Supreme Court of New Zealand
Te Kōti Mana Nui

3 MAY 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

RE SOLICITOR-GENERAL'S REFERENCE (NO 1 OF 2016) FROM CRI-2015-485-52, HIGH COURT AT CHRISTCHURCH

(SC118/2016) [2017] NZSC 58

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Issue

This case concerns the obligation on the New Zealand Transport Agency to give notice to drivers who have accumulated 100 or more demerit points and so must have their driver licences suspended or be disqualified from holding a driver licence.

The issue arose after the High Court quashed the conviction of a driver for driving while suspended on the basis that the Agency had not properly given notice under s 90 of the Land Transport Act 1998 that his licence was suspended. The driver was given a form completed by a police officer who had been electronically alerted that the driver was liable to have his licence suspended.

The prosecution could not appeal against the High Court's determination, so (for the first time in New Zealand) the Solicitor-General referred two questions of law to the Court of Appeal. Solicitor-General's references

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allow the appellate courts to consider questions of law without affecting the outcome of the cases from which the issues arise.

The Solicitor-General asked the Court of Appeal to determine whether the High Court was correct to find that the Agency had not complied with s 90; and, if so, whether the correct remedy was the quashing of the defendant's conviction. The Court of Appeal granted leave to refer the questions but held that the High Court had been correct on both issues.

The Solicitor-General was granted leave to appeal to the Supreme Court against the conclusions of the Court of Appeal.

Result

The Supreme Court has unanimously allowed the Solicitor-General's appeal. The Court has held that the Agency fulfils its duty to give notice under s 90 by causing the police to serve the required information on drivers who are liable to receive such notices. The requirements of s 90 were therefore met in this case and the driver was properly notified of his suspension. As a result, it is not necessary to consider whether, if s 90 had not been complied with, the High Court was correct to quash the driver's conviction.

Note: under s 316(7) of the Criminal Procedure Act 2011, the quashing of the driver's conviction is not affected by the Supreme Court's determination of the appeal.

Background

When drivers accumulate 100 or more demerit points, the New Zealand Transport Agency is obliged under s 90 of the Land Transport Act 1998 to "give notice in writing" that their licence has been suspended for three months, or, if they are unlicensed, that they have been disqualified from holding a driver licence for three months. Notice may be "served" by the Agency, a person approved by the Agency, or by an enforcement officer (such as a police officer).

The Agency maintains an electronic record of all drivers who have accumulated 100 or more demerit points. Automatic alerts are sent by the Agency to a central database maintained by the police. The police database is linked to the automatic number plate recognition system installed in some police vehicles. This system alerts police officers when it recognises a number plate registered to a driver who is liable for service of a s 90 notice. Officers then complete a standard form using information from the Agency's database and serve this on the driver.

A driver was served a s 90 notice in this manner. He was subsequently stopped by police and charged with driving while suspended. He defended the charge on the basis that the s 90 notice was invalid because it was the police, not the Agency, who had "give[n] notice in writing".

This defence was rejected in the District Court and the driver was convicted. He appealed to the High Court against his conviction. Williams J held that the Agency had not fulfilled its obligation under s 90 to give notice to the driver in writing of his suspension, and that the conviction should be quashed.

The prosecution was not able to appeal against Williams J's quashing of the driver's conviction, but the Solicitor-General is able to apply for leave under s 313 of the Criminal Procedure Act to refer points of law for the consideration of the Court of Appeal. The reference does not affect the result of any particular criminal proceedings. Individual defendants are not party to these references, so counsel are appointed to assist the Court by arguing against the Solicitor's submissions.

The Solicitor-General sought leave to refer to the Court of Appeal two questions of law: whether the High Court was correct to conclude that the requirements of s 90 had not been met; and, if so, whether the correct remedy was the quashing of the driver's conviction.

The Court of Appeal granted leave. It held that the High Court had been correct to find that s 90 had not been complied with, and also was correct to quash the conviction for driving while suspended.

The Solicitor-General appealed with leave to the Supreme Court. The approved questions were the same as those initially referred for consideration by the Court of Appeal.

The Supreme Court has unanimously allowed the appeal and set aside the answers given by the Court of Appeal.

The Court has held that the Agency fulfils its duty to give notice under s 90 by causing the police to serve the required information on drivers who are liable to receive such notices. Section 90 does not treat giving notice and service as distinct concepts. The scheme of the section is that notice is given by service or delivery of the information required to be supplied to the driver in writing. An overly literal approach to the section leads to a strained application inconsistent with recent amendments intended by Parliament to simplify the process. The requirements of s 90 were therefore met in the case giving rise to the reference appeal.

This conclusion means that it is unnecessary to determine whether, if s 90 had not been complied with, quashing the conviction was the appropriate remedy.

Under s 316(7) of the Criminal Procedure Act, the Supreme Court's determination of the appeal does not affect the driver whose case gave rise to the reference.

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