



## Taha v. Broadmeadows Magistrates' Court; Brookes v. Magistrates' Court of Victoria

[2013] VSCA 37

**Country:** Australia

**Region:** Oceania

**Year:** 2013

**Court:** Supreme Court of Victoria Court of Appeal

**Health Topics:** Mental health, Violence

**Human Rights:** Right to due process/fair trial

### Facts

Mr. Taha was arrested for failing to pay outstanding traffic fines and was sentenced to imprisonment by a magistrate after a hearing. Mr. Taha was intellectually disabled and had been certified as such and placed on a Justice Plan. Neither his legal representative nor the magistrate were aware of this, but if they were they could have applied for a waiver or reduction of the fine pursuant to Section 160(2) of the Infringements Act ("Act").

Ms. Brookes had incurred a large number of fines associated with driving a car, many of which were actually from her partner with whom she was in an abusive relationship. Ms. Brookes was diagnosed with PTSD from this abusive relationship three years before she was arrested for failure to pay the fines. Though her legal representative requested that her special circumstances be considered, the Magistrate refused to consider them without written support. Ms. Brookes then received a further installment order, and when she later defaulted, she was sentenced to imprisonment.

On appeal, a judge overruled Mr. Taha and Ms. Brookes' sentences. The state appealed.

### Decision and Reasoning

The Court upheld the judge's decision that the magistrates needed to consider making an alternative order instead of imprisonment under Sections 160(2) and (3) of the Act, and that by failing to do so they had made an order beyond the court's power. The Court used principles of statutory construction to decide this, reasoning that an act of Parliament should be read as a whole and so Section 160(1) should be read in the context of 160(2) and (3).

Depending on the facts of the case and whether "flags" are present, the Court found that the magistrate had a duty to inquire whether the offender has special circumstances that would justify an alternative order. The Magistrates' lack of inquiry amounted to procedural unfairness because, had Mr. Taha and Ms. Brookes' intellectual disabilities been taken into account, the hearings would have been conducted differently.

The Court also held that a unified construction of Section 160 was supported by the Charter of Human Rights and Responsibilities Act 2006 ("Charter"). The Charter provided for special treatment for those with mental disabilities, as well as the rights to liberty and a fair trial. Sections 160(2) and (3), which provided alternative options to imprisonment, were intended to protect mentally ill individuals from being unfairly punished or caught up in the system. After looking at the legislative history, the court found that the act did not plan to have imprisonment be the default punishment and so offered alternative measures available to suit the circumstances of individual offenders. It was thus necessary to interpret Section 160 in a way that did not cause Taha and Brookes to be imprisoned unjustly or disproportionately.

### Decision Excerpts

"He emphasised that the ground of special circumstances served to ensure that persons with a mental impairment were kept out of any automated process of enforcement...[there are filters] to prevent people with special circumstances being channelled into a highly automated enforcement process." Para. 85.

"The powers given under sub-ss(2) and (3) of s 160 to avoid imprisoning an infringement offender with a

mental illness or intellectual disability, or to imprison them according to a less draconian formula, had been included precisely to avoid the imprisonment of the vulnerable; that is, to avoid detaining, or detaining for longer than appropriate, an infringer of the law where there were special circumstances that would render imprisonment according to the formula in sub-s (1) unjust, or where imprisonment would be excessive, disproportionate and unduly harsh." Para. 200.

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