

LICENSING COURT OF SOUTH AUSTRALIA

EVES, Shannon

JURISDICTION: **Licensing Court of South Australia**
Liquor Licensing Act 1997 – Application for
Directions

CASE NO/S: 133 of 2021

HEARING DATE: 20 October 2022

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 24 October 2022

CATCHWORDS:

*Mr Eves was granted approval as a responsible person on the condition that he be of good behaviour for a period of three years – Within a matter of months after being granted approval he was apprehended for drink driving with a blood alcohol reading of 0.147 – **Held** that Mr Eves has not fulfilled the condition that his approval was contingent on such that his approval must be revoked – To enable some transition, the revocation is to take effect from midnight on 21 November 2022 – Liquor Licensing Act 1997.*

Shannon Eves [2022] SALC 29

REPRESENTATION:

Counsel:

Applicant: Acting Sergeant M Osterstock

Respondent: In person

Solicitors:

Applicant: Commissioner for Police

Respondent:

- 1 For reasons published by me on 17 March 2022¹ I allowed an application for review made by the Police in connection with a decision by the Liquor and Gambling Commissioner to grant Mr Shannon Eves an unqualified approval as a responsible person for the purposes of the *Liquor Licensing Act 1997*.
- 2 In lieu thereof I made the following order:

... I am prepared to grant Mr Eves his approval as a responsible person effective immediately, on the condition that he fulfils my expectation of a period of good behaviour, which I nominate as three years from the date of my order. If that condition is fulfilled, his ongoing approval will continue without qualification. If the condition is not fulfilled, his approval will automatically lapse, because a condition precedent to its grant will have not been fulfilled.
- 3 On 31 July 2022, Mr Eves was found to be driving a motor vehicle on Main North Road while there was present in his blood, a blood alcohol concentration of 0.147 grams in a hundred millilitres of blood. This is just under three times the legal limit. At the time Mr Eves was driving under a provisional licence. As such, it was a condition of his licence that he does not have any alcohol in his system when driving. Thus he was also acting in breach of this condition.
- 4 The Police contend that in light of these matters, Mr Eves has breached the condition that this Court imposed upon him, such that his approval must be revoked.
- 5 Mr Eves throws himself on the mercy of the Court. He said that immediately prior to his recent offending his father had died and there were challenging family issues surrounding his death and cremation.
- 6 The Police contend that whilst Mr Eves' personal circumstances might attract some sympathy, there is no getting away from the fact that his offending breached the condition of his approval.
- 7 I can accept that just as the criminal courts possess a residual discretion to excuse a breach of a bond, this Court can excuse a breach of a condition that would otherwise result in the activation of a pre-determined sanction, which in this case is disqualification.
- 8 But the circumstances would need to be exceptional. This Court partially or totally suspends sanctions, and in a case such as this, imposes conditions to bring about changes in behaviour. It is a 'carrot and stick'

¹ *Shannon Eves* [2022] SALC 29.

approach by providing an incentive to change in the face of adverse consequences if the change in behaviour does not occur. It would significantly diminish the effect of these orders if parties could too readily escape the consequences of their failure to change. It could also undermine the authority and integrity of this Court if it developed the reputation of not meaning what it says.

- 9 In determining whether exceptional circumstances exist in this case that would warrant not acting on Mr Eves' self-evident misconduct, there needs to be consideration given as to why the condition was imposed in the first place, and the seriousness of the recent breach.
- 10 Prior to applying for his approval, Mr Eves had a troubling offending history. He was issued with an expiation notice for possession of cannabis in September 2004. He was convicted of driving with excess alcohol in 2008. He was convicted of four counts of dishonestly dealing with property dating back to before 2008, but not dealt with until October 2017, and in 2021 he was convicted of three counts of driving whilst disqualified.
- 11 The reason there was a long delay between the commission of the dishonesty offences and sentencing was because Mr Eves effectively skipped bail and left Australia. He was issued with an arrest warrant after he returned to Australia some years later, culminating in his appearance before a Magistrate in 2017.
- 12 In granting Mr Eves an unqualified approval, the Commissioner accepted Mr Eves' statement that his earlier offending occurred at a time of personal challenges and through his personal growth, his marriage, parenthood, and responsible employment, he had changed. The Commissioner spoke of him having rebuilt his life, family and career. He stated that he was confident that these matters would provide Mr Eves with strong motivation to continue to operate in a responsible and law-abiding manner.
- 13 This Court took a different view of Mr Eves' conduct and character to that taken by the Commissioner. It stated:

Mr Eves committed repeated acts of aggravated theft. Stealing from one's employer is a particularly egregious form of theft as it involves a serious breach of trust. It must be accepted that the offending occurred many years ago, but it nevertheless casts a grave shadow over Mr Eves' fitness and propriety. It is notable that s 55 of the Act expressly requires a licensing authority to take into account a person's reputation for honesty and integrity in determining the person's fitness and propriety.

In 2007, Mr Eves left the jurisdiction. He must have known that criminal charges against him were pending. His failure to remain in the State to face those charges reflects poorly on him.

The fact that Mr Eves was not successfully prosecuted with drug driving, does not reduce his culpability in driving whilst disqualified. He was told by the police that he was not to drive, and he repeatedly ignored that direction. That behaviour shows a lack of respect for authority.

14 The Court then went on to say:

In my respectful opinion, on the evidence presented, this was a case where the applicant's prior offending was such that an order granting him unqualified approval should not have been made. The public would be concerned about Mr Eves' offending, and they were entitled to have safeguards put in place to allay those concerns. The Commissioner erred in not doing so. Accordingly, the order of the Commissioner cannot stand and requires revision.

...

If I had been dealing with the matter at first instance, I would have come to the view that Mr Eves, through his prior misconduct, had cast such a serious doubt over his fitness and propriety to hold office under the Act that I would not have been satisfied that he is a fit and proper person for the purposes of the Act and would have refused his application. I would have formed the view that his recent commission of multiple offences of driving whilst disqualified against a background of historic offences of serious dishonesty, required further time for Mr Eves to demonstrate that he was a fit and proper person worthy of approval under that Act. I therefore would have deferred further consideration of the application to a later date to enable that to occur.

15 The Court did not make that order because it considered that there would be a legitimate sense of unfairness in taking away Mr Eves' approval after it had been granted to him following a hearing before the Commissioner.

16 But Mr Eves should have been under no illusions that the decision to grant him approval was a close thing and that he needed to allay the Court's concerns about his fitness and propriety through a sustained period of good behaviour.

17 Putting to one side Mr Eves' prior conviction for dishonesty, in the last two years he has been convicted of three counts of drive disqualified, one count of drink driving and one count of driving in contravention of a condition of his licence. In connection with the drive disqualified he had been told by the police not to drive, but he ignored that direction. A

blood alcohol reading of 0.147 demonstrates excessive drinking. Mr Eves' personal circumstances might explain why he drank to excess, but it provides no explanation as to why he chose to drive his car while he had any alcohol in his system, let alone nearly three times the legal limit.

- 18 The Police lawfully told Mr Eves not to drive, but he wilfully ignored that directive. He was told through the issue of a provisional licence that he cannot drive after drinking, but he ignored that directive. In addition to this, as a mature man, Mr Eves must have known that he had a lot to drink when he chose to drive. He must have known that as a consequence of this there was an enhanced risk of him being involved in a car accident that could potentially hurt others. The fact that he chose to drink to excess and then drive shows a lack of regard for the safety of others.
- 19 Mr Eves though his recent behaviour has put paid to the Commissioner's belief that he had a 'strong motivation to continue to operate in a responsible and law-abiding manner'.
- 20 To the contrary, when his recent offending is looked at in light of the past, there appears to be a persistent pattern of an unwillingness to abide by the law and an indifference to the consequences of his behaviour. These are attributes that are inconsistent with the qualities that are expected of a person approved under the Act.
- 21 Mr Eves' approval was subject to a condition of three years good behaviour. Mr Eves has not fulfilled that condition. The breach, when considered in light of the circumstances that led to the condition being imposed, demonstrates that he is not a fit and proper person for the purposes of the Act. His approval must therefore be revoked. In anticipation that this order may result in Mr Eves having to change his existing working arrangements, I am prepared to extend some leniency. I direct that the revocation of his approval will take effect from midnight on Monday 21 November 2022.