

CITATION: *Sims v Pultchen* [2019] NTSC 16

PARTIES: SIMS, Erica Ann

v

PULTCHEN, Steven

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 12 of 2019 (21842137)

DELIVERED: 13 March 2019

HEARING DATE: 13 March 2019

JUDGMENT OF: Kelly J

CATCHWORDS:

Special case stated pursuant to *Criminal Code* s 408 - *Traffic Act* s 29AAN – Is a notice of immediate suspension and disqualification notice issued by a police officer pursuant to s 29AAN of the *Traffic Act* is sufficient to prove a charge of driving disqualified pursuant to s 31(1) of the *Traffic Act*? – answer no - a person can only be found guilty of the offence of driving disqualified pursuant to s 31(1) of the *Traffic Act* once a relevant charge has been determined by a court and a period of disqualification from obtaining a driver’s licence has been imposed

Traffic Act

Sanderson v TC [2018] NTSC 82 at [10] referred to

REPRESENTATION:

Counsel:

Complainant: I Rowbottom

Defendant: M Aust

Solicitors:

Complainant: Director of Public Prosecutions

Defendant: North Australian Aboriginal Justice
Agency

Judgment category classification: B

Judgment ID Number: Ke11904

Number of pages: 7

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Sims v Pultchen [2019] NTSC 16
No. 12 of 2019 (21842137)

IN THE MATTER of the *Traffic Act*

AND IN THE MATTER of a Special Case stated by the Local Court

BETWEEN:

ERICA ANN SIMS
Complainant

AND:

SEVEN PULTCHEN
Defendant

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 13 March 2019)

Background

- [1] On 29 September 2018, the defendant was stopped by police while driving, arrested and charged with driving with a high range breath alcohol content pursuant to s 21(1) of the *Traffic Act* (the ‘Act’) as well as some other charges. The high range drink driving charge is not disputed. The defendant has indicated that he intends to plead guilty to all the charges on that file.
- [2] Later on the same day the defendant was bailed and served with a “notice of immediate licence suspension and disqualification from driving” pursuant to s 29AAN of the Act (“the s 29AAN notice”).

- [3] On 6 October 2018 police again stopped the defendant while he was driving. He was arrested and charged with driving with a medium range breath alcohol content contrary to s 22(1) of the Act and driving a vehicle with a passenger under 16 years old who was not wearing a seatbelt contrary to s 266(1) of the Australian Road Rules. Again, neither charge is disputed by the defendant.
- [4] The defendant was further charged with driving while disqualified, contrary to s 31(1) of the Act as a result of his driving after having been issued with the s 29AAN notice. The defendant disputes that his conduct constituted “driving while disqualified” within the meaning of s 31(1). He contends that the only appropriate charge would have been “driving unlicensed”.

The question of law reserved

- [5] On 8 February 2019 at the request of parties, the following question of law was reserved for the opinion of the Supreme Court pursuant to s 408 of the *Criminal Code*:

Is a notice of immediate suspension and disqualification notice issued by a Police Officer pursuant to section 29AAN of the *Traffic Act* sufficient to prove a latter (sic) charge of Driving Disqualified pursuant to s 31 (1) of the *Traffic Act*, or does a charge of driving disqualified pursuant to section 31 (1) of the *Traffic Act* only arise once a disqualification period has been determined by a court?

- [6] Section 31 of the Act provides:

31 Driving while disqualified

- (1) Where a person is disqualified from holding a licence for a period, that person shall not during that period:

- (a) obtain a licence; or
 - (b) drive a motor vehicle on a public street or public place.
- Penalty: Imprisonment for 12 months.

[7] Section 29AAN of the Act, provides:

29AAN Notice of immediate licence suspension and disqualification from driving

- (1) If a person is charged with an immediate suspension offence, a police officer may give the person a notice under this section.
- (2) For subsection (1), a person is charged with the offence when given a copy of the charge, signed by a police officer.
- (3) The notice must be in a form approved by the Commissioner and:
 - (a) has the effect that the person's licence is suspended immediately the person is given the notice; and
 - (b) must inform the person that he or she is disqualified from driving until the charge is determined by a court; and
 - (c) must require the person to surrender to police any licence document the person holds; and
 - (d) must include a statement of the person's right to appeal to the Local Court against the suspension and disqualification.
- (4) A police officer who gives a person a notice under this section must provide details of the notice, and the person to whom it was given, to the Registrar without delay.

[8] A person cannot be found guilty of an offence under s 31 solely on the basis of a notice issued under s 29AAN. The provisions of s 31 apply only to a person who has been disqualified from holding a licence for a period – and it applies during the period for which the person is so disqualified.¹ A notice

¹ Section 31 (1)

under s 29AAN disqualifies a person from driving:² it does not disqualify them from holding a licence. The licence is suspended, not cancelled.³

[9] The Act provides two separate regimes, one operating before the charge against the person is determined by a court and one after. The provisions of s 29AAN apply before. Once issued with a s 29AAN notice, the person's licence is immediately suspended. A licence suspension can be lifted, for example if a charge for which there would be a mandatory disqualification period is successfully defended or withdrawn. The licence then continues in effect.

[10] A person can only be disqualified from holding a licence following a disposition of a relevant charge by a court. For example, s 21 provides:

21 High range breath or blood alcohol content

- (3) If a court finds a person guilty of a relevant offence, the person's licence to drive is automatically cancelled and the person is disqualified from:
- (a) for a first offence – obtaining a licence for a period that is at least 12 months; and
 - (b) for a second or subsequent offence:
 - (i) obtaining a licence for a period (*mandatory period*) that is at least 18 months; and
 - (ii) if the mandatory period is less than 5 years – obtaining a licence other than an AIL licence for an additional period (*AIL period*) immediately after the mandatory period that is at least 12 months and not more than 3 years.

[11] The following should be noted.

2 Section 29AAN (3)(b)

3 Section 29AAN(3)(a)

- (a) The section only applies “if a court finds a person guilty of a relevant offence”.⁴
- (b) Once the section applies, the person’s licence is cancelled – not simply suspended.⁵
- (c) Unlike a licence which has been merely suspended, a cancelled licence cannot be revived. The person must obtain a new licence when the period of disqualification has expired if the person wishes to be legally entitled to drive.⁶ The person is disqualified from obtaining a licence for the relevant period.⁷

[12] As Grant CJ said in *Sanderson v TC*:⁸

The purpose and nature of cancellation and disqualification

In the ordinary course, orders for the cancellation of driver’s licences and disqualification from holding driver’s licences constitute part of the sentence imposed by the court for the offence in question.

[13] A person who has been issued with a s 29AAN notice is not disqualified from holding (or indeed obtaining) a driver’s licence. There is no need to obtain one: the person already has a licence – at least unless and until it is cancelled by operation of one of the other sections of the Act (for example s 21) after the charge has been determined by a court.⁹ The effect of

4 Section 21(3)

5 Section 21(3)

6 That would involve applying for a licence at the MVR.

7 Section 21(3)(a) and (b)

8 [2018] NTSC 82 at [10]

9 This may be backdated to the date of issue of the s 29AAN notice but need not be.

s 29AAN is that the person to whom the notice has been issued may not drive under the authority of that licence, and must surrender the physical licence document. A further example is s 29AAM which empowers a police officer, in the circumstances outlined in that section, to issue a notice to a person which has the effect that the person's licence is suspended and the person is disqualified from driving for a period not exceeding 24 hours. Thereafter, unless further action is taken, the licence would continue in force.

[14] The question reserved is:

Is a notice of immediate suspension and disqualification notice issued by a Police Officer pursuant to section 29AAN of the *Traffic Act* sufficient to prove a later charge of driving disqualified pursuant to s 31(1) of the *Traffic Act*, or does a charge of driving disqualified pursuant to section 31(1) of the *Traffic Act* only arise once a disqualification period has been determined by a court?

[15] The answer is:

- (a) Driving a motor vehicle after being served with an immediate suspension and disqualification notice issued by a police officer pursuant to s 29AAN of the Act does not amount to driving disqualified pursuant to s 31(1) of the Act.
- (b) A person can only be found guilty of the offence of driving disqualified pursuant to s 31(1) of the Act once a relevant charge has been determined by a court and a period of disqualification from obtaining a driver's licence has been imposed.

