

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

WEDNESDAY 13 NOVEMBER 2019

APPELLANT WAYNE VANDERBURG

**APPEAL AGAINST DECISION BY GWIC TO REFUSE
TO GRANT APPELLANT AN ATTENDANT'S LICENCE**

DECISION

- 1. Appeal upheld**
- 2. Appeal deposit refunded**

1. The appellant Mr Wayne Vanderburg appeals against the decision of the Greyhound Welfare Integrity Commission, ("GWIC"), of 24 September 2019 to refuse to grant him an attendant's licence.
2. The evidence has comprised a bundle of material with a considerable number of documents, which may be summarised as those relating to the subject application, references and the various decisions involving the appellant before this Tribunal in the past and of his partner, Ms Fellowes.
3. The appellant's evidence, which is not otherwise embraced in his interview, which was contained in that bundle and in supporting submissions that he made, is also, by agreement, contained in his grounds of appeal.
4. In a decision of 30 November 2015 the Tribunal determined that this same appellant had satisfied it that he was a fit and proper person under s11 of the former Greyhound Racing Act to hold an attendant's licence. And in a subsequent decision of 3 December 2015 dealing with some formalities found that a s18 of the Act was also satisfied.
5. In the decision of 30 November the Tribunal set out the then statutory scheme together with a summary from paragraphs 8 through 12 of a number of case law principles which were applicable. Those case law principles have not changed from 2015 to the present time and the Tribunal adopts the summary it there set out as being applicable to this case. In essence, the new 2017 Act does not essentially change the test. It may be paraphrased to require that the appellant needs to satisfy the Tribunal that he is a fit and proper person. And to do that he has to satisfy the Tribunal having regard in particular to the need to protect the public interest as it relates to the greyhound racing industry. Importantly, it requires that an opinion be formed that it would be in the best interests of the greyhound racing industry that his application not be refused. In addition, there is a requirement to give consideration to criminal convictions.
6. Again, it is necessary to reflect upon that which he seeks. It is an attendant's licence. The rule has not changed since the 2015 decision. In essence, the rules, for which he seeks the imprimatur of the Tribunal, are to the effect that he be physically in charge of a greyhound while it is on the premises of a race club racing or he otherwise is a person who is handling a greyhound at other times. It is – and this is not said in a disrespectful fashion – the most basic form of licence; it is not, as it were, in the upper category of gravity for assessment of public trainer.
7. The Tribunal analysed this appellant's association with the industry, his falls from grace and the factual matters he advanced up until November 2015 to support the then decision that he established he was fit and proper. Those matters canvassed, in very brief summary form as they are not set out in this decision in detail but are adopted, are, the fact that he first

became engaged in the industry, interestingly, as an attendant on 1 April 1988, progressed through owner/trainer in 1990 to public trainer in 1991. There were then, as was previously set out, a number of penalty matters involving prohibited substances and again the 2013 three presentation matters for which the Tribunal upheld his appeal and imposed a period of disqualification of two years and three months on 27 February 2014, which have been assessed and addressed in detail.

8. The appellant previously made his decision to seek an attendant's licence as soon as his last disqualification expired. As said, it was refused. As also said, this Tribunal found it should issue to him. It is his evidence in his interview with the stewards, repeated in the factual matters that are advanced today, that the former GRNSW, as it existed prior to the restructure under the Greyhound Racing Act 2017, on 1 July 2018 chose to ignore the decision of the Tribunal of 30 November 2015 to find him fit and proper.

9. As the Tribunal said in its original decision and its subsequent decision of 3 December 2015, it is not the function of the Tribunal to issue a licence, that remains the responsibility of the regulator. Various pejorative terms could be used to describe the attitude taken by the regulator to this appellant now and as it took to him in the past. In essence, despite his numerous written and verbal requests that his licence issue to him, he was basically told, regardless of what the Tribunal said, he was not going to get it, and he did not. This Tribunal does not sit in judgment of the now disbanded Greyhound Racing NSW.

10. This appellant has described himself as then broke, and that might account for a lack of legal advice as to what other steps he might have taken. Be that as it may, he today describes, as he did to the Commission interview, his frustration by that, what he described as, contemptuous disregard of an order of the Tribunal.

11. The effect of that, as he said, is a creation of anxiety and, it must be said, a fully understandable sense of grievance, disappointment and annoyance. No reasons other than that blatant refusal have been given to him. Its relevance in this application is that it provides in him a greater understanding of the necessity for proper behaviour.

12. Since the November 2015 decision, in addition to that failure to succeed in obtaining his licence, he has fallen from grace in respect of the criminal law of this State. His activities in that matter were summarised in the Tribunal's decision on the appeal of his partner Sarah Fellowes in the decision of 18 March 2019 where it analysed this appellant's conduct. He was questioned about that in considerable detail in his interview.

13. The summary that he gives today is that, consistently with his version at all times, the items in question, which involved knuckle dusters, steroids and pentobarbital, were in a tallboy in his room and they had been there for considerable time, possibly up to 10 years. The circumstances of him obtaining the steroids and the pentobarbital were set out in considerable detail and are not repeated. His other aspect of possession is knuckle dusters, which he described as having been made when he was a young man, but again “put in this drawer and forgotten about”. Even with a change of house. As he said today, they were in with old tax papers.

14. Importantly, he points out, as he said at all times, not only had he forgotten about their existence, but they had never been used, there was no intention to use them and, indeed, the fact that whilst he was still licensed up until his disqualification in December 2013 that he had had numerous presentation and swabbing of greyhounds but none of those substances came up as positive in any of those tests. He has expressed regret and remorse for his oversight but emphasised that he did not set out to retain possession of them for any nefarious purpose.

15. He was sentenced by the Local Court and in respect of each of the possessions, the subject of monetary penalties, which he tells the Tribunal today he has paid.

16. That conduct of possession came to light as a result of the execution upon him – and coincidentally at the same time upon his brother – of search warrants by the NSW police. The appellant described to the Commission staff in the interview that it was his belief that those search warrants were executed in an endeavour to find matters to do with race-fixing. He said to the Commission staff – and there is no evidence to the contrary – that nothing of a race-fixing nature came to light in respect of that.

17. It might be noted at this stage, for further certainty, that the matters of Fellowes, which related to similar possession matters, she being a licensed person and the items being found on licensed premises, were dealt with on the basis that Fellowes did not know of the presence of those items. The appellant has at all times accepted that they were his, and his responsibility alone, for their presence at the premises of a licensed person. It is important that at the time of those items being found he was not a licensed person.

18. The respondent today points out that that possession by this appellant did have a nexus to greyhound racing. That nexus, it is pointed out, is to be found in respect of the fact it was at a licensed person’s premises and that the substances were originally obtained – with the exception of the knuckle dusters – for the purposes of greyhound-related use.

19. The appellant points out that the salutary lesson not only of being subject to a search warrant, a criminal prosecution and sentencing has been

to make it quite clear to him about the caution which he must exercise for the future, it also had a substantial impact upon him personally by the stress occasioned by the allegations of race-fixing which were not found established. As he said – and it is not a surprising remark – in his interview, page 28, “I wish I had have thrown them all in the bin.”

20. The other possession matter to which reference can be made is a couple of rounds of .22 ammunition were found in a magazine. That of course is contrary to the law and nothing further is made about it in these proceedings.

21. He was dealt with in the criminal law. In essence, it might be said those matters have been finalised.

22. His present circumstances are that he is, of course, unlicensed and outside the industry and he is fully reliant on his employment by a corporation which looks after the maintenance of public schools. That is a full-time five-day-a-week job which he has had for some months. He describes his finances as being somewhat perilous and, in essence, other than for that he was at times broke. He gives a figure, which will remain confidential, of the gross money that is paid to him for that job.

23. He did tell the Commission staff about the mental health suffering which was occasioned to him in relation to the criminal matters. No medical reports are tendered and that is not examined further.

24. He calls in aid various referees.

25. They are Mr Paul Freeman, President of Palmerston North Greyhound Racing Club, 20 August 2019, who was a business associate of many years. He describes the appellant as having a great talent for determining the ability of greyhounds. He is aware of his past history of disqualifications for both the ethanol and the police-related matters. And despite his knowledge of those matters he is prepared to offer the appellant a racing manager’s position at a racing kennel operated by Mr Freeman’s partner where he could be engaged in the day-to-day training of greyhounds if he has a handler’s licence.

26. Next is by his partner Ms Fellowes. While the submissions do not greatly emphasise the fact, it is noted it is by his partner and, of course, matters such as that have traditionally been given less weight than those of unrelated people or, more critically, people who are licensed in the industry for which the imprimatur of the Tribunal is sought. Not surprisingly, Ms Fellowes speaks highly of him. He is a person of good character with compassion and empathy and held in high regard in the greyhound industry, a person who has assisted her and a person whom she has been saddened

to see decline in his health as a result of these various matters, and also because of his financial loss.

27. Next is by Lincoln Moncrieff of 19 August 2019. Friends for over 25 years with a mutual love of greyhound racing. Assesses him as honest and genuine and a loyal friend, willing to offer assistance or guidance to people. He considers it a great injustice that he has even been asked to provide this reference. I am not sure if that is an injustice to him or an injustice to the appellant, but that need not be examined further. He assesses the appellant as a person who, like everybody else, should be given a second chance. He says he would be an asset to the game because of his wide and varied experience and willingness to pass on his knowledge.

28. The next is by Hayden Wilson of 19 August 2019. He has known him since 1998, both personally and professionally, and assesses him as professional, honest and very reliable, considerate, kind and a great mate. He is happy to recommend him.

29. The last is by Mark Jordan of 18 August 2019. Known him for 40 years as a person of great integrity and values, being fully aware of all of the charges against him, says he is trustworthy and great to all animals.

30. The appellant described to the Commission staff, as he has to the Tribunal, the reason why he seeks to be licensed in this industry. He said this to the Commission staff: "I had trained dogs for many, many years. That's the only thing I want to do."

31. He is in a steady relationship. He has two boys. He says he has always been an honest person, a fair and reasonable person who does not cause trouble. He is unable to describe certain of his past conduct because of a lack of knowledge as to the reason it occurred, in particular, the ethanol matter. He says no one has been investigated more than him. And because he is honest, reliable and fair, he should be assessed as fit and proper. He describes his coaching of children at cricket and football and it is noted that he has a Working With Children Certificate. Interestingly, he makes the comment: "I found it interesting that I can work with children but I can't work with greyhounds."

32. In his evidence to the Tribunal he reiterates his desire to be involved in the industry which he loves and has a great passion for and he spent virtually his entire life living and caring for greyhounds and that that huge part of his life is missing. Importantly, in respect of why he seeks only an attendant's licence he says: "I only intend to help my partner with a few dogs that she may get in the near future. I fully understand the serious nature of the items found in my drawer. However, I never intended using them, I simply forgot they were there until they were found by the authorities."

33. He also points out in his evidence and submissions that the effect of the 2015 determination that he should have the benefit of a licence has been thwarted and that in effect he has been excluded from the industry for another four years. That is raised as a factor of its own, but also was repeated in respect of a question of him by the Tribunal as to why the further 12 months the Commissioners thought to be appropriate before he should be further considered should not apply to him, and that is that, "Well, he's already done effectively four years without the benefit of a licence which was given to him", and that of course it might also be added by the Tribunal that there has been a period of time since he came under adverse notice in relation to those criminal matters.

34. There is no doubt that the Commissioners were fully entitled to give great weight to the most recent criminality of the appellant by reason of the nexus described to the greyhound industry. It is, of course, that armed with that the test of satisfaction about what is in the best interests of the industry by reason of a need to protect its public interest must be considered. That is, that a person who has previously been the subject of a number of penalties for prohibited substance matters, who is given a chance, although not extended to him, to show that he can comply with rules and the law falls foul of the law and that therefore it could be said it could not be in the public interest if such a person was seen to be related to the industry.

35. There is the important statutory test which also drove the Commissioners that the circumstances of that criminality are capable of, and in their opinion did, render him unfit to be registered.

36. There is also the test that motivated them that they did not consider it in the best interests of the industry that he should be licensed.

37. The real assessment this Tribunal is asked to make is whether the criminality is such that, taken alone, or in conjunction with past behaviour, having regard to all of them being associated in some way with the greyhound industry, that he has not established a trustworthiness which was found in terms expressed to him in 2015 as follows:

"He is well aware he cannot afford to be found guilty of any further breaches."

38. Now, that remark was directed to breaches of the greyhound rules, but it seems to the Tribunal it must also apply to the criminal law. That was implied.

39. The conclusion the Tribunal reaches is that this appellant puts himself forward as an honest and reasonable person but nevertheless continues to come under adverse notice. It is fair to say, as the Tribunal assessed him in

the past on at least two occasions, that he presents well, he is able to clearly and succinctly deal with the issues that he must, and it could be said he is persuasive with words but not with deeds.

40. The referees support him, as he was previously supported by referees. Some weight must be given to that, particularly from the president of a greyhound racing club.

41. The criminality is dealt with. On that, the Tribunal accepted in the Fellowes' case, and remains of the opinion, that the explanation he gave to the Commissioners, which he says he gave to the Local Court and which he gave in the Fellowes' case about a mere oversight in respect of his possession is the most telling factor in assessing the gravity of that conduct so far as it relates to the nexus with the industry. The further conduct post the 30 November 2015 assessment, therefore, despite the assessment of the Commissioners in respect of it as was just summarised, remains, in the Tribunal's opinion, not a disqualifier per se.

42. Again, the Tribunal returns to the fact that he seeks an attendant's licence and the limited functions which go with it and the limited rationale he has for it, to assist Ms Fellowes when she is not able, because of her work commitments, to attend to her licence functions. Those are, indeed, very limited functions. They take place under a licensed person's supervision away from the racetrack, but importantly, at the racetrack, directly under the eyes of the stewards. There is not a great convincing, therefore, that the likelihood of further breaches of the rules relating to greyhound racing are of such a high level that despite the conviction nature of them and the public interest-related issues of them the Tribunal should find adversely in respect of him.

43. Accordingly, the onus being upon him, the Tribunal yet again determines as it did on 30 November 2015 and 3 December 2015 that he establishes he is a fit and proper person to be issued with an attendant's licence.

44. His appeal against the decision to refuse that application is upheld.

45. The Tribunal orders the appeal deposit refunded.
