

06/81

SUPREME COURT OF VICTORIA

VAUGHAN v LENNIE

Anderson J

16 December 1980 — [1981] VicRp 25; [1981] VR 229

MOTOR TRAFFIC – DRINK/DRIVING – PERSON PREVIOUSLY FOUND GUILTY OF DRINK/DRIVING – RELEASED ON BOND – FINDING BY MAGISTRATE ON SUBSEQUENT DRINK/DRIVING OFFENCE THAT OFFENDER SHOULD BE DEALT WITH AS A FIRST OFFENDER – WHETHER MAGISTRATE IN ERROR: MAGISTRATES (SUMMARY PROCEEDINGS) ACT 1975, S80(1); MOTOR CAR ACT 1958, S81A.

L. had been before a Court in 1976 on a charge of exceeding .05, the charge was adjourned to 1977 a period of 52 weeks on the defendant entering into a recognizance to be of good behaviour. In 1977, the information against the defendant was dismissed, the defendant having satisfied the Court that he had observed the conditions of his recognizance. Defendant again before the Court in 1980 on another charge of exceeding .05. The previous proceedings were proven before the Magistrate. It was submitted, because of the dismissal in 1977 (at the end of the period), the court should deal with the defendant, as not previously been guilty of the .05 offence. The submission was accepted and the defendant dealt with as a first offender. Upon appeal—

HELD: Where a person has been found guilty of a drink/driving offence and released on a bond to be of good behaviour, a magistrate was in error in imposing penalties as for a first offence.

ANDERSON J: Submissions made to me by Counsel who appeared for the informant, were to the effect that though the information in terms may have been dismissed on 15 August 1977, nevertheless on 16 August 1976, the court had been satisfied that the defendant was guilty of the .05 offence with which he was then charged and that now he was a person who was liable to be punished, and should be punished, on the basis that he was not guilty of a subsequent offence in respect of the charge before the court for which substantially heavier penalties were mandatory.

It is not without significance that s80(1) of the *Magistrates (Summary Proceedings) Act* 1975 is, in terms, somewhat different from what its predecessor, s92(6) of the *Justices Act*, was. The earlier provision read:

"Where at any time after the commencement of the hearing of an information for an offence it appears to the justices to be expedient to do so, it shall be lawful for the justices to adjourn the further hearing ..."

Section 80(1) of the *Magistrates (Summary Proceedings) Act* of course provides that: "Where the court is satisfied that the defendant is guilty" and the situation is that s80(1) has now been brought more or less in line with not dissimilar legislation in other States. Counsel referred me to a number of cases where this very aspect was considered, and where the conclusion reached by the courts that had the matter under consideration was to the effect that the dismissal of an information subsequent to a recognizance of this nature being entered into did not mean that the defendant had not been found guilty of an offence, and that the dismissal did no more than record that the condition of the recognizance had been kept. The person would thereafter go through life with no conviction for an offence – no conviction, I stress; but nevertheless he would be a person who had been guilty of a prior offence because the basis on which the recognizance had been allowed could only be on the basis that the court had found him guilty.

The cases to which counsel referred, insofar as really relevant, are two in number. One is *Pring v Woolacott* (1966) SASR 6, and the other case is *Kelly v Russell* [1970] ALR 644; (1969) 14 FLR 255. ... I share the view with the learned judges in those cases, expressed in the context in which the word "offence" is as used in s80A of the *Motor Car Act*. A dismissal of the information by the Court in 1977 does not alter the fact that the defendant had been found guilty of the .05 offence in August of 1976. I think I need say no more, and the consequence is that the magistrate was in error in imposing penalties as for a first offence.

[Note: Because of the long period between the conviction and the decision by the Supreme Court, the Supreme Court pursuant to Section 93 of the *Magistrates' Courts Act*, imposed a period of disqualification as for a second offence, to commence from the date of conviction at the Magistrates' Court. Ed]
