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THE MAGISTRATES COURT OF
WESTERN AUSTRALIA
CRIMINAL

JO 8878 of 2010

WA ELECTORAL COMMISSION

and

MORTON STUART MACDONALD

(Sentence)

BEFORE: MAGISTRATE PACKINGTON

EXTRACT OF PROCEEDINGS

AT PERTH ON TUESDAY, 12 OCTOBER 2010, AT 11.30 AM

12/10/10
(s&c)

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HIS HONOUR: I don't know that I actually need to look at that. I don't know what the Full Court said about the relevant provisions of the Fines, Penalties and Infringement Notices Enforcement Act, but what I would say is that those provisions are penal provisions and have to be construed strictly, because at the end of the day it is possible under the Fines, Penalties and Infringement Notices Enforcement Act for people to be imprisoned, to have their goods seized, and more commonly of course to have their driver's licence suspended.

So it's very important that the provisions of the act which set in train the procedures by which those ends can be visited upon citizens be complied with strictly, and the enforcement certificate provided for in section 16 seems to me to be important because it is a shorthand or easy way for a public authority, if that's the right term, to place a matter which it has been dealing with in the hands of the Fines Enforcement Registry.

It provides I suppose for a sort of a paraphrase of what has happened so far, and it then triggers the action that the registrar of the Fines Enforcement Registry will undertake, and it does seem to me that the infringement notice plays a crucial part in that procedure, whether one regards it only as the procedure adopted by the authority referring a matter to the Fines Enforcement Registry or whether one views the procedure as covering everything that is done by not only the authority but also the Fines Enforcement Registry.

To put it another way, when the registrar embarks upon a prosecution of a type such as is before the court today, his authority to do so depends on strict compliance with the prescribed procedures to be followed for the registration of an infringement notice, and the act, that is, the Fines, Penalties and Infringement Notices Enforcement Act, says that to register an infringement notice, of course the infringement notice issued to the accused in this case, Mr Macdonald, should have been validly registered with the registrar for there to be a proper prosecution. Section 16 of the act says:

To register an infringement notice with the registry for enforcement an authority must give the registry:
(a) an enforcement certificate and (b) such information as the registrar requires in such manner as the registrar specifies.

I have not been told anything about a requirement by the registrar that information must be given or that it be

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given in a particular manner, but I do have before me an enforcement certificate provided by the deputy electoral commissioner for the Western Australian Electoral Commission. The act, in section 16, further provides:

An enforcement certificate must identify the alleged offender to whom and the alleged offence to which it relates.

This enforcement certificate on its face does not identify any alleged offender specifically or, as far as I can see, an alleged offence. It says:

I certify that in relation to all attached infringement notices -

that certain things have happened. Of course there are no infringement notices attached. What is attached, if I can use that word loosely given that the attachment was eventually sent by facsimile to the registry after the enforcement certificate had been taken there, what was intended to be attached - and perhaps I can regard it as having been attached - is a list of people.

I'm sure that an enforcement certificate would comply with the section if it said, "This certificate applies to all the alleged offenders named in the attached document," or words to that effect, which it doesn't. It says "in relation to all attached infringement notices".

The excerpt from the proposed attachment mentions the 2009 daylight saving referendum. It mentions Ocean Reef. There is set out a number. Did you say that was an infringement notice number, you thought?

REPPER, MR: I think that's what I said, yes, your Honour.

HIS HONOUR: It sets out the date of the referendum. It sets out the names of the alleged offenders. I don't know what the dates are that come at the end of the line.

REPPER, MR: I recall the first was the birth dates.

HIS HONOUR: Yes, and what after that?

REPPER, MR: The second was the date on which the final demand was sent.

HIS HONOUR: Yes. Then there are other figures, 9001, and then there's a sum of money presumably as a penalty.

REPPER, MR: Yes.

HIS HONOUR: But, frankly, one would have to infer, without benefit of the prosecution notice, that the alleged offence was failing to vote at the 2009 daylight saving

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referendum, because neither the certificate nor the attachment make that clear. Anyway, even if I accept that the alleged offender is identified in the certificate by reason of the fact that there was to be attached to it, in the form of a thumb drive, a list of alleged offenders, the alleged offence is not identified. Further, it is provided in section 16 subsection (2):

The enforcement certificate must state that on a date specified in the certificate an infringement notice was issued to the alleged offender in respect of the alleged offence.

The certificate says:

An infringement notice was on the day specified issued to the alleged offender.

No day is specified. No day is specified in the enforcement certificate, and no day, as far as I can see, is specified in the attachment. It seems to me that under the scheme provided for in the Fines, Penalties and Infringement Notices Enforcement Act, the issue of the infringement notice is an important aspect, and the date of it is important because all else runs from it.

I note, for example, that in subsection (5) of section 16 it is provided:

If the law limits the time within which proceedings for an alleged offence may be commenced, an enforcement certificate in relation to an infringement notice issued (indistinct) must not be lodged after that time limit has expired.

In my view, the enforcement certificate does not comply with section 16 of the Fines, Penalties and Infringement Notices Enforcement Act, and it follows, in my view, that the registrar did not therefore have the necessary statutory authority to embark upon this prosecution, and I would therefore dismiss this charge.