19 August 2014 he had collected the firearm in question from business premises in Napier. He had purchased the firearm earlier and one of the employees had agreed to sight it in for him. He collected the firearm during the afternoon and put it in the boot of his car to take home with him. He said there was no ammunition with the firearm. Instead of going home he went to visit a friend in Hastings because he originally had not intended to stay long. The firearm remained in the boot of the car which was locked at all times. He said that at no stage did he take the firearm out of the boot and show it to anyone let alone use it. The Defendant accepted in the evidence he gave before me that he was at the address in Hastings for about six hours but that he did not have much alcohol to drink or much cannabis to smoke.

[23] The Appellant said that he travelled back to Hastings in his car at about 11.50pm and crashed on the way home. He said that he stayed at the scene of the crash until the Police arrived and immediately told them that he had the firearm in the boot of the car. He said that he accompanied the Police back to the Hastings Police Station for the breath alcohol procedures to be undertaken.

[24] As can be seen the version given by the Appellant in his evidence of what he did in the late afternoon and early evening of 19 August 2014 is markedly different from that recorded in the Summary of Facts in support of the charge against him. The Appellant accepted in evidence that he had told the attending Police Officers at the time that he had travelled from Palmerston North prior to the accident but he said

that in doing so he was telling them lies and that what he has said in support of this appeal accurately outlines the true state of affairs.

[25] On an appeal under s 62 of the Arms Act 1983 I am required to consider the matter de novo. In the context of this legislation I consider “de novo” to mean a new hearing of the matter, conducted as if the original hearing had not taken place Black’s Law Dictionary 10th Edition ¹ see also *Fewtrell v Police*² and *Police v Cottle*³. There is no presumption in favour of the decision appealed from and no onus on the Appellant to satisfy me that the original decision was wrong. It is necessary for me to look at the matter afresh and to determine it independently.

[26] The Arms Act 1983 does not set out a definition of who is to be regarded as a fit and proper person and neither does it provide any criteria for determining who falls within that category. It is accepted that the case law recognises that general character and temperament are relevant and criminal convictions can also be significant. In *McCabe v Police*⁴ Judge Neave made the following observation about the determination of a fit and proper person:

“[3] Under the Arms Act 1983 (“the Act”) a person who applies for a firearms licence shall be issued with such licence if the member of the police to whom the application is made is satisfied that the applicant is of or over the age of 16 years and is a fit and proper person to be in possession of a firearm or airgun (s 24 Arms Act 1983). Exactly what is meant by fit and proper person is not spelled out in the legislation. Such a determination clearly requires consideration of the applicant’s overall character and history to determine that they are the sort of person who should be allowed to be the holder of a firearms licence and thus entitled to lawful possession of firearms. It is perhaps apt to note the long title of the Arms Act 1983 which states that it is “an Act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons”. Clearly the considerations of promoting safe use and control of firearms must inform any decision on the fitness and propriety of any particular person holding a firearms licence.”

[27] I gratefully adopt those comments and also consider they are just as applicable in “revocations” such as this as they are to “application” cases such as the one Judge Neave was dealing with.

¹ Black’s Law Dictionary 10th Edition page 837

² *Fewtrell v Police* (1996) 14 CRNZ 372

³ *Police v Cottle* [1986] 1 NZLR 268

⁴ *McCabe v Police* – District Court Timaru 30 January 2009

[28] In his submissions Mr Phelps dealt with the discreet issues raised on the appeal. As far as the crash on the 19th of August 2014 is concerned he acknowledged, as he must, that the Appellant had left a .308 rifle in the boot of his car for about six hours. Mr Phelps submits that it is significant that the evidence revealed that the Appellant would normally keep his firearms in a locked gun safe at his father's house. He also pointed out that this incident appeared to be a one-off as far as storage issues were concerned and there had been no persistent issues around storage in the past.

[29] Mr Phelps accepted that the Appellant had consumed cannabis on 19 August 2014 and that he had consumed it to such an extent that he was convicted for driving under the influence of drink or drugs. He submits that the evidence reveals that the Appellant had only consumed alcohol and drugs after he arrived at his friend's house in Hastings having earlier collected the firearm from the retail outlet in Napier where it had been sighted in for him. Mr Phelps submits, correctly, that there is no evidence available to the Court that the Appellant handled the firearm while under the influence of drink or drugs nor that he allowed any other person to handle the firearm nor that he had any intention to use it during the course of that time. He pointed out that the firearm remained in the boot of the locked vehicle where it was not in public view.

[30] The evidence given by the Appellant for the purposes of his hearing also has to be weighted against the other explanations he has previously given. The first of those was the explanation that he claimed was false that he had come from Palmerston North and there was the second explanation given to Ms Mataroa that he never left the car and spent some six hours talking to his friend through the car window. The Appellant accepted in evidence that he had not told the truth about what he had actually done and at this stage it is difficult to make an assessment as to exactly where he had been and when prior to the accident.

[31] While Mr Phelps accepted that there had been a breach of the Arms Code by the Defendant leaving the firearm unattended in his vehicle he challenged the second breach of the Arms Code that Inspector Sloan relied upon that the Defendant should avoid alcohol and drugs when handling firearms. It would seem that based on a

decision of Heath J in *Peck v Police*⁵ there would have been insufficient proof that the Defendant was in charge of a firearm while under the influence of drugs. Presumably that is why the Police never proceeded with that charge. Whether the Defendant's conduct on 19 August 2014 amounts to a technical breach of Rule 7 relating to the avoidance of alcohol and drugs when handling firearms or not there can be no doubt that his leaving of the firearm in the boot of the car can be linked to the consumption of alcohol and/or drugs because for part of the time at least if the firearm was left unattended in this way that was the activity the Defendant was engaged in.

[32] I consider that the past criminal convictions of the Defendant are of marginal relevance in considering whether he remained a fit and proper person to have a Firearms Licence. They do have some relevance when combined with the other circumstances of the case but in my view on their own they would not have led to a conclusion that he was not a fit and proper person.

[33] I consider that the circumstances surrounding events on 15 December 2005 and the allegation of sustained loss of traction should not have been taken into account. While his vehicle may have been impounded there is no evidence that he was ever charged and there does not appear to be any surrounding circumstances that provide any concern as to being a fit and proper person under the Arms Act.

[34] I believe the incident on 22 August 2011 is in a different category. I appreciate the submission made by Mr Phelps that no charges were laid but that is perhaps understandable in the circumstances of the case. The events as described by Inspector Sloan would undoubtedly point to the Defendant suffering mental health concerns at the time and the fact he was not charged does not derogate from the concerning behaviour that occurred on that date.

[35] I consider the events of 22 August 2011 must still have significance in determining whether the Appellant is a fit and proper person to have a Firearms Licence when that behaviour is compared with the way he presented to Ms Mataroa later in the day on 19 August 2014. I have already outlined in some detail the

⁵ *Peck v Police* High Court Hamilton 12 December 2002

unchallenged evidence of Ms Mataroa about the way the Defendant presented and about some of the unhelpful things he said. She also gave evidence about how his behaviour swung between the aggressive on the one hand and the upset and distraught on the other. Even taking into account that the Appellant had only recently been involved in a car accident where the Police turned up and where he knew his Firearms Licence was to be revoked I still consider that this behaviour towards Ms Mataroa was at the very least unsettling and when considered in light of the events of 22 August 2011 provides a real concern about the temperament of the Appellant in stressful circumstances.

[36] While Mr Phelps in his submissions has said all he can in support of the Appellant the fact remains that the Appellant left a high powered rifle together with its bolt in the boot of a car for a number of hours while he was involved in consuming alcohol and cannabis for at least some of that time. Having done so he then took the risk of driving that car with the firearm and bolt still in it when he must have known that was a very unsafe thing to do. Whichever explanation the Appellant gave about where he had been on the 19th of August it does not get away from the fact that he took no steps at all to properly secure the firearm and the bolt and he reduced his own effectiveness as a custodian of that rifle by illegally consuming cannabis and also drinking some alcohol.

[37] I consider that Inspector Sloan was also entitled to take into account the past mental instability of the Appellant as highlighted by the events of August 2011 and to have concluded that there was still a strong chance of irrational behaviour by the Appellant based on his dealings with Ms Mataroa on 19 August 2014.

[38] To adopt the test applied by Judge Neave in *McCabe v Police* I find that a consideration of the Appellant's overall character and history as well as an examination of the events that occurred on 19 August 2014 lead me to the conclusion that the Appellant is not the sort of person who should be allowed to be the holder of a Firearms Licence and thus entitled to lawful possession of firearms. He is not a fit and proper person to do so. I consider that on the evidence before me there were major concerns about the Appellant's safe use and control of firearms and I consider that the decision arrived at by Inspector Sloan to revoke the Appellant's Firearms

Licence was the only one open to him on a proper application of the provisions of the Arms Act 1983.

[39] The appeal is dismissed.

G A Rea
District Court Judge