

Remission of Driving Disqualification

Royal prerogative of Mercy

In my criminal law practice I have had the pleasure of seeing many criminal clients change their lives and become honest and respected members of the community. Sadly, many of these clients are haunted by criminal convictions and licence disqualifications that cause them hardship which is disproportionate to the mistakes they have made.

The Royal Prerogative of Mercy

The Crown Advocate has advised that the purpose of the Royal prerogative of mercy is to temper the rigidity of the law. Even though an applicant may not deserve a reduction in his or her penalty as a matter of justice, as a matter of clemency, the price he or she will have to pay for their wrongdoing has become disproportionate. The continued disqualification will result in extreme hardship for which no other alternatives are available.

The following principles are set out to guide crown law officers when considering a petition and advising the governor:

1. Public Safety – Evidence of Rehabilitation,
2. Extraordinary circumstances, and
3. Other Factors

Public Safety – Evidence of Rehabilitation

The applicant must provide evidence in support of his or her claim to rehabilitation. In the absence of such evidence, it would be highly improbable that other circumstances could warrant the extension of clemency – especially if there is a possibility of re-offending. If there is any doubt as to public safety, the application will be refused.

Alcohol / Drug Offences

These offences indicate a potentially extreme risk to public safety, so a heavy onus rests on the applicant to provide evidence of rehabilitation. Evidence must be provided as to the applicant's abstinence from drinking / drug use. Documents which demonstrate that the applicant has received / is receiving counselling, medical evidence and character references of a corroborative nature are required as a matter of course.

General Rehabilitation

In addition, evidence of general rehabilitation is required. References attesting to the applicant's character and attitude to the offence would be required. The applicant must not have reoffended during the period of disqualification.

In evaluating the status of an applicant, consideration can be given to various factors:

- the age of the applicant (especially if under 25 years),
- evidence of a new sense of responsibility and maturity (which could include a subsequent history of stable employment and / or family responsibility), and

- recognition by the applicant of both the seriousness of the offence and the appropriateness of the penalty imposed.

Extraordinary Circumstances

Evidence of rehabilitation is necessary though not in itself sufficient to support a recommendation for remission. In order for the Attorney General to intervene in the decision of a court, further exceptional circumstances need to exist.

It would be expected that these circumstances will have arisen after the sentence was imposed, or at least can be demonstrated as not having been able to have been taken into account by the court at the time the sentence was handed down (for example, where a relevant medical condition existed at the time but was only subsequently diagnosed).

As a general principle, what the applicant must demonstrate is both:

1. A pressing need for a licence, and
2. The absence of any reasonable alternatives to holding a licence.

Medical Grounds

The most compelling extraordinary circumstances are those that involve medical issues. Examples include where the applicant is required to attend for medical treatment of a serious nature (either regularly or where there is a real threat of a need for emergency treatment) or where the applicant is in a carer relationship with a person (for example elderly parents, spouse or dependent child) with a similar need. In such cases detailed documentary evidence of the medical condition and the need for, and availability of, treatment is required.

Financial & Domestic Hardship

Many applicants will point to the financial hardship that follows from the imposition of the penalty. Further, the strain on a relationship or the effect on family life may also be raised. However, these circumstances would normally have been foreseeable both at the time of the offence and at the time of the imposition of sentence. As such, these circumstances cannot support a recommendation for remission.

In particular, evidence of the detrimental effect of disqualification on employment prospects will not justify a recommendation of remission. Evidence that remission will improve an applicant's income or career prospects is also insufficient.

Other Factors

In addition to the two primary issues of Public Safety & Rehabilitation and Extraordinary Circumstances, both of which must be satisfied in order to support a recommendation for remission, the Attorney General may have regard to other factors such as the seriousness of the offending and previous driving record of the applicant, especially if it indicates a general disrespect for the law. The remaining period of the disqualification may also be a relevant consideration.

The Petition

The application for a remission in sentence is known as a petition for mercy. The Governor of NSW has a broad discretion to dispense clemency which he or she exercises on the advice of the Attorney General's Department. However, granting clemency to one offender does an injustice to every other offender who has to cop it sweet. So, it is up to the petitioner to demonstrate why the Governor should intervene instead of allowing the law to run it's course.

Petitioners should provide documents to support their claim of special circumstances or hardship. Petitions to the Governor should be posted to the Governor at:

Office of the Governor of New South Wales
Level 3, Chief Secretary's Building
121 Macquarie Street
Sydney NSW 2000

The Governor refers these petitions to the Attorney General who receives the advice of Crown law officers and makes a recommendation to the Governor in an Executive Council Minute.

Should you require assistance drafting a petition, I am available everyday after 4pm.

Chris Nowlan
Barrister-at-Law
Ph: (02) 9024 9533
chris@chrisnowlan.com