

12/07; [2007] VSCA 13

SUPREME COURT OF VICTORIA — COURT OF APPEAL

R v CONER

Buchanan and Eames JJ A and Kellam AJA

7 February 2007

CRIMINAL LAW – PROHIBITED PERSON CARRYING AN UNREGISTERED FIREARM – PERSON CONVICTED AND SENTENCED TO THREE MONTHS' IMPRISONMENT FOR AN OFFENCE UNDER THE ROAD SAFETY ACT 1986 – WHETHER SUCH CONVICTION AND SENTENCE MADE A PERSON A PROHIBITED PERSON FOR THE PURPOSES OF THE FIREARMS ACT 1996 – COURT FOUND ACCUSED TO BE A PROHIBITED PERSON – WHETHER COURT IN ERROR: FIREARMS ACT 1996, S3.

C. was convicted and sentenced to three months' imprisonment for driving a motor vehicle whilst disqualified pursuant to the *Road Safety Act* 1986. Subsequently, C. pleaded guilty to a count of being a prohibited person carrying an unregistered firearm. The accused was convicted and sentenced to a term of imprisonment. Upon appeal—

HELD: Appeal allowed. Conviction and sentence quashed.

A conviction and sentence of imprisonment for an offence under the *Road Safety Act* 1986 does not make one a prohibited person for the purposes of the *Firearms Act* 1996 ('Act'). Accordingly, the court was in error in finding that C. was a prohibited person within the meaning of s3 of the Act and finding the charge proved.

BUCHANAN JA:

1. The applicant was arraigned in the County Court and pleaded guilty to a presentment containing one count of being a prohibited person carrying an unregistered firearm. On 30 August 2006 the applicant was sentenced to be imprisoned for a term of two years with a minimum term of 12 months' imprisonment.

2. The applicant seeks leave to appeal against the conviction. A judge of this Court extended the time in which notice of application for leave to appeal may be given to 9 February 2007.

3. The ground of the application is that the applicant was not a prohibited person within the meaning of s3 of the *Firearms Act* 1996. At the plea, the prosecutor said that the applicant was a prohibited person because he had been convicted and sentenced to a term of three months' imprisonment for driving a motor vehicle while disqualified. No demur to this proposition was made by counsel for the applicant, and the applicant was sentenced on the basis of the prosecutor's assertion. In fact, a conviction and sentence of imprisonment for an offence under the *Road Safety Act* 1986 does not make one a prohibited person for the purposes of the *Firearms Act*. Accordingly, the applicant's conviction was in error.

4. It is settled law that a person who has pleaded guilty can nevertheless appeal against his conviction pursuant to the provisions of s567 of the *Crimes Act* 1958 if there has been a miscarriage of justice.^[1]

5. Clearly there has been a miscarriage of justice in this case. The conviction must be quashed. Counsel for the Crown concedes as much and submits that the appropriate course for this Court to take is to enter a judgment and verdict of acquittal rather than direct that there be a new trial with respect to an appropriate offence. Accordingly, in my opinion, those orders should be made.

EAMES JA: 6. I agree. **KELLAM AJA:** 7. I agree.

BUCHANAN JA:

8. The orders of the Court will be as follows:

The application for leave to appeal against conviction is granted.

The appeal is treated as instituted and heard *instanter* and is allowed.

The conviction sustained by the appellant is quashed and the sentence passed thereon is set aside.

The Court directs that a judgment and verdict of acquittal be entered.

^[1] See *R v Murphy* [1965] VicRp 26; [1965] VR 187 at 190, per Sholl J.

APPEARANCES: For the Crown: Mr OP Holdenson QC. Ms A Cannon, Solicitor for Public Prosecutions. For the applicant Coner: Mr DA Dann, counsel. Victoria Legal Aid.
