

COURT: MAGISTRATES COURT OF TASMANIA (Administrative Appeals Division)

CITATION: *McCauley v Shepherd* [2020] TASMC 02

PARTIES: McCAULEY, Benjamin Jack
v
SHEPHERD, Kerry

FILE NO: M2018/1829

DELIVERED ON: 28 February 2020

DELIVERED AT: Hobart

HEARING DATE: 18 December 2019

DECISION OF: Magistrate R B Webster

CATCHWORDS:

Administrative Law – Application for review – Generally – Fire, explosives and firearms – Firearms – Licences and related matters – Review of refusal to grant licence – Whether “fit and proper person”.

Firearms Act 1996 (Tas) ss 29, 51, 141.

Magistrates Court (Administrative Appeals Division) Act 2001 (Tas), s 26(1).

Shi v Migration Agents Registration Authority [2008] HCA 31, (2008) 235 CLR 286; *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577; *Adamson v The Pharmacy Board of Tasmania* [2004] TASSC 32; *Peters v Commissioner of Police* [1993] TASSC 153; *Commissioner of Police v Lewis* [1994] TASSC 13; *Quarell v Lieutier* [2013] TASMC 37; *Australian Broadcasting Tribunal v Bond and Others* [1990] HCA 33, (1990) 170 CLR 321; *Hughes & Vale Pty Ltd v NSW [No. 2]* [1955] HCA 28, (1955) 93 CLR 127; *Free v Bennett* [2019] TASMC 3; *In Re Davis* [1947] HCA 53, (1947) 75 CLR 409.

Aust Dig Administrative Law [1001]

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BENJAMIN JACK McCaULEY v KERRY SHEPHERD**REASONS FOR DECISION****MAGISTRATE R B WEBSTER****Determination**

1 What follows are my reasons for refusing this application. Mr McCauley has not persuaded me he is a fit and proper person to hold a firearms licence.

Introduction

2 Up until 21 February 2017 the applicant, Mr McCauley, held a category A and B firearms licence issued under the provisions of the *Firearms Act* 1996 (the “Act”). On that day Inspector Bennett, acting in her capacity as a delegate of the Commissioner of Police, suspended that licence by serving a notice of suspension on Mr McCauley. Inspector Bennett took this action under s 53 of the Act as she had formed the opinion, due to pending firearm and wildlife offences which Mr McCauley had allegedly committed on 19 February 2017, he may no longer be a fit and proper person to hold that licence.

3 On 19 June 2017 and 29 November 2017, Mr McCauley requested his licence be reinstated. On 5 April 2018 he was verbally advised a decision had been made by Mr Shepherd, a delegate of the Commissioner of Police, to cancel his licence. Mr Shepherd did cancel Mr McCauley’s licence by exercising a power conferred by s 51(2) of the Act because he had formed the view Mr McCauley was no longer a fit and proper person to hold a licence. Mr McCauley was unhappy with this decision so he exercised the right of review conferred upon him by s 141 of the Act and filed this application to review that decision.

The Law

4 The right to review Mr Shepherd’s decision to cancel Mr McCauley’s licence is provided for in s 141(1)(c) of the Act. That section provides a person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the cancellation of a licence or permit issued to the person, other than a cancellation under s 51(1) which does not apply in this case.

5 This Court’s administrative appeals jurisdiction is established by the *Magistrates Court (Administrative Appeals Division) Act* 2001. Subdivision 3 of Div. 2 of Pt 4 of that Act sets out the Court’s powers on review. In particular section 26 provides:

"26 Determination of review by Court

- (1) A review of a decision by the Court is to be by way of hearing *de novo*.
- (2) In determining an application for a review of a reviewable decision, the Court may exercise all of the functions that are conferred or imposed by any relevant enactment on the decision-maker who made the decision.
- (3) In determining an application for a review of a reviewable decision, the Court may decide —
 - (a) to affirm the reviewable decision; or
 - (b) to vary the reviewable decision; or
 - (c) to set aside the reviewable decision and make a decision in substitution for the reviewable decision it set aside; or

- (d) to set aside the reviewable decision and remit the matter for reconsideration by the decision-maker in accordance with any directions or recommendations of the Court."

6 The question for determination by me on this application is not whether Mr. Shepherd's decision was the correct or preferable one on the material before him. It is whether his decision is the correct one on the material placed before this Court: *Shi v Migration Agents Registration Authority* [2008] HCA 31, (2008) 235 CLR 286 per Kirby J at [35], [141] – [143] wherein he cites with approval what Davies J said in *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 589.

7 This has been expressed in the cases that the Court is obliged to conduct a fresh merits review, that is, a hearing *de novo*, rather than determining whether Mr. Shepherd's decision is "right" or "wrong". In making my determination I may have regard to new material unavailable to, or not considered by, Mr. Shepherd: *Adamson v The Pharmacy Board of Tasmania* [2004] TASSC 32. I have all the powers Mr. Shepherd had when he made his decision.

8 The whole of Mr. Shepherd's decision is subject to this review. However, at the hearing it became clear the only issue between the parties was whether or not Mr. McCauley is a "fit and proper person". The onus of proof with respect to that issue is on Mr. McCauley. He has to satisfy me on the balance of probabilities he is a fit and proper person: *Peters v Commissioner of Police* [1993] TASSC 153 per Crawford J., as he then was, at [5]-[8] and *Commissioner of Police v Lewis* [1994] TASSC 13 per Underwood J., as he then was, at [5] - [10]. What then does this term mean?

What does "fit and proper person" mean?

9 The starting point of my consideration of this term is ss 29 and 51 of the Act. Section 51 permits the Commissioner, or his delegate, to cancel a licence issued under the Act if satisfied that the holder of the licence is "no longer a fit and proper person to hold that licence". Section 29(2) provides:

"(2) In deciding whether a person is a fit and proper person the Commissioner is to take into account the following:

- (a) any likelihood of the person using a firearm —
 - (i) for an unlawful purpose; or
 - (ii) to harm himself or herself;
- (b) the mental and physical condition of the person;
- (c) any criminal activity of the person, whether in Tasmania or elsewhere;
- (d) any offence committed by the person under this Act or under the Guns Act 1991 ;
- (e) <https://www.legislation.tas.gov.au/view/html/inforce/2007-11-13/act-2007-043 - GS13@Hpb@EN> the ability of the person to exercise reasonable and responsible control over a firearm;
- (f) <https://www.legislation.tas.gov.au/view/html/inforce/2007-11-13/act-2007-043 - GS13@Hpc@EN> whether the person is subject to a restraint order, interim restraint order, family violence order, interim family violence order or police family violence order or has, at any time in the 5-year period immediately before lodging the application, been subject to such an order;
- (g) whether the person is subject to a recognisance, granted in Tasmania or elsewhere, to keep the peace."

10 I agree with what Magistrate Cooper said about s 29(2) in *Quarell v Lieutier* [2013] TASMC 37. At [7] his Honour said the following:

“Although section 29 is concerned with considerations relating to the grant of a licence rather than its cancellation the list of considerations (which list is not exhaustive) is a useful guide of the type of matters to which the court should have regard. It is also important to bear in mind that the meaning of the expression ‘fit and proper person’ is one to be judged in its legislative context (see *The ‘Bond Media Case’ - Australian Broadcasting Tribunal v Bond Media* (1990) 170 CLR 321; [1990] HCA 33). Here the legislative context is concerned with ensuring the protection of the public by, amongst other things, the safe and appropriate use and storage of firearms and ammunition by suitable people or, as Magistrate Pearce (as he then was) said in a decision concerning a similar application by Mr Quarrell in 2010, ‘whether Mr Quarrell is a person who can be trusted with the responsibility of safely possessing and using firearms’ (see *Quarrell v Commissioner of Police* L40700/09, hearing 29 January 2010).”

- 11 The meaning of the term, fit and proper person, has been discussed by Courts in this country on many occasions. The most commonly cited example is found in *The Bond Media Case* referred to in the last paragraph. At [36] Toohey and Gaudron JJ said:

“The expression ‘fit and proper person’, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities.”

- 12 In *Shi v Migration Agents Registration Authority* (*supra*) Kirby J stated at [148] the expression “fit” is referable to a person’s honesty, knowledge and ability. This was explained by Dixon CJ, McTiernan and Webb JJ in *Hughes & Vale Pty Ltd v New South Wales* [No 2] [1955] HCA28, (1955) 93 CLR 127 at 156 that the purpose of the expression is “to give the widest scope for judgment and indeed for rejection” and that *fit* with respect to an office required three things:

“... honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it”- Coke.

- 13 I adopt what Deputy Chief Magistrate Daly said in *Free v Bennett*¹ [2019] TASMC 3 as to the meaning of “fit and proper” within the context of the Act where he said at [10]:

“... I have borne it in mind that the applicant must satisfy the Court that he has the knowledge how to comply with all his obligations under the Act; that he has the capacity to do so; and, that he would do so diligently and honestly. The Firearms Act 1999 (sic) is important legislation for the protection and safety of the community. The Act reflects parliament’s clear intention that disobedience to, or neglect of, obligations under the Firearms Act 1996 has the potential for very grave harm within the community. The penalty provisions within the Act reflect this. The relevant activities which are regulated by the Act, include the registration, acquisition, possession, storage, transport, use and disposal of firearms. The nature of firearm ownership and use is such that a very high level of trust is placed in licence holders in relation to their compliance with the objects of the Act. A principal objective of the Act is the safety of persons and property within the community. The determination of whether a person is ‘fit and proper’ to hold a firearms licence is squarely focused on these considerations. This was reflected in Chief Magistrate Shott’s observations in *Geeves v Shadbolt* [2007] TASMC 12 at [23]:

“The community is entitled to demand that persons who are entrusted with the privilege of possessing dangerous weapons of the type that are the subject of the stringent regulatory and penal provisions of the Firearms Act 1996 should conduct themselves at all times in a manner that continues to reinforce the confidence that resulted in the initial conferring of the privilege. One may argue

¹ The applicant in this case, Mr Free, is the same person referred to in [22] and following in these reasons. Mr Free’s application was unsuccessful.

that one departure from that standard of conduct should not result in a forfeiture of that confidence. That may be true. However, the resolution of that argument can only be made after a close examination of all the surrounding circumstances of the particular departure’.”

Factual Findings

14 There was little dispute between the parties about the facts in this matter. By consent I was provided with a copy of the statement of reasons for the decision of the Commissioner’s delegate, Mr Shepherd, all the material upon which Mr Shepherd based his decision, and some additional documentation which included Mr McCauley’s initial application for a firearms licence in April 2012.² In addition to the contents of the application,³ the applicant gave sworn evidence and was cross-examined. He also tendered a letter from Paul and Elizabeth Geard dated 14 March 2019,⁴ and a reference from John Jones dated 23 May 2018.⁵ All the evidence, and my findings of fact are summarised as follows.

15 Mr McCauley initially applied for and was granted a category A and B firearms licence in 2012. On 21 February 2017 Mr McCauley was served with a notice from Inspector Kathy Bennett, a delegate of the Commissioner of Police, which suspended his category A and B firearms licence.

16 On 19 June and 29 November 2017 Mr McCauley wrote to Inspector Bennett and requested that his licence be reinstated. He was advised on 5 April 2018 that a decision had been made by Mr Kerry Shepherd, a delegate of the Commissioner of Police, to cancel his licence. On the same day Mr McCauley sought a statement of reasons with respect to Mr Shepherd’s decision. A notice of cancellation of his licence was forwarded to Mr McCauley on 5 April 2018 and his licence was formally cancelled on 24 April 2018.

17 The decision to cancel Mr McCauley’s licence was made by Mr Shepherd under s 51 of the Act as Mr Shepherd determined Mr McCauley was no longer a “*fit and proper person*” to hold a firearms licence.⁶ In reaching that determination Mr Shepherd had regard to the factors listed in 29(2) and in particular the following:

- “(a) any likelihood of the person using a firearm for an unlawful purpose; and
- (b) any criminal activity of the person, whether in Tasmania or elsewhere; and
- (c) the ability of the person to exercise reasonable and responsible control over a firearm.”

18 In addition s 51(2)(c) provides the Commissioner may cancel a licence if the holder contravenes any provision under the Act, whether or not he or she has been convicted of an offence for the contravention.

19 The Act, by s 30, also places restrictions on the granting of Category B firearms licences. That section provides the Commissioner must not grant an application for a Category B firearms licence to any person unless that person, in addition to establishing a genuine reason for holding the licence, produces evidence to the Commissioner’s satisfaction that there is a need for the person to possess or use a firearm of this category. As result of the offences under the Act, Mr McCauley was banned from obtaining a game licence permit by the Department of Primary Industries, Parks, Water and Environment (DPIPWE) for a period of five years commencing from the date he was sentenced in Court for offences under the Act.

² Exhibit R1

³ Exhibit A2 annexure A

⁴ Exhibit A1

⁵ Exhibit A2 annexure B

⁶ Section 51(2)(f) of the Act.

20 In 2015 Mr McCauley provided written consent from a landowner at Bothwell to shoot on his property however the Firearm Services branch of Tasmania Police confirmed this consent was withdrawn on 22 March 2018. In those circumstances there was no evidence before the Commissioner Mr McCauley had a genuine need to use Category B firearms and therefore the Commissioner was not satisfied of the requirement for such a licence. This was no longer an issue in this appeal given the permission provided by Mr and Mrs Geard which is set out in exhibit A1.

21 On 24 November 2017 Mr McCauley was convicted of the following offences that occurred on 19 February 2017:

- “(a) trespass (land) contrary to section 14B(1) of the Police Offences Act 1935;
- (b) take a form of partly protected wildlife during closed season contrary to r37(2) of the Wildlife (General) Regulations 2010;
- (c) use a firearm at night for the purpose of taking partly protected wildlife contrary to r28(5) of the Wildlife Regulations 1999; and
- (d) unlawfully use light in the taking of partly protected wildlife contrary to r29(6) of the Wildlife Regulations 1999.”

22 The circumstances of the offending referred to in [21] were that on the evening of 19 February 2017 Mr McCauley was driving his Mitsubishi Triton dual cab utility on Victoria Valley Road at Strickland in Tasmania. Mr Sean Free was travelling as a front seat passenger in that vehicle. The vehicle was fitted with a large light bar and Mr McCauley had observed several deer in paddocks near the sides of the road. He decided he was going to shoot one of the deer for food. Mr Free did not wish to be involved in this enterprise so he left the area on foot despite being a significant distance from his own vehicle. After Mr Free left, Mr McCauley entered a paddock at an address in Victoria Valley Road and shot and killed one of the deer he had observed earlier. He walked towards the deer. However he heard and saw the headlights of a vehicle heading in his direction. He panicked, unloaded his firearm and ran to his vehicle where he placed the firearm into the rear of his vehicle. He drove along Victoria Valley Road and turned left onto Strickland Road. There he parked until he lost sight of the vehicle.

23 A short time later Mr McCauley travelled back to Victoria Valley Road to retrieve the deer but again observed the same vehicle travelling back towards him. He therefore continued driving on Victoria Valley Road towards Ouse. As Mr McCauley drove towards Ouse he observed another vehicle travelling towards him and, as he passed that vehicle, he observed that vehicle turn around and follow him back to New Norfolk. This vehicle was later identified as belonging to the land owners of the property on which Mr McCauley had shot the deer. The deer was located the next day with its head removed.

24 Mr McCauley was interviewed by police during which he admitted shooting the deer and using the large light bar fitted to his vehicle to spot the deer. He admitted trespassing on private property and he said he shot the deer to help feed his family. He admitted he did not hold a permit and he knew it was out of season to hunt deer. On his plea of guilty to the charges set out in [21], the Court recorded a conviction with respect to the trespass charge and it dismissed the other charges under s 7H of the *Sentencing Act* 1997.

25 On 24 November 2017 Mr McCauley also appeared in this Court on a charge of making a false declaration contrary to s 113(1)(a) of the *Criminal Code Act* 1924. The circumstances of that charge were that, after the offending outlined in [22] to [24], Mr McCauley attended the New Norfolk police station on 20 February 2017 and made a statutory declaration about the events set out in those paragraphs. Before making the statutory declaration he was informed by police it was an offence to make a false statutory declaration. In his statutory declaration he alleged he had an argument with Mr Free on the evening of 19 February 2017. He said Mr Free was intoxicated and he therefore kicked him out of his vehicle. Mr McCauley declared that prior to Mr Free exiting the vehicle his firearm had

been sitting in the rear passenger side of the vehicle with the butt in the foot well standing up. Shortly after Mr Free exited the vehicle Mr McCauley said he noticed the rear door was partly open, the light was on and his firearm was no longer in the vehicle. He asserted he turned the vehicle around and headed back to where Mr Free had exited his vehicle but could not find the firearm. He stated in his statutory declaration that as he was heading back he saw a vehicle pulled up at the side of the road, that he could not see Mr Free and he did not stop to look for the firearm at that time. It was then asserted the vehicle followed him, flashing its headlights at him and it swerved towards him. Mr McCauley then said at 9am on 20 February 2017 he spoke to Mr Free after he had been picked up by his partner and Mr Free “*swore black and blue that he didn’t have the gun*”.

26 On 8 April 2017 Mr McCauley participated in an electronically recorded video interview under caution and admitted that parts of his statutory declaration were false and that he saw deer in his headlights and decided to shoot a deer to help feed his family for up to three weeks. He spotted the deer with a light bar fitted to his vehicle, entered onto private property without permission and loaded the firearm. He shot the deer when he knew he did not have a permit and it was out of season.

27 Mr McCauley pleaded guilty to making a false declaration on 24 November 2017 and elected that charge be dealt with in the Magistrates Court at the same time as the other charges set out in [21]. During his plea in mitigation Mr McCauley told the Court he had been on workers compensation and had only recently commenced a return to work program. The Court accepted he had genuine remorse for his actions and had pleaded guilty at the first available opportunity. The Court noted the charge of making a false statutory declaration was the most serious charge before the court and he was convicted of that charge and fined \$750.

28 Mr McCauley’s record of prior convictions discloses the following:

- “(a) Exceed .05 (.124) on 22 February 2014.
- (b) Common assault on 14 March 2009.
- (c) First year driver with alcohol in body (.115) on 27 March 2009.”

29 There had been three interactions between Tasmania Police and Mr McCauley concerning firearms prior to February 2017. The first in time occurred on 8 July 2014 when Mr McCauley was a passenger in a vehicle intercepted by Tasmania Police. He advised police he and his party were going to a property to hunt wallaby. Located in the vehicle were a Tikka .22 – 250, a CZ .22 and a Tikka .300. When questioned about the larger calibre rifles, Mr McCauley said he had them to sight in at the property. The police interception occurred at approximately 9:30pm, it was dark and the attending officer formed the view it was not a suitable time for sighting a rifle. That officer believed it was likely the occupants of the vehicle intended to hunt deer by spotlight. One of the occupants of the vehicle did not have a firearms licence and the officer believed it was likely Mr McCauley was providing a firearm to that person so he could hunt without a licence.

30 The second interaction occurred on 11 July 2015 when a vehicle in which Mr McCauley was a passenger was intercepted for the purposes of a random breath test. A Tikka .300 firearm was located in the vehicle which was registered to a person who was not present. When asked about the firearm Mr McCauley was argumentative and said he had advice from an inspector of police he could take the firearm where-ever he liked as long as it was transported in a registered vehicle. He said he was going to sleep in the vehicle with the firearm at the Great Lake hotel overnight before going to Bothwell the next day to shoot paper targets. The occupants of the vehicle were wearing camouflage clothing at the time of interception. The reporting officer believed they may be in the area to shoot fallow deer illegally, and made a request of Firearms Services for review regarding the transport of high calibre rifles for the purpose of “*sighting in*” and “*shooting paper targets*”, and whether Mr McCauley satisfied the requirement of having a genuine reason to hold a licence for recreational game and vermin control.

31 The third interaction occurred on 28 January 2017 when police conducted a random firearms inspection at Mr McCauley's residence. During the inspection a Sako bolt action 243 rifle, serial 607 was not located. When asked where it was Mr McCauley advised it had been borrowed by Zack Hepburn of Baghdad for a short while. Mr Hepburn held a current licence at the time. However at the time Mr Hepburn borrowed the firearm, his own firearm had been seized in relation to wildlife offences and another of his firearms had previously been destroyed. Attending police formed the view it was likely Mr Hepburn would be shooting wildlife illegally with Mr McCauley's firearm. Mr Hepburn was convicted in 2016 in relation to possessing a wildlife product taken contrary to the regulations.

32 On or about 14 August 2015 Mr McCauley applied to renew his firearms licence which had been granted in 2012. His prior convictions at that time, and the interactions with police set out above, were noted, and as a result he was advised his application would not be granted until a review of his circumstances had been conducted. Mr McCauley attended on police with his mother to plead his case for the reinstatement of his licence as he was due to leave for a shooting trip to mainland Australia in respect of which he had already invested a significant sum of money. An interim licence was granted for the period 13 to 31 October 2015 and on 22 November 2015 a determination was made to grant the application for renewal of his licence. On 24 November 2015 he was sent a letter by Firearms Services reminding him of his legal obligations with respect to the safe keeping and storage requirements under s 46(b) of the Act and the requirement that he not allow any other person to possess or use a firearm in Mr McCauley's possession if that person is not authorised to possess or use the firearm pursuant to s 46(d) of the Act.

33 In his application to this Court Mr McCauley confirms he shot the deer on 19 February 2017 for the sole purpose of using the meat to feed his family as he could not afford to buy meat. He previously had a Tasmanian game licence but that was cancelled as a result of his firearms licence being cancelled. He is a member of the Sporting Shooters Association of Australia (SSAA) T10 club located at Pontville and wants to have his licence renewed to continue his active membership of that club. He is passionate about target shooting and recreational hunting, and uses the platform provided by SSAA to meet and engage with shooting enthusiasts. At the time of his application, which was filed on 25 May 2018, he said he had been in a committed relationship with his partner for 2½ years and they had a 15 month old child. He acknowledges his previous criminal history but says he has never been involved in any firearms-related offences or abused his licence conditions. He has been involved with firearms since a young age and was raised in a family involved in hunting and the safe use of firearms. In addition he says he is aware of the laws and regulations involving firearms and as an active member of the SSAA he has abided by all their membership policies and conditions. He says he has rectified his prior behaviour and he has focused on his family and raising his child. He requests a second chance and the opportunity to prove he has changed. He says he is a fit and proper person to be granted a firearms licence.

34 Mr Jones' reference indicates he is a trainer at the Glenorchy District Football Club and he has known Mr McCauley since he was six years of age. He attests to Mr McCauley's honesty and reliability and the fact Mr McCauley is a hard-working and valued volunteer at the football club. He speaks of Mr McCauley's skills as a junior footballer and State 8ball representative. He also notes Mr McCauley's active involvement in fund raising events and his workers compensation injury which has caused significant stress. He says he is sure Mr McCauley "*... is a fit and proper person to be awarded anything for which he applies,*".

35 In his evidence-in-chief, Mr McCauley advised me he was now 28 years of age (date of birth 31/10/1991). He is a joiner by trade but is in receipt of workers compensation because he suffered a blunt force injury to his right eye which occurred on 9 September 2016. He acknowledged the offences on 19 February 2017, that he initially lied about the matter and he was aware, prior to giving his statutory declaration, that it was an offence to provide a false statutory declaration. As to why he

lied he said he panicked and he was going through a stressful period in his life. He acknowledged it was a silly thing to do but he did not want to lose his guns. He owned up to his statutory declaration being false when he participated in the video record of interview at the Bridgewater police station. His reason for “coming clean” was that he did not want to “mess anybody around” and that he had had time to think about the matter. Mr McCauley realised he had done the wrong thing and he wanted to resolve the charges as quickly as he could.

36 At the time he shot the deer he was under significant stress. He was in receipt of workers compensation but he was not receiving the same pay per week that he had been receiving before the injury as the overtime he performed before the injury was not included in the calculation of the weekly rate of compensation which was being paid to him. Before his injury he received \$1,100 per week but after the injury he received only \$700 per week. He had also signed a contract to purchase his first home the day before he was injured at work and he and his partner had had a baby. Against this background he saw an opportunity to put some meat in the freezer; so he took that opportunity knowing full well he should not have as he knew what he did was illegal.

37 Before Mr McCauley shot the deer he had held a firearms licence for approximately six years. His licence was up for renewal in 2015, however he acknowledges at that time there were problems over the renewal because he was suspected of doing the wrong thing. His licence was however renewed at that time.

38 In response to the notice of suspension which Mr McCauley received in February 2017, he wrote to Firearms Services by letter on 19 June 2017 and again by email on 29 November 2017. In that correspondence he sets out his reasons why his licence should not be cancelled. He asserts he is a fit and proper person to hold a firearms licence, he apologises for his actions and explains why he acted in the manner he did on 19 February 2017. In his email he sought a response to his letter and indicated what penalties he received in respect of the charges which had been finalised on 24 November 2017. In that email he said he was sorry for giving Inspector Bennett and her team any reason to question whether or not he was a fit and proper person but he assured her he would not do anything to jeopardise losing or suspending his license in the future. He therefore sought reinstatement of his firearms licence.

39 Mr McCauley indicated he can shoot rabbits and hares and go target shooting with a Category A firearms licence. However he cannot shoot over the same distance with a Category A firearm as he can with a Category B firearm because a Category A firearm is not as powerful as a Category B firearm. He said he would not shoot over 50 m with a Category A firearm and he usually shoots rabbits and hares at a distance of about 150 m. A Category A firearm is not powerful enough to shoot a deer. He can shoot a kangaroo with a Category A firearm but he has rarely used such a firearm to shoot kangaroos. The SSAA T10 club at Pontville is a deer stalkers' club but he has not done any deer hunting with that club as he has gone to other properties. He used to go to the club with a friend to shoot targets.

40 Mr McCauley indicated he did not have a current game licence. He said he needs a Category B licence so he can continue target shooting. He is still permitted to shoot rabbits and hare without a game licence and also to travel to Victoria and shoot deer in that State pursuant to his Victorian game licence, but he wanted a Category B firearms licence to be able to participate in those activities at a distance of over 50 m. He assured me that if his application was successful he would not abuse such a privilege again. He was effectively asking for a second chance. He said the last three years had been painful and not much fun.

41 In cross-examination Mr McCauley said weekly payments of workers compensation were stepped down⁷ and have ceased altogether. He is however now in receipt of income pursuant to an income protection policy. Mr McCauley receives less from that source than what he received by way of weekly payments of workers compensation. That, and the fact he bought a house the day before he was injured at work, means that since February 2017 his financial situation has deteriorated.

42 Mr McCauley conceded he used to be friends with both Sean Free and Zack Hepburn but those friendships ceased approximately four months ago due to there being personal issues between them. He agreed both Mr Free and Mr Hepburn were well-known deer poachers and over the years he would regularly go shooting with them. He said he was last with Mr Free in such circumstances on 19 February 2017. He had not seen Hamish Wood who Mr McCauley acknowledged had been involved in illegal hunting for a long time. He conceded he ceased associating with Mr Hepburn, Mr Wood and Mr Free because that would not assist his chances in this application.

43 Mr McCauley acknowledged the difficulties he experienced in reapplying for his licence in 2015. He understood Tasmania Police held concerns about his fitness to hold a licence because police suspected he was engaged in poaching at that time and because of the people he was associating with. He acknowledged this experience had been a warning to him that there were concerns about his fitness to hold a firearms licence.

44 Tasmania Police's concerns were based upon some interactions with Mr McCauley in 2014 and 2015. After some prompting, Mr McCauley recalled the incident on 8 July 2014 and he explained in cross-examination you need targets to shoot at in order to sight a firearm. He agreed the optimum time to do that was during daylight hours but he considered there were no issues in him doing that at night time.

45 Mr McCauley also recalled the incident on 11 July 2015 and said during cross-examination he wore camouflage clothing just to keep warm. Most of the clothing he wears when hunting is camouflage clothing.

46 Subsequent to the events in [43] to [45], and prior to Mr McCauley committing the offences on 19 and 20 February 2017, he concedes police conducted a random firearms inspection at his residence on 28 January 2017. During cross-examination Mr McCauley indicated the missing firearm was lent to Mr Hepburn so that Mr Hepburn's partner could determine whether or not she would buy the firearm. She ended up purchasing that firearm.

47 Mr McCauley said if this application is successful, and once his finances improved, he would like to travel to Victoria 2 to 3 times per year if he could, in order to hunt. He also indicated he was hoping to have settled his workers compensation claim by the middle of February this year.

48 He conceded he shot the deer in February 2017 to feed his family because of his financial circumstances and that his financial circumstances have deteriorated since then. He said his actions on 19 February 2019 resulted from a spur of the moment decision. He said the Court could be sure he would not act in this way again for those reasons because his partner was now being paid more in her employment, and he had sold a four-wheel-drive motor vehicle which cleared a couple of loans. He said as a family they were getting by, although their financial circumstances were not great. He acknowledged that if he broke up with his partner he would have to rely upon the income received from the income protection insurer and, although his financial position would be worse in those circumstances, he said he would not behave in the manner he behaved in February 2017 again. He said I only had his word he was a changed man and the last three years had been the worst three years of his life.

⁷ This occurs by operation of s 69B of the *Workers Rehabilitation and Compensation Act 1988*.

49 He lied twice to police, first on the evening of 19 February 2017 and, second, on 20 February 2017, when he made his statutory declaration. He did so because he panicked on both occasions. He conceded he denied all involvement in the shooting of the deer because he did not want to lose his firearms. He indicated he was a member of the club at Pontville which he said was small, but he could not say whether Mr Hepburn and/or Mr Free were members. When pressed, he said they might be. He conceded he was prepared to lie to keep his firearms and he was prepared to lie to avoid any convictions. As to whether the Court could be satisfied he was not prepared to lie to obtain his licence, he said he had paid a heavy price, the last three years have been the worst three years in his life, that hunting is one of the most passionate things in his life, and he acknowledged his mistake but wanted a second chance to prove he would not make the same mistake again. He said there would be a lot of people who would doubt that. He also conceded he had an equally strong motive to lie to get his licence and his firearms back.

50 Finally he conceded Tasmania Police had Mr Free's version, that it was Mr McCauley who wanted to shoot deer and that Mr Free wanted no part in that enterprise and therefore he left Mr McCauley's vehicle. He was aware the police wanted to interview him about making a false statutory declaration and, in my view, and I so find, Mr McCauley only admitted his statutory declaration was false because he knew the police had Mr Free's version of events. His lies would not have been detected otherwise.

Discussion

51 It could not be successfully argued that at the time of the offending on 19 and 20 February 2017 Mr McCauley was a fit and proper person to hold a firearms licence. On 19 February 2017 he had trespassed on another person's property, shot a deer during closed season, had used a firearm at night for the purpose of taking partly protected wildlife, and he had unlawfully used light in the taking of partly protected wildlife. He fled the scene when he heard and observed an approaching motor vehicle, only to return when he believed the coast was clear. He was forced to leave the scene again due to the return of the motor vehicle. He then lied to police that evening about his involvement in these offences, and the next day he gave a false statutory declaration to police when he knew that to do so amounted to an offence. He was, as he said in evidence, prepared to lie in order to keep his firearms and avoid conviction. Having had a firearms licence for approximately six years, and having been warned about his obligations in 2015, I am satisfied Mr McCauley knew about his obligations under the Act. He had the capacity to comply with those obligations, but he clearly did not do so diligently and honestly. He was not, as at February 2017, a person who could be trusted with the responsibility of safely possessing and using firearms.

52 The events in February 2017 were, in my view, likely to occur given Mr McCauley's conduct on 28 January 2017 and his interactions with police on 8 July 2014 and 11 July 2015. As Mr McCauley has admitted, he was, in February 2017, prepared to lie to keep his firearms and avoid conviction. I therefore do not accept his explanations for his conduct on 8 July 2014, 11 July 2015 and 28 January 2017 in the absence of independent corroborating evidence.

53 So what, if anything, has changed since February 2017? Mr McCauley's counsel put to me his client had seen the error of his ways, had accepted responsibility for his offending in 2017 and had, albeit at a later stage, owned up to his wrongdoing. Mr McCauley accepts the granting to him of a firearms licence is a privilege, not a right, and he asserts he will not abuse that privilege again. It was submitted Mr McCauley was in a similar position to the applicant in *Jackson v Commissioner of Police – Firearms Services* [2014] TASMC 23 and *McCallum v Lieutier* [2014] TASMC 25. In *Jackson's* case the applicant had committed a number of offences in January and February 2013 which were:

“17 January 2013 common assault; and

21 February 2013 injure property, common assault, failing to take all precautions to ensure safe keeping of a firearm, failing to comply with ammunition storage requirements for Category A and B firearms and failing to comply with the storage requirements for Category A and B firearms.”

54

The common assaults perpetrated on his partner and injure property charge occurred after Mr Jackson had consumed too much alcohol, and the breaches of the Act were discovered when police attended his home. The evidence in that case was Mr Jackson had previously held a firearms licence for 17 years and he had no prior convictions under that legislation. He had expressed remorse in relation to his behaviour towards his partner and they had refocused on their relationship. He had no prior convictions for such behaviour. He was clearly, given his employment, in a position of responsibility. The cancellation of his licence was also having a severe impact upon him. In addition he had modified his alcohol consumption which was corroborated by his partner, who the Court was satisfied was genuinely sensitive to what amounted to the inappropriate use of alcohol, and who was not concerned with Mr Jackson's recent alcohol use. In fact she indicated she would not support his application and would not be living with Mr Jackson if she had any such concerns. Mr McCauley's case is clearly different to this case. The firearms offences in Mr Jackson's case are in a completely different category, namely they are storage offences. In addition, in this case, I have no evidence from Mr McCauley's partner to support his contention he has changed his ways or that she even supports his application.

55

In Mr McCallum's case he was charged with exceed .05 and having an unregistered loaded .22 rifle in his vehicle on 20 June 2010. Ammunition compatible with that rifle was also found in the vehicle. Records revealed that firearm had been reported lost in May 2010. Later that day police executed a search warrant at his home. In a storage cabinet that complied with the safe storage requirements for Category A and B firearms, police located three firearms which were registered to the applicant, together with another firearm which was registered to another licensed firearm owner. Some ammunition was incorrectly stored in the cabinet. A search of the rest of Mr McCallum's premises revealed four incorrectly stored firearms. He was charged with a number of offences and pleaded guilty to those offences on 25 January 2011. Mr McCallum was convicted of those offences and sentenced to a term of imprisonment of six months wholly suspended on conditions for three years. He did not commit any further offences after that time and shortly after the imposition of the sentence his firearms licence was cancelled. He did not challenge or appeal that decision. The suspended sentence ended on 25 January 2014. On 31 October 2013 Mr McCallum made an application for a Category A and B firearms licence for the purpose of recreational hunting/vermin control, but on 7 December 2013 he was notified that application had been refused on the basis that the delegate of the Commissioner of Police was not satisfied he was a fit and proper person. He sought a review of that decision. It was found on the evidence Mr McCallum had a history of alcohol abuse. However, since the imposition of the suspended sentence, he had worked hard to reduce his use of alcohol. He had settled down to a quiet life with his partner and children. He also had an excellent industrial record and for the last nine years had been subject to daily testing for alcohol and random drug tests in the course of employment, which tests he had never failed. He had also complied with the conditions of the suspension of the 2011 sentence. Although his offending in 2010 and his prior offending revealed a person who had an underlying tendency to abuse alcohol, a propensity for drink-driving and a person who was complacent and careless in respect of his obligations under the Act, those matters needed to be considered in the context that he had never been convicted of any offence relating to the misuse of firearms, apart from possessing a loaded firearm in a vehicle, nor any offence which included an element of violence. It was held that although Mr McCallum's history of alcohol abuse and the firearms offences were legitimate matters of concern, and certainly justified the cancellation of the firearms licence in 2010, the Court was satisfied, particularly having regard to the changes that had been made since the imposition of the suspended sentence, he was a fit and proper person to hold a firearms licence. Some four years had elapsed since the commission of those offences

without any further offence being committed or any suggestion he had breached any of the terms of the suspended sentence.

56 The length of time since any prior offending occurred is a relevant consideration. In some circumstances sufficient time may have passed to expunge what occurred in the past. However in other circumstances it may not. In *Re Davies* [1947] HCA 53, (1947) 75 CLR 409, Latham CJ said at 416 in the context of determining whether a person was fit and proper to continue to be a barrister:

“...immediately recent and more distant behaviour may be taken into account. It is not possible to draw a line at some point of time and to prevent the Court from looking behind that line. When a question arises in 1947 as to whether a person is a fit and proper person to continue as a barrister it is not irrelevant to consider facts which happened in 1934, 1944 or 1946. Such facts may be most informative as to his character. When a considerable period of time has elapsed past facts should be considered in the light of the lapse of time, and weight should be given to the subsequent behaviour of the person concerned.”

57 Again, Mr McCallum’s case is different to Mr McCauley’s case. Although there is approximately three years between the offending and the decision in this matter, Mr McCauley lodged his application for review of Mr Shepherd’s decision approximately 15 months after the offending. In addition, and importantly in this case, Mr McCauley acknowledged he had only ceased his association with well-known deer poachers approximately four months prior to this hearing. Further, although the reason for cutting ties with them was stated to be due to personal issues, I was not told what the issues were between them. To persuade me he had indeed changed Mr McCauley had to be far more frank with respect to his past association with these men and his recent disassociation with them. His assertions on this issue and his assertions generally given his lies to police, his conviction under s113(1)(a) of the *Criminal Code Act* 1924, his concessions he was prepared to lie in order to keep his firearms and avoid conviction and he had the motive lie to this Court to get his licence and his firearms back necessarily means Mr McCauley’s assertions must be treated with caution. I am not prepared to accept them unless they are corroborated. Finally, I think Mr McCauley’s concession he ceased associating with well-known deer poachers because his association with them would not assist his chances in this application is a very telling, albeit obvious, concession.

58 My other difficulty in this case is the evidence that was provided with respect to his family’s financial circumstances. Those circumstances were difficult at the time of the offending in 2017; in fact that was one of the reasons it occurred. Mr McCauley confirmed his financial circumstances had worsened since, but, although difficult, the family was getting by on the additional income which was being earned by Mr McCauley’s partner. It was also suggested by Mr McCauley he would be able to settle his workers compensation claim by way of a lump sum in or about the middle of February this year. His evidence about his financial circumstances and that of his partner was vague and that evidence was not corroborated by his partner. It is also not possible, given I was not told why Mr McCauley’s workers compensation claim was disputed or what evidence there was with respect to the validity or otherwise of his claim, to make any assessment as to whether or not his claim would settle, and even if it did settle, that it would settle for an amount that would alleviate his family’s difficult financial circumstances. I am therefore left in a position that if he was successful in this application I am satisfied, because of the vague and uncorroborated evidence with respect to his family’s financial circumstances, the temptation still exists for Mr McCauley to breach his obligations under the Act in order to “*put meat in the freezer*”.

59 While the reference which is in evidence attests to Mr McCauley’s general good character, it is not clear from its terms whether Mr Jones is aware of Mr McCauley’s offending in 2017, his hunting activities generally, and his association with known deer poachers. Because of this, little weight can be attributed to the reference.

60 Finally, I do not accept Mr McCauley admitted his involvement in these offences and his false declaration for the reasons he provided to this Court. The real reason for his admissions was, not only did he know Mr Free would have provided a different version to police, he knew police were looking for him. He had been found out. As Mr Miller submitted, if Mr Free had remained silent then it was unlikely Mr McCauley would have been charged. In those circumstances this application would not have been necessary.

61 In summary without corroborative evidence of his assertions Mr McCauley has not persuaded me he is now a person who can be trusted with the responsibility of safely possessing and using firearms.

Order

62 I order pursuant to s 26(3)(a) of the *Magistrates Court (Administrative Appeals Division) Act* 2001 that Mr Shepherd's decision is affirmed.