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R. v. Zembal

Between
Her Majesty the Queen, and
Zembal, accused

[1987] O.J. No. 2417

Ontario Provincial Court - Criminal Division
Judicial District of Peel
Langdon Prov. Ct. J.

January 30, 1987.

Counsel:

No counsel mentioned.

¶ 1 **LANGDON PROV. CT. J.**:— I have already decided the facts. The accused's licence was suspended for default of payment of fines under s. 29 of the Highway Traffic Act, R.S.O. 1980, c. 198. On June 13, 1985, he travelled to Milton and paid all of the fines in respect of which his licence was suspended. On Friday, June 14, a constable stopped him while he was driving a motor vehicle on a highway. His licence then had not been reinstated. In fact his licence was reinstated the following Monday, June 17, 1985. Mr. Midanik urges upon me that in those circumstances it would offend s. 7 of the Charter of Rights to register a conviction under s. 35 of the Highway Traffic Act when that conviction carries with it as an automatic consequence a mandatory 6-month driver's licence suspension under s. 35(3).

¶ 2 Section 29(4) of the Highway Traffic Act as it was on the day of the offence provided as follows:

> Upon payment in full of the amount in respect of which an order directing suspension was issued, a justice of the court from which the order was issued shall issue an order to the Registrar directing the reinstatement of the driver's licence and the Registrar shall reinstate the licence.

¶ 3 On December 20, 1985, the above provision was replaced with the following:

29(2)

The Registrar shall,

...

upon being informed that the fine and any applicable prescribed administrative fee

(b) upon being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless. ..." (the proviso does not apply)

¶ 4 When the accused was driving, his licence was under suspension if at all because of the administrative delay which had to occur between payment of the fine and reinstatement of the licence. All underlying reasons for the suspension had ceased to exist. In theory at least, the accused on June 14, 1985, would have been entitled to an order of mandamus compelling the Registrar to reinstate his licence if the Registrar had refused to do so.

¶ 5 He was in the anomalous position where (a) his licence had been suspended, (b) he was entitled to reinstatement of his licence and (c) administrative exigency delayed the reinstatement process.

¶ 6 Even making allowances for the accused's history as a scofflaw in so far as traffic tickets are concerned, it does not seem to me that the prosecution can satisfy me that the actus reus of the offence has been committed. It is not completely accurate to say the accused's licence was under suspension. It had been under suspension. It is more accurate to say that the accused was legally entitled to reinstatement of his licence at the time of the offence. His position can more accurately be described as "pending reinstatement" than "under suspension". As a matter of law I am not convinced that the accused's driver's licence was under suspension when he was driving. A fortiori when one considers the very serious minimum fine and mandatory suspension that are consequent upon conviction of this offence. It is not disputed that suspension of this accused's licence would be tantamount to suspending his right to earn a living. He needs a private motor vehicle to get to work and to perform his work. There is no other work for which he is qualified by training or experience.

¶ 7 If I have erred in the conclusion already reached its strikes me that the consequences of conviction are hideously disproportionate to the gravity of the particular technical offence. During the hiatus between payment and reinstatement, absolutely no legislative object is served by the continuing suspension, if suspension there be, of his licence. Such an offence is not one which calls for a minimum fine of $250 and what is in effect a 6 month deprivation of livelihood. In these particular circumstances the statutory scheme (which has generally passed muster, see R. v. Miller (1986), 41 M.V.R. 141), works a grave and fundamental injustice upon this accused. I do not think that it strains the point to say that it would deprive Mr. Zembal of liberty in a manner inconsistent with the principles of fundamental justice. Therefore, if it were necessary, I would find that the application of the scheme, in the particular circumstances offends Charter rights secured to him under s. 7 and is not justified under s. 1.

¶ 8 The remedy that I would grant, were it necessary, would be to stay proceedings before registering a conviction.

¶ 9 In the result, the information is dismissed.

LANGDON PROV. CT. J.

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