

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Samuel Joshua Tasker
Licence Number:	4744
Proceedings:	Application for reinstatement of Dual Security Officer / Crowd Controller Licence
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Philip Timney (Legal Member) Ms Helen Kilgariff
Date of Hearing:	31 March 2011
Appearances:	Senior Licensing Inspector Wayne Sanderson Mr Samuel Joshua Tasker

Background

- 1) Mr Tasker was granted a conditional Crowd Controller / Security Officer licence on 22 November 2004 and held that dual licence until 11 March 2006 when the *Private Security Act* ("the Act") was amended to introduce disqualifying offences. Mr Tasker had been convicted on 12 November 2003 of a number of property and dishonesty offences, committed whilst Mr Tasker was a minor. When Mr Tasker applied for renewal of his licence after the amendments to the Act he was advised that one of the offences for which he was convicted when he was a minor was a disqualifying offence with the result his licence would not be renewed by the Licensing Commission as it did not have the power to waive disqualifying offences.
- 2) Mr Tasker appealed the non-renewal of his licence and on 3 August 2006 the Local Court ordered that Mr Tasker be allowed to renew his Security Officer licence. The Court did not order the renewal of his Crowd Controller licence. For reasons that are not entirely clear to the Licensing Commission given the disqualifying offence, Mr Tasker was subsequently granted a dual Crowd Controller / Security Officer Licence on 30 April 2007. That licence was due to expire on 15 September 2010.
- 3) In July 2010 officers of Licensing Regulation and Alcohol Strategy became aware that Mr Samuel Tasker had been charged with the following offences:
 - Possess a dangerous drug contrary to Section 9(1) and 9(2)(f)(ii) of the *Misuse of Drugs Act*; and
 - Possess a trafficable quantity of a dangerous drug contrary to Section 9(1) and 9(2)(e) of the *Misuse of Drugs Act*.
- 4) Those offences are disqualifying offences for the purposes of holding a Crowd Controller or Security Officer Licence. On 24 August 2010 Mr Tasker applied for annual renewal of his Crowd Controller Licence. On 31 August 2010 the Chairman of the Licensing Commission issued a notice to Mr Tasker advising that his Security Licence was suspended pursuant to Sections 26(1) and 27(6) of the Act on the grounds that he had been charged with disqualifying offences. Consideration of the application for renewal of Mr Tasker's licence was deferred pending the outcome of the criminal proceedings.

- 5) On 16 December 2010 Mr Tasker appeared in the Local Court in response to the drug offences. He was found guilty on both counts, without the recording of a conviction, and released on a good behaviour bond for eighteen months subject to a surety of \$500.
- 6) The matter was referred to the February 2011 meeting of the Licensing Commission. The Commission determined to conduct a Hearing into whether Mr Tasker remained an appropriate person to hold a Crowd Controller / Security Officer Licence.

Hearing

- 7) At the commencement of the Hearing Mr Tasker was informed of the issues relating to renewal of his licence that were of concern to the Commission. Namely:
 - His failure to notify LR&AS at the time he was charged with the drug offences;
 - The reasons behind the Police obtaining a search warrant to enter and search Mr Tasker's private residence;
 - Why his application for renewal of licence did not refer to the charges that had been laid against him prior to him lodging the renewal application; and
 - Whether, taking account of the finding of guilt in respect of the drug charges, Mr Tasker remained a suitable person to hold a security licence.
- 8) Mr Tasker informed the Commission that he was first summonsed in relation to the drug offences on 28 September 2010, which was after the date on which he lodged his licence renewal application. He stated that he was in Renmark SA at the time looking for work and was not sure prior to that whether or not he would be summonsed for the offences.
- 9) Mr Tasker stated that he was going through a bad period last year and he had purchased the drugs as a form of relief or escape from his problems. He added that he had purchased the drugs at licensed premises but not from a security officer and they were for his own personal use. The drugs were four x MDMA (Ecstasy) pills and 3.5 grams of cannabis plant.
- 10) Mr Tasker stated that he thought the Police had obtained a search warrant as part of a Police operation that invited members of the public to "dob in druggie". He stated that he was not a regular drug user and that he had co-operated fully with the Police during the search, including showing them where the drugs were located at his residence.
- 11) Mr Tasker noted that, should his licence be renewed, he intended to work in the security industry, primarily in the area of installing security systems at premises. He noted that he had the support of his prospective employer in that field of work. Mr Tasker added that he was in a stable relationship and is having a fifth child with his wife and that the employment he had been offered would assist by providing more work and a better income than he was currently enjoying.
- 12) Senior Inspector Sanderson stated that, despite the drug offences, the Deputy Director was not opposed to the grant of a Security Officer licence. However, he does not support the grant of a Crowd Controller licence that would entail work at licensed premises and regular contact with members of the public.

Consideration of the Issues

- 13) The Commission is restrained by the Act from granting a Security Licence to a person who has been found guilty of a disqualifying offence, with that power being reserved for the Local Court.
- 14) On 12 November 2003 Mr Tasker was convicted in the Alice Springs Juvenile Court of various property related offences, including receiving stolen property which is a

disqualifying offence within the terms of Section 15(7)(a) of the Act for the purposes of holding a Crowd Controller or Security Officer licence. In the normal course that disqualifying offence would preclude Mr Tasker from holding either category of licence for a period of ten years.

15) However, Section 6 of the *Criminal Records (Spent Convictions) Act* provides:

6 Convictions may be spent

(2) *Subject to this Part, a criminal record is a spent conviction on the expiration of a period, immediately after the date of conviction of the offence, of:*

(a) *where the offender was convicted in the Youth Justice Court within the meaning of the Youth Justice Act – 5 years; and*

(b) *in any other case – 10 years.*

16) As a result Mr Tasker's conviction for receiving stolen property became a spent conviction on 12 November 2008. Section 11 of the *Criminal Records (Spent Convictions) Act* states:

11 Person not required to disclose spent record

Subject to this Part, where a record is a spent record:

(a) *the person to whom it relates is not required to disclose to another person that spent record;*

(b) *... ..; and*

(c) *in the application to a person of a provision of an Act or instrument of a legislative or administrative character:*

(i) *a reference to a conviction, criminal history or criminal record or record of a similar kind shall be taken to be a reference only to a record which is not a spent record; and*

(ii) *a reference to a person's character or fitness shall not be taken as permitting or requiring a spent record to be taken into account.*

17) For the purposes of Mr Tasker's application to renew his dual Security Licence, the Commission is not to take into account the fact that Mr Tasker was convicted of the offence of receiving stolen property in 2003 when he was a minor. In effect, the spent conviction is no longer a disqualifying offence.

18) So far as the recent drug related offences are concerned, on 16 December 2010 Mr Tasker was found guilty, without convictions being recorded, of two offences against Section 9(1) of the Misuse of Drugs Act. Those offences are disqualifying offences for the purposes of holding or renewing a crowd controller or Security Officer Licence. However, Section 15(7) of the Act provides:

(7) *A person is not an appropriate person to hold a licence if the person, within 10 years of applying for a licence, has been **convicted of:***

(a) *a disqualifying offence in relation to such a licence; (emphasis added)*

19) As noted above, Mr Tasker was found guilty of the drug offences however no conviction was recorded with the result Section 15(7)(a) has no application in this case. However, that does not conclude the issue. Section 15(6)(e) of the Act requires the Commission, in considering whether a person is an appropriate person to hold a security licence, to take into account the fact that a person has been **found guilty** of an offence, regardless of whether or not a conviction has been recorded.

- 20) In the circumstances set out above, the Commission is tasked with determining whether Mr Tasker remains an appropriate person to hold a security licence despite the fact he has been found guilty of two offences against Section 9(1) of the *Misuse of Drugs Act*.
- 21) The Commission is greatly assisted in this matter by being provided with the transcript of proceedings before His Honour Mr Borchers SM in the Local Court. His Honour was aware at the time of handing down his decision that a conviction would likely result in Mr Tasker being disqualified from holding a security licence. Of significance to the Commission in its deliberations, His Honour took account of the following matters in determining not to record a conviction:
- The cannabis in Mr Tasker's possession was a minor amount that, if dealt with alone, would result in a finding of guilt with no conviction and a small fine;
 - Whilst the possession of the MDMA pills was a more serious offence, it was accepted that Mr Tasker did not intend to traffic the drugs but rather they were for personal use;
 - Mr Tasker had successfully completed the CREDIT program;
 - Mr Tasker has not appeared before the Court as an adult and he had completed the community work ordered as a result of the convictions when he was a minor;
 - The offences for which Mr Tasker was convicted when he was a minor occurred seven years previously;
 - It was clear that Mr Tasker was co-operative with Police during the execution of the search warrant; and
 - The job offered to Mr Tasker in respect of the installation of security systems provided as opportunity for him to be employed in a position where he would acquire technical skills.
- 22) The Commission is highly persuaded by the transcript of proceedings and the matters taken into account by His Honour, in determining not to record a conviction against Mr Tasker. It is clear from the transcript that His Honour took into account that fact that a conviction would preclude Mr Tasker from holding a Security Licence for a period of ten years and effectively prevent him from taking up the employment he has been offered in the security industry.
- 23) The Commission is satisfied for the reasons set out above, that despite being found guilty of the drug offences, Mr Tasker is an appropriate person to hold a Security Officer Licence. The previous convictions recorded when Mr Tasker was a minor are spent convictions and are not taken into account by the Commission.
- 24) The Commission is not satisfied however that Mr Tasker is presently an appropriate person to hold a Crowd Controller licence. In reaching that conclusion the Commission notes that Mr Tasker has admitted that he obtained the MDMA pills from licensed premises in Alice Springs. In all the circumstances the Commission has determined that Mr Tasker is not currently a person who should be employed or engaged as a Crowd Controller at licensed premises where he would come into frequent contact with patrons, and particularly not at a nightclubs and the like frequented by patrons in the younger age brackets where illicit drugs are more likely to be present.
- 25) Had Mr Tasker been convicted on the offences, as distinct from the finding of guilt with no conviction, he would have been precluded from holding a Crowd Controller licence for a period ten years. For obvious reasons, the Commission holds a firm view that persons with drug convictions should not be engaged as crowd controllers at licensed premises where they are likely to come into contact with a range of people and likely to be exposed to illicit recreational drugs.

- 26) Given the fact Mr Tasker was found guilty of the drug related offences very recently, on 16 December 2010, the Commission is not prepared, at this stage, to renew his Crowd Controller Licence. In reaching this decision the Commission notes the submissions made by Mr Tasker during the hearing that, whilst his preference would be to have the dual licence restored, the type of employment which he has recently been offered requires only that he hold a Security Officer Licence.

Decision

- 27) The Commission finds that, despite the recent finding of guilt in respect of the drug offences, Mr Tasker is fit and proper for the renewal of his Security Officer Licence. In taking this decision the Commission places significant faith in the submissions made by Mr Tasker that he has turned the corner and is looking towards a long term career in the security industry.
- 28) For the reasons set out above, the Commission is not minded to renew Mr Tasker's Crowd Controller Licence at this time. The Commission advises Mr Tasker to not to re-apply for a Crowd Controller Licence prior to the expiry of the good behaviour bond to which he is currently subject, namely 15 June 2012.

Richard O'Sullivan
Chairman

4 May 2011