

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

TUESDAY 11 OCTOBER 2022

APPELLANT JOHN WRIGHT

RESPONDENT GWIC

GREYHOUND RACING ACT 2017, S59(1)(a)

Appeal against GWIC decision to impose a suspension pending the finalisation of the Commission's inquiry into the appellant's fitness to be registered as a participant in the greyhound racing industry

DECISION:

- 1. Appeal dismissed**
- 2. The registration of the appellant is suspended**
- 3. Appeal deposit forfeited**

1. The appellant, licensed handler John Donald Wright, appeals against the decision of GWIC of 27 September 2022 to impose a suspension pending the finalisation of the Commission's inquiry into Mr Wright's fitness to be registered as a participant in the greyhound racing industry.

2. That determination was made under the powers of s 59(1)(a) of the Greyhound Racing Act 2017. Relevantly, that provides as follows, section 59(1):

“Any of the following actions may be taken by the Commission against or in respect of a relevant person –

(a) suspending: (i) the person's registration.

3. The remaining critical legislative provision is s 11 of that Act, which defines the principal objectives of the Commission as being to promote and protect the welfare of greyhounds, safeguard the integrity of greyhound racing and betting, and maintain public confidence in the greyhound racing industry.

4. The determination to be made in this de novo hearing is whether the Tribunal is satisfied to the Briginshaw standard that it should exercise its discretion, which is unfettered, to effect a suspension.

5. The Tribunal is satisfied that the respondent has acted under that provision and the Tribunal is empowered to determine whether a suspension should be effected. It is noted that in these proceedings the rules which apply to greyhound racing have no part to play.

6. It is important to recognise that this is a civil proceeding. It is the Tribunal's opinion that criminal law concepts have no part to play in this determination. They do, however, have some relevance because matters here relate to criminal allegations.

7. The evidence in the proceedings comprises what is described as a brief. That brief contains a series of correspondence prior to and during the determination by GWIC to impose the suspension. It contains, relevantly, criminal charge material and submissions in respect of that, as well as a newspaper article.

8. The key facts are these. The handler's licence provides the appellant's sole source of income for him and dependents. He works seven days per week. He aspires to becoming an owner trainer. He was first licensed in 2021. On 26 May 2022, he renewed that registration using the GWIC online portal.

9. The appellant was charged on 26 November 2021 in the Australian Capital Territory with a series of criminal charges. Those criminal charges were immediately notified by him and on his behalf to the Commission.

10. Having been charged on 26 November 2021, he was granted bail on 2 December 2021 on conditions. No reasons for the bail determination or its original refusal are before the Tribunal.

11. The brief facts indicate that on various court return dates, charges were varied, some were withdrawn, some were replaced and some are alternatives. It is not necessary, for the reasons for determination here, to know precisely that history.

12. The evidence establishes that, as the appellant is assessed today, he is charged with and subject to the following possible maximum terms of imprisonment: trafficking, 25 years; dealing with proceeds of crime, one year; possess drug of dependence, two years; conspire to cultivate cannabis plant for selling, 25 years; cultivate cannabis plant trafficable quantity, 25 years; possess document with instructions, seven years; possess prohibited weapon, two years; failure to comply with s 3LA of the Commonwealth Crimes Act, five years.

13. As stated, some of those will not proceed to finality as they are alternatives, depending on the outcome of the trial.

14. The Tribunal is advised that on 29 August 2022, the appellant was committed to stand trial in the Supreme Court of the ACT.

15. On 12 August 2022, the appellant appeared in court on an allegation of breach of bail. That allegation was found established. The court determined not to revoke bail.

16. The brief facts in relation to the alleged breach, and all of the conditions of bail are not in any event before the Tribunal, related to the appellant's presence in a room with other people when a phone call was being made to a named person by another person, and during the course of that conversation the appellant uttered words. No more is known than that.

17. Subsequent to those matters, the Commission determined to call on the appellant to show cause why he should not be suspended. Submissions were made. The decision of 27 September then fell from the Commission.

18. It is important to note some other key factual matters.

19. Firstly, that the Tribunal does not have police statement or Director of Public Prosecution statement of facts supporting the charges. It only has the

bare names of the charges and their penalties. It has not seen the charge sheets or the indictments.

20. The appellant, under the principle of legality, has the right to silence in respect of his criminal proceedings, an enshrined right not under challenge in these proceedings.

21. The Tribunal is not persuaded that there is a further reason for him not to speak to the Tribunal by reason of the submissions on the provisions of s 84(6) of the Greyhound Racing Act which relate to the conduct of inquiries into the greyhound racing industry under Part 8 generally of that Act. That certainly does provide in s 84(6) that immunity of an individual from self-incrimination applies there. The Tribunal is not satisfied that is relevant, but the principle nevertheless is, and there is no suggestion to the contrary.

22. The conundrum that often faces licensed persons who face criminal charges and disciplinary action in their field arises in this case. The Tribunal has not heard from the appellant by oral evidence. The Tribunal has the benefit of his statement to GWIC of 19 September 2022, and the key parts of that have been referred to already.

23. The Tribunal, therefore, cannot assess for itself, in determining the discretion it has, what it thinks of the appellant and the imprimatur it can give to him based upon any of his evidence. As described, it is a conundrum. It is a tension between the criminal law and the licensing regime under which he has the privilege of a licence.

24. The Tribunal is not assessing his guilt. It cannot do so; it does not have to do so. The Tribunal is assessing matters relating to the greyhound racing industry in the context of the introduction of the 2017 Act, which created both GWIC and GRNSW, and the reasons for the implementation of that Act and, critically, the keywords of the duty upon the Commission, and therefore the Tribunal in this determination, is making sure a decision is made which maintains public confidence in the greyhound racing industry.

25. It is submitted that if the appellant was to apply for a licence today, in all probability, he would fail the fitness and propriety test, because he has been charged. The Tribunal, whilst it is informed by those type of considerations, is careful not to suggest that that is the test. This is not a fitness and propriety test for the obtaining of the privilege of a licence, because he has one. He has had it renewed, although it appears, on the submissions, in the form of an automatic nature with no assessment. But the assessment was able to be activated by reason of the fact that in his renewal application online he disclosed the charges. The fact that the Commission then elected not to look at that and investigate further or relate back to it, the facts and the reasons therefor are not known, they cannot be matters which fall against the appellant.

26. It is also the fact that, as a licensed person, it is open to the Commission to keep him under observation, to call him in and question him – he may maintain his right to silence, he might not – but otherwise to make inquiries about him which would enable them, should this appeal be successful, that they are not left without remedies.

27. There are a number of other principles that need consideration. This is a person licensed as a handler. It is basically one of the – and no disrespect is intended – most basic form of registration by way of privilege of a licence. It does not entitle him to train and to be an owner and matters of that nature. It is virtually as an attendant, to catch greyhounds at races and to look after them in kennels and going to and from the kennels.

28. The criminal charges have nothing to do with the Greyhound Racing Act or the industry generally. As stated, there are no issues relating to breaches of the rules and, as also established, whilst it is only in a period of a little over 16-odd months that he has been licensed, there is nevertheless the fact that he has not come under adverse notice for breaches of his licence.

29. The appellant relies upon case law in relation to the criminal right to silence and the consequences that can flow. Those cases do not require further analysis because of the reasons expressed by the Tribunal to date. Likewise, *Briginshaw* does not require further consideration. The Tribunal is appropriately informed as to the severity of the suspension of a licence and its consequences and the need to assess the factual matters and the application of the test at a level commensurate with those consequences.

30. There is also, importantly, the fact that the appellant has, as already expressed, ensured that the Commission has been notified. There has been no hiding from the Commission of any of his conduct, and that is a strong factor in his favour. I

31. In addition, as has been also expressed, but again a strong factor in his favour, is that the Tribunal has nothing of the facts of these criminal charges, only the bare nature of them, and not even the particulars that go to support those charges as expressed.

32. What then is the public confidence which needs protection from this appellant?

33. The industry is one which is under substantial scrutiny. That is a matter on which Tribunal notice is taken, the equivalent of judicial notice. The Act was introduced to ensure that the industry, which had been abolished, operates to ensure public confidence.

34. It is submitted that there is nothing about integrity of the industry as to racing and betting which needs consideration. That submission is not accepted. The whole tenor of integrity is that those who participate in the industry, those who use the industry as wagers or likewise, and external observers, particularly those driven by the welfare concerns in relation to the industry, all expect that races will be run, that betting will take place, and the like, on a level playing field by people who have the appropriate imprimatur of the Commission or, in this case, of a Tribunal.

35. When the Tribunal stands back and looks at the nature of the charges, and there is no suggestion that they are other than serious, and it only needs to be reflected upon briefly, that the prospect of some of these matters carrying up to 25 years of imprisonment makes that a plain and inarguable fact of concern.

36. Can it be that this Tribunal can allow its imprimatur to remain, with this appellant committed to trial in the Supreme Court of the ACT on such number of charges and of such gravity, that it can hold this appellant out to the industry and the public as just described as a person who should have the right to continue to exercise a handler's licence?

37. The Tribunal is of the opinion that the respondent has established he is not.

38. The Tribunal is not prepared to assess a person facing these charges of such gravity, under a committal order, that he is entitled to continue to exercise his licence as its discussion, its commentary, its consideration in the broader community would not lead to public confidence in the greyhound racing industry.

39. In those circumstances, the appeal is dismissed.

40. The Tribunal notes that the provisions of s 59(1)(a) are in simple terms.

41. The Tribunal orders that the registration of the appellant is suspended.

42. There being no application for a refund of the appeal deposit, it is ordered forfeited.
