

IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Other Jurisdiction)

Criminal Appeal
Case No. 19/2671 CoA/CRMA

BETWEEN: Nigel Morrison
Appellant

AND: Public Prosecutor
Respondent

Date of Hearing: 14 November 2019 at 9 am

Before: Justice J Hansen

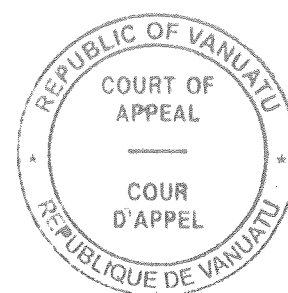
In Attendance: Counsel - Stephane Mahuk for the Appellant

Simcha Blessing for the Public Prosecutor

ORAL RULING

[1] The applications before a single Judge of this Court are, firstly, an application to extend time for filing the appeal, and, secondly to stay the judgment of the Supreme Court in Criminal Case 19/893 SC/CRML dated 26 September 2019.

[2] It must be said at the outset that the circumstances of the conviction and sentence are tragic for everybody involved. I will not dwell on this at length. Mr. Morrison was turning left into a restaurant when a motor cycle collided with the front right of his car ultimately leading to the death of that motorcyclist. He was convicted on the charge of reckless or negligent driving causing death. Conviction was entered on the basis of negligent driving. It was clear from the decision of Doogue



J, both on conviction and sentence that the negligence was found to be at the very lower end. Mr. Morrison was convicted and sentenced 6 months imprisonment suspended for 12 months.

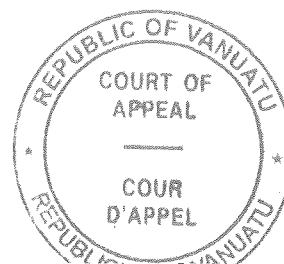
[3] Mr. Morrison is a practicing lawyer in Vanuatu, he has been in practice in this jurisdiction for many years. He is a respected and senior member of the profession. At the time he, and counsel advising him, took a view of section 1M of the Legal Practitioner's Act that is at least arguable. That section provides that a practitioner convicted and sentenced to imprisonment shall have his/her name removed from the Register of Legal Practitioners. Effectively a bar to practice. One view is that a suspended sentence does not amount to a sentence of imprisonment and there is some overseas authority that support that view. There are of course a number of other authorities to the opposite effect. It also seems under that Act that it is some form of absolute bar and there is no discretion to avoid the consequences of section 1M. It is the effect of section 1M and the competing interpretations of that section that led to the application for a stay.

[4] It is submitted that the impact of the sentence would be out of all proportion to the culpability because it would prevent Mr. Morrison continuing in his profession and continuing to earn a living. That is undoubtedly true.

[5] The test just enunciated is usually applied to applications for a discharge without conviction but it is a matter that equally goes to questions of sentence.

[6] This of course is not just a matter that would impact on Mr. Morrison. It would have an effect on the practice that he is a partner in but even more importantly it would be prejudicial to clients of Mr. Morrison. The affidavit in support of the application for a stay demonstrates that he has significant trials for the 18th November, 26th November 2019 and the first week of February 2020. In the matter listed for next week, the clients are flying in today for that trial. The inability to practice would have significant consequences for the clients.

[6] It is also said that the effect of the stay will not create a long delay in having the matter finally disposed of. The next session of this Court is been set for February next year but counsel representing Mr. Morrison at trial, and who he wishes to represent him on appeal, is unavailable for that session due to a commitment to a Royal Commission in Melbourne. It is understandable that



Mr. Morrison would wish to continue to retain the counsel that appeared for him at trial and sentencing. The second session next year is in early May. It has to be said that although this Court could accommodate the appeal in February, a delay until May is not particularly long when compared with other jurisdictions in the South Pacific. Appeals in Vanuatu are heard with admirable speed.

[7] Mr. Morrison is not a flight risk. He has been in this jurisdiction for a lengthy period and he has well established ties, both privately and professionally, to this jurisdiction. There is little likelihood of him re-offending. Low level negligence as was found in this case, notwithstanding the devastating consequences, does not in my view impact on Mr. Morrison's ability to practice law.

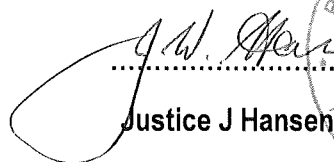
[8] Balancing all of these factors I am quite satisfied that it is appropriate to grant the stay that has been sought. I order:

(i) There will be a stay of the enforcement and/or application of the judgment of the Supreme Court in Criminal Case No. 19/893 SC/CRML entered on 26 September 2019 sentencing the applicant for 6 months imprisonment suspended for a period of 12 months. That stay shall be until the 5th day of May 2020 or such other date that this court may direct.

(ii) The appeal is listed for 9 am on the 5th day of May 2020 for half a day. That hearing date is the second day of the session. The date is subject to confirmation. If the hearing date is extended the appellant will need to apply for an extension

DATED at Port Vila this 14th day of November, 2019

BY THE COURT


Justice J Hansen

