

JP:DAT MC

630/13
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IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE XXXXXXXX SC

PARRAMATTA: THURSDAY 13 JUNE 2013

2013/00041691 – Defendant D v R**JUDGMENT** - Appeal against conviction; see transcript p 7

HIS HONOUR: Defendant D appeals from the conviction entered against him on 12 March 2013 when he was convicted of parking a motor vehicle in an area requiring a ticket to be displayed.

The defence raised by Mr Defendant D is an unusual one, but one which must be given proper attention. Amongst other things, it is necessary for the prosecution to prove that the officer who issued the parking infringement notice and/or the Court attendance notice was an appointed officer, that is appointed by the Parramatta Council to perform those functions. Mr Gough who appears for the respondent, council, has not been able to prove on the appeal that the officer was appointed by the council.

Various other matters raised by Mr Defendant D, I should briefly note, would have failed.

The Parramatta Council is a corporation known to the law by reason of the provisions of the **Local Government Act**. The fact that a referendum in the 1980s failed to incorporate local government into the federal constitution does not mean that the council is not a legally recognisable authority. It is created by act of state parliament and is a lawful corporation.

The other matters which the prosecution would needed to have proved, namely that the motor vehicle was parked without a ticket, that the appellant

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was the registered operator, that the offence was a designated offence and all the other matters necessary for the prosecution to prove, in my opinion, were made out. The one matter which the prosecution has not proved was, as I have said, the fact that the relevant officer was duly appointed.

The appeal is therefore allowed and the conviction and the penalties are set aside.

I would add to that the solicitor who appeared for the council today was not aware that this was a conviction appeal. That is no criticism of Mr XXXXX. I accept without hesitation that there was a genuine misunderstanding within his office as to the nature of the appeal.

Moreover, the point taken by the appellant, whilst ultimately an effective one, is one which is not ordinarily taken and the solicitor for the respondent is not to be criticised for failing to have that particular piece of evidence available to him today. It would have been unreasonable to expect him to have done so, but in the result, that's the point that the appellant has taken and the appellant has succeeded.