

Appeal County Court of Victoria - Holly Tara Creenaune

- On 17 January 2006, 21-year-old journalism and law student Holly Creenaune was arrested at the Goongerah Forest Block. Initially she was charged on Summons with 3 offences.
- On 13 December 2007 on Holly's plea of guilty to the 2 remaining charges, a Magistrate sitting at Melbourne found proven one charge of obstructing an access road off Yalmy Road in the Goongerah Forest Block in the Bendoc Forest District (section 4(e) Summary Offences Act 1966) and one charge of obstructing an authorised officer (employed by the Department of Sustainability and Environment) who was exercising his duties or powers under the Forest Act or Regulations (section 96A Forest Act 1958).
- Following a plea in mitigation pursuant to section 76 of the Sentencing Act 1991 and without recording a conviction the Magistrate dismissed the remaining charges (Charges 1 and 3). The Magistrate also declined to make an order on the application by the Department for compensation to cover the cost of the attendance of the Victoria Police Search and Rescue Unit called by Department Officers to remove Holly from her tree-sit on a tripod structure.
- Based on similar facts and to allow for a hypothetical Appeal by Holly against sentence to the County Court of Victoria, you are to assume a different sentencing outcome in the Magistrates' Court involving the recording of convictions and the imposition of fines of \$100 and \$500 respectively with payment stayed for 60 days. You are also to assume that the Department does not pursue the earlier unsuccessful application for compensation.
- Pursuant to sections 83 and 85 of the Magistrates' Court Act 1989 an Appeal to the County Court involves a rehearing. You are to assume that through this Appeal Holly seeks to minimise the impact of any finding of guilt or conviction on her career and in particular on her prospects of being admitted to practice law in Victoria in the future. Furthermore, as a person of limited means Holly hopes to avoid the imposition of any fine.

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Relevant Legislation

As to Appeals to the County Court, sections 83, 85 and 86 of the *Magistrates' Court Act 1989* (Vic) provide:

s. 83 Appeal to County Court

- (1) A person may appeal to the County Court against any sentencing order made against that person by the Court in a criminal proceeding conducted in accordance with Schedule 2.
- (2) If a person appeals under Subdivision 3 to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court.

s. 85 Appeal operates as re-hearing

An appeal under section 83 or 84 must be conducted as a re-hearing and the appellant is not bound by the plea entered in the Magistrates' Court.

s. 86 Powers of County Court on appeal

- (1) On the hearing of an appeal under section 83 or 84, the County Court—
 - (a) must set aside the order of the Magistrates' Court; and
 - (b) may make any order which the County Court thinks just and which the Magistrates' Court made or could have made; and
 - (c) may exercise any power which the Magistrates' Court exercised or could have exercised.
- (1A) The County Court may backdate an order made under subsection (1) to a date not earlier than the date of the order of the Magistrates' Court that was set aside on the appeal.

As to the power of the Department of Sustainability and Environment to prosecute the charges, section 96 of the *Conservation, Forests and Land Act 1987* (Vic) provides:

s. 96 Proceedings for offences

- (1) An authorised officer or member of the police force or a person authorised generally or in a particular case by the Secretary or, if the matter concerns freehold land, managed land or vested land within the meaning of the *Victorian Plantations Corporation Act 1993*, by the Victorian Plantations Corporation may take—
 - (a) proceedings for an offence against a relevant law;
 - (c) proceedings on behalf of the Department or the Secretary.
- (1A) If proceedings mentioned in subsection (1) are brought by a person authorised by that subsection to take those proceedings, the proceedings may be conducted before the court by any other person authorised by that subsection to take proceedings of that kind.

- (2) All courts must take judicial notice of the fact that the Secretary, an authorised officer or person has valid authority to take proceedings mentioned in subsection (1) or conduct proceedings under subsection (1A) as the case requires.

As to Charge 1, section 4(e) of the *Summary Offences Act 1966 (Vic)* provides:

s. 4 Offences relating to the good order of towns etc.

Any person who—

- (e) obstructs a footpath or road whether by allowing a vehicle to remain across such footpath or road or by placing goods thereon or otherwise;

shall be guilty of an offence.

Penalty: 5 penalty units.

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Relevant Legislation

As to Charge 3, section 96A of the *Forests Act 1958 (Vic)* provides:

s. 96A Offence to hinder or obstruct an authorised officer

A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising that authorised officer's duties or powers under this Act or the regulations.

Penalty: 60 penalty units.

As to the recording of a conviction, section 8 of the *Sentencing Act 1991 (Vic)* provides:

s. 8 Conviction or non-conviction

- (1) In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including—
- (a) the nature of the offence; and
 - (b) the character and past history of the offender; and
 - (c) the impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects.
- (2) Except as otherwise provided by this or any other Act, a finding of guilt without the recording of a conviction must not be taken to be a conviction for any purpose.
- (3) A finding of guilt without the recording of a conviction—
- (a) does not prevent a court from making any other order that it is authorised to make in consequence of the finding by this or any other Act;
 - (b) has the same effect as if one had been recorded for the purpose of—
 - (i) appeals against sentence; or
 - (ii) proceedings for variation or breach of sentence; or
 - (iii) proceedings against the offender for a subsequent offence; or
 - (iv) subsequent proceedings against the offender for the same offence.

As to admission to practice in Victoria, section 1.2.6 of the *Legal Profession Act 2004 (Vic)* provides:

s. 1.2.6 Suitability matters

- (1) Each of the following is a *suitability matter* in relation to a natural person—
- (a) whether the person is currently of good fame and character;
 - (c) whether the person has been found guilty of an offence in Australia or a foreign country, and if so—
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed.
 - (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following—
 - (i) this Act or a previous law of this jurisdiction that corresponds to this Act; or
 - (ii) a corresponding law or corresponding foreign law