

416-696-2121

IN THE ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION)HER MAJESTY THE QUEEN

Respondent

versus

- JASON STANICAK and WALTER VIECELI -

Appellants

- I N D E X -

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1.

Submissions - Mr. Prout

MS. JONKERS: Now there are two matters on the list that I suppose should be heard together. Mr. Prout represents both of these individuals, Jason Stanica and Walter Viececi.

MR. PROUT: That's correct, Your Honour, and I appear as agent for both individuals. Perhaps if we dealt with one, then for certain the second one would be resolved very easily I think.

HIS HONOUR: Fine but give me a moment, please, and I'll read this. Should we hold down Stanica and look at Viececi?

MS. JONKERS: Certainly, Your Honour.

MR. PROUT: Certainly.

HIS HONOUR: Just a moment please - yes.

MR. PROUT: Yes, Your Honour. This appeal I guess is based on a combination of a partial error in law and the evidence perhaps not being supported under the section that this individual was charged with.

I haven't specified on my appeal, it's not an ambush appeal, but perhaps I can spend a few minutes just going through highlighting a couple of areas of my opinion and perhaps Your Honour could have a look at the piece of paper that I'm supplying with it. It's not that thick. There's various parts of the Provincial Offences Act and Highway Traffic Act contained there. There's three pages of just areas that I will quickly cover.

HIS HONOUR: All right but just bear with me, please

MR. PROUT: Certainly. The facts are all agreed

2.

Submissions - Mr. Prout

upon the transcript. It appears that three people, as a result of an accident three people received offence notices for parking their vehicles in inappropriate spots. That's agreed upon and certainly His Worship decided that in fact they should be convicted of a no parking offence. That's certainly in his submission on the last page.

HIS HONOUR: With respect to Viececi?

MR. PROUT: Sorry, it's Stanicak I was looking at, I'm sorry.

HIS HONOUR: I had better shift gears then. Mr. Clerk, please take back everything to do with Viece and return Stanicak.

MR. PROUT: I apologize, Your Honour.

THE CLERK: Yes.

HIS HONOUR: Thank you. Now where are you referring me?

MR. PROUT: It was a situation, Your Honour, that an accident happened on the 5th of April, 1992, just down the road where these vehicles were parked. It was very evident from the evidence that three vehicles were parked close to no parking zones and all three vehicles were ticketed with a Provincial Offence notice, not a parking ticket, but a Provincial Offence notice with an out-of-court settlement. They were charged with Section 182 which in fact does carry demerit points.

The whole essence of the appeal today is that in fact the three were charged with a parking offence under a section which only deals with a moving

3.

Submissions - Mr. Prout

violation situation and certainly His Worship in his Reasons for Judgment on page eleven basically convicts them of disobeying the stop sign which is there and certainly I have no difficulty with that, those vehicles were stopped, there were no drivers in the vehicles at the time and that's certainly the evidence and the officers carried out an investigation and later interviewed the parties who all agreed that they left their vehicles in this particular incident.

Section 182, Your Honour, in my submission, is a general term indicating the Lieutenant Governor in Council will make regulations providing for the erection of signs and placement of markings on a highway or any type of class thereof and prescribing the types of signs, markings and their location on the highway of each type of sign or markings and prohibiting the use or erection of any signs or types of signs that is prescribed and then it goes on to Part II which these three individuals were charged:

"every driver or operator of a vehicle or streetcar shall obey the instructions and directions indicated on any sign so erected."

Under the appendix I have supplied to you, Your Honour, you will see that the Regulations for demerit points include 182. However, so does no stopping signs, red light signs as they all have their own particular sections that they're dealt with and speeding is another particular area

4.

Submissions - Mr. Prout

and it's certainly the Crown's position that they got charged with a parking offence which is certainly not what the legislators designed originally as a moving violation area and certainly that's why demerit points were added on to that particular section.

Perhaps I can be a little more specific. The Provincial Offences Act Part 1 and 11 and I think I've supplied you with a copy of that, Your Honour, and in Part 11 it indicates:

"in this Part, 'parking infraction' means any unlawful parking, standing or stopping of a vehicle that constitutes an offence."

This, of course, is certainly the position the appellants are taking that they were parked. There's no two ways about it, they were parked and they should have had proceedings under this Part 11, not under Part 1, of the Provincial Offences Act which deals with other Provincial Offences acts so it's the position of the appellants that they were, in fact, given the wrong process for the section that they were charged under.

I think the whole essence of the legislation dealing with, of course, The Highway Traffic Act, the Provincial Offences Act and the Regulations was that in fact to keep our roads safe from certain types of drivers and it appears to be that these drivers who park their vehicles have certainly been put into a position where they've committed an offence where their demerit points

Submissions - Mr. Prout
Ms. Jonkers

5.

have been taken for an offence which doesn't
exist unless it's stopped so it's not reflective
of their driving ability.
It certainly might be effective under their
visual observations that they shouldn't have
parked there and certainly if they had been given
a parking ticket on this particular occasion, we
wouldn't be here today.

All three or two of the people that are appeal-
ling this decision were, in fact, professional
drivers and certainly should have known better
than to park in an improper parking area but the
whole essence of this appeal is that they have
lost demerit points under the Regulation which
only deals with moving violations, not parking
offences, and I feel fairly strong on this area
because what it does, Your Honour, is open the
doors that with a parking sign outside this build-
ing here, somebody could receive an offence notice
and lose demerit points for a stationary vehicle
and that certainly should concern the judicial
system.

HIS HONOUR: Thank you - Crown.

MS. JONKERS: Well, Your Honour, I'm not certain
if I can assist the Court at all. I can certainly
understand my friend's position that parking is
not a matter that should assess demerit points.
However, the offence indicates:

"Every driver or operator of a vehicle or
streetcar shall obey the instructions or
directions on any sign so erected."

6.

Submissions - Ms. Jonker
Reasons for Judgment

If you take yourself to Regulation 615, certainly the sign indicated or described in the trial is specified a parking sign of the size and the colours et cetera and so it's certainly a regulation sign and I suppose it's a matter of interpretation whether the section used in this particular offence is one that can be used for parking offences.

I can certainly understand that the intent perhaps of this particular section, because demerit points are attached to it, would refer to a moving violation. However, there's nothing to assist me and consequently to submit to Your Honour that this particular section may not apply. I would suggest that it could very well apply.

It's unfortunate and I suppose it's in the discretion of the officer and it's unfortunate for these drivers that the officer chose this process as opposed to a parking ticket. However, the officer has the discretion to proceed and I see nothing in law that prohibited the officer or officers if we're talking about both cases to proceed under this particular section.

I have nothing further to add, Your Honour.

HIS HONOUR: Thank you. I will make my Ruling. Clearly the appellant did not commit a moving violation. It is neither the intent nor the spirit of the Provincial Offences Act to have demerit points applicable to parking offences. A proceeding should have been taken under Part II of the Provincial Offences Act.

7.

Reasons for Judgment

I agree with the applicant. The appeal is allowed, the conviction is quashed and any fine paid is to be returned forthwith.

MR. PROUT: Thank you, Your Honour.

HIS HONOUR: Is the other matter the same?

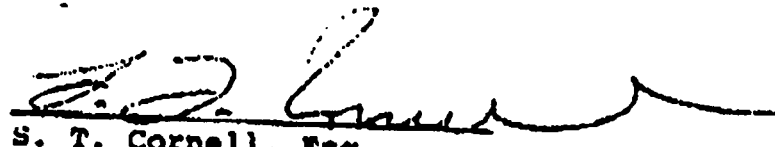
MS. JONKERS: Yes, Your Honour.

HIS HONOUR: Very well. The result will be the same in that the appeal is allowed, conviction quashed, the fine to be returned forthwith.

MR. PROUT: Thank you, Your Honour.

- - - At this time the proceedings are concluded:

Certified correct:


S. T. Cornell, Esq.,
Official Court Reporter.