

## VILI (MILA) v POLICE

Supreme Court Apia  
29 October 1976  
Hull ACJ

STATUTORY OFFENCES (Speeding) - Information (Whether charging offence known to law) - Information charging driving "at a speed in excess of 35 miles per hour at an area in which a lower speed is not prescribed" and referring to s 37 of the Road Traffic Ordinance 1960 and Regulation 109(2) (a) of the Road Traffic Regulations 1956 held to describe an offence under s 37 - Appeal against conviction dismissed.

- Penalty (Disqualification from driving)  
- Appellant with two previous convictions of speeding proved to have been travelling at 44 miles per hour - Appeal against fine of \$20.00 and disqualification for six months allowed to extent of setting aside disqualification order - Court considering disqualification inappropriate for "a mere speeding offence" although "repeated breaches will eventually put a different light on the matter".

GENERAL APPEAL against conviction and penalty pursuant to s 138 of the Criminal Procedure Act 1972.

Enari for appellant.  
Sapolu for respondent.

HULL ACJ. The appellant was on 8 October 1976 convicted in the Magistrate's Court at Apia of an offence "that he did on the 10th day of August 1976 at Faleula drive a motor vehicle, namely, a taxi registered plate number T.7273 on a road, namely, West Coast Road, at a speed in excess of 35 miles per hour at the area in which a lower speed is not prescribed". The court imposed a fine of \$20.00 and disqualified him from driving for six months.

He now appeals against the conviction and sentence, on two grounds, namely:-

- (a) That the information did not show an offence.
- (b) That the sentence was manifestly excessive.

In support of his first ground of appeal, counsel for the appellant contends that the information did not show in what way exceeding 35 miles per hour was a breach of the law.

The information in all material respects followed the wording quoted above, and referred to sections 37 and 72(3) of the Road Traffic Ordinance 1960 and to Regulation 109(2) (a) of the Road Traffic Regulations 1961.

Section 37 of the Ordinance states:-

If any person drives a motor vehicle on a road at a speed greater than the speed prescribed he shall be guilty of an offence.

There is a proviso that is not relevant for present purposes.

Regulation 109(2) provides:-

No person shall drive any motor vehicle in excess of the following speeds -

- (a) Thirty-five miles per hour in any case in which a lower speed is not prescribed.

Section 72(3) of the Ordinance imposes a general penalty.

"Prescribed" includes, inter alia, prescribed by regulations.

Regulation 109(2) (a) prescribes a general speed limit of 35 miles per hour wherever no lower limit is prescribed. It is therefore an offence under section 37 to drive a motor vehicle at a speed greater than 35 miles per hour in any case where no lower speed is prescribed.

The information asserts that the defendant drove a motor vehicle at a speed in excess of 35 miles per hour at the area on the West Coast Road in which a lower speed is not prescribed. Such wording alleges an offence against section 37. The court below found the information to be proved.

Counsel for the appellant referred to the unreported case of Peter Ah Poe v. Police, a decision of Scully, C.J., delivered in November, 1975. That decision was given orally and the reasons for it are not recorded. The information in that case however referred to an "area in which a low speed is not prescribed", which is of course a different situation.

The present appeal against conviction is therefore dismissed.

On the question of penalty, it was stated in the summary of facts that the defendant was travelling at 44 miles per hour. Counsel for the respondent also drew attention to the fact that the defendant had been convicted twice previously in 1976 for speeding.

In the absence of aggravating circumstances (which I will not attempt to specify exhaustively), disqualification is not an appropriate penalty for a mere speeding offence. In the present case, the fact that the defendant has had two previous convictions this year for speeding is not sufficient to justify disqualification, although repeated breaches will eventually put a different light on the matter.

The appeal against sentence is therefore allowed to the extent that the disqualification order will be set aside. The fine of \$20.00 will stand.