

The Grounds of Appeal

Mr Clarke lodged an appeal to this Tribunal on the following grounds.

1. Guy Clarke has been charged with a single count of aggravated assault; the matter is currently listed for mention in the Darwin Local court at 9.30am on 31 August 2020.
2. A preliminary examination of the material confirms that Mr Clarke has a defence which should see the charge against him withdrawn or dismissed.
3. There is an independent witness by the name of Jessica Longe, who can verify Mr Clarke's instructions and confirm he was acting defensively when threatened by the alleged victim, Raymond Vigar.
4. Mr Clarke did not seek advice before appearing at the hearing before the Stewards on 14 July 2020. He should not have pleaded guilty to improper conduct at that time. He was told by Mr Hensler that it was just going to be a friendly chat, not an inquiry.
5. The penalty imposed on Mr Clarke is manifestly excessive, given the facts and circumstances surrounding the alleged incident.
6. Mr Clarke's sole source of income is derived from track work and farriers' services he provides primarily at the Fannie Bay Racecourse.
7. Mr Clarke has a mortgage and the 18 months disqualification period will see him experience significant financial difficulties.
8. The Thoroughbred Racing Northern Territory Stewards should have considered other sentencing options such as a suspended sentence or imposing conditions on Mr Clarke's licence.
9. For the above reasons, the appeal should be granted and a stay of proceedings put in place until such time the appeal can be heard.

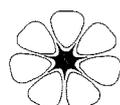
Subsequently Mr Maley by letter on 26 August provided an amended notice of Appeal:

The penalty imposed on the appellant is manifestly excessive having regard to the facts and circumstances surrounding the alleged incident, as well as his personal circumstances.

The facts and circumstances surrounding the incident are still live issues. The stewards found the facts and circumstances to be as Mr Vigar gave in evidence wholly supported by the CCTV footage and found the assault to be violent, serious and unprovoked. We entirely agree with that finding. Regardless of the plea of guilty a finding of guilty was inevitable. From that conclusion the remaining question concerns the penalty and whether it was "manifestly excessive".

The plea of guilty:

The discussion between Mr Clarke and stewards about pleading guilty or not guilty is confusing reading but displays one constant that Mr Clarke considers himself innocent because he acted in self-defence and he argues this case strongly until at page 47 says:



Mr G Clarke Well can you explain that to me like what is going to go on from here?

Mr D Hensler Yes sure, well it is like anything when you are charged you have been before the Stewards before for other matters so you know how inquires work.

Mr G Clarke Yep, yep.

Mr D Hensler So we have decided on the evidence before us that the charge should be issued, we are not saying you are guilty of it that is the charge that has been issued. You can plea to the charge so you plead guilty, not guilty you know if you want to defend the charge you can but you have got to be comfortable with what your plea.

Mr G Clarke Yep, yep.

Mr D Hensler So if you plead guilty, we go directly to a penalty. If anything, we will ask you to tell us about you know what you think mitigating factors are and that may be what you are saying that you were acting in self-defence.

Mr G Clarke Ah, okay I understand that.

Mr D Hensler At the end of the day the charge itself is that you did physically assault licenced jockey Raymond Vigar by striking him in the head with your right hand. So, there is no specifics as to the charge as to why you did that but you did do it.

Mr G Clarke Yep.

Mr D Hensler So mitigating factors will be what we determined through the process of the inquiry. What your mind set was, what his was and we take into account the evidence of Jessica, she is a witness in your evidence. Raymond's evidence but in particular the video evidence which is something we don't always have and it is quite clear what has occurred.

Mr G Clarke Is there any audio?

Mr D Hensler No on the vision they don't actually have audio.

Mr G Clarke No I understand that.

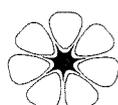
Mr D Hensler It is same as the CCTV over at the Turf Club.

Mr G Clarke Yep.

Mr D Hensler Does that help that explain that more to you?

Mr G Clarke Yep that does, guilty.

As we have observed a plea of not guilty would have been futile. The weight of credible evidence would certainly have resulted in a finding of guilt. The plea was hollow. There is no remorse, no regret other than that he is in trouble, no sparing of witnesses the trauma of testimony, no saving anything really. Despite the hollowness of the plea the stewards seem to have arrived at a two year disqualification and given him a 25% discount for a guilty plea to reduce the period to 18



months. There was no basis to apply such a discount in this case. Mr Clarke's position to this day is that he acted in lawful self-defence and deserves no penalty.

Evidence admitted

By mutual consent each party presented written material some of which we received without being given an adequate explanation of its relevance. Mr Maley placed considerable reliance upon a 25 page report by Margaret Mary Dixon, a well credentialed psychologist. She gives a detailed account of Mr Clarke's childhood, his rejection of his father, his falling in with a bikie gang, as a tattooist, his unusual release from the gang and involvement with drugs including some prescribed. It includes an overdose of "polypharma" in the jargon. It suggests that a change in dosage or prescription of anti-depressant drugs might exacerbate and otherwise explain this violent behaviour. A short report from GP Dr Pillai supports this. Mr De Silva tendered a technical bulletin from the makers of the anti-depressant prescribed to Mr Clarke warning against consumption of alcohol. Nowhere in the material is there any acceptance that this vicious attack is something for which Mr Clarke might accept responsibility. Nowhere is there any sense of remorse apart from the effect of his actions on him.

The final paragraph of the psychologist report contains this observation:

"Whilst he is regretful for actions he should have taken or not taken' it appears overall that the patient is willing to calmly take responsibility for the outcomes."

This is hardly the remorse which might trigger a "discount" for a plea of guilty.

Other matters

The Tribunal gave close attention to the issues of mental health raised in reports and submissions. We note that violent behaviour before the stewards in August 2018 amounted to improper conduct following his being found guilty of a charge related to cocaine. Considering the remarks of the stewards on matters taken into account it is clear that the violent nature of the unprovoked assault was the determining factor for assessing penalty. General deterrence as part of the extended reasons cannot be seen to have any effect on the end result. Therefore we are not assisted by the decision of the Victorian Court of Appeal in *The Queen v Verdins*.

Consideration

The Tribunal at first thought the starting point we attributed to the stewards of two years might have been excessive but as the matter proceeded we came to the view that it was not too high as to show error in the sense discussed by the High Court in *House v The King* (1936) 55 CLR 499. When we considered the apparent reduction of 25% to 18 months merely on a hollow plea of guilty which was unmerited we concluded that the end result was neither unreasonable or plainly unjust. That is to say that while the method for arriving at an 18 month disqualification was flawed in the way we have described the end result is appropriate. Accordingly this appeal must fail and is dismissed.



TOM PAULING AO QC
CHAIRMAN

