

SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeal: Criminal)

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HUSSAINI v COMMISSIONER OF POLICE

[2026] SASC 104

Judgment of the Honourable Justice Bochner

2 July 2026

MAGISTRATES - APPEAL AND REVIEW - SOUTH AUSTRALIA - APPEAL TO SUPREME COURT

CRIMINAL LAW - APPEAL AND NEW TRIAL - APPEAL AGAINST CONVICTION RECORDED ON GUILTY PLEA - PARTICULAR CASES

This is an appeal against a sentence imposed by a Magistrate for offences of disorderly behaviour, contrary to s 7(1)(a) of the *Summary Offences Act* 1953 (SA).

On 5 October 2025, the police were called to a domestic disturbance. On arriving at the subject address, the police were approached by the appellant, where she became upset and used offensive language towards the police and the other person involved in the disturbance. She was given numerous warnings by the police to cease her abusive behaviour; when she did not, she was arrested. On 15 January 2026, the appellant was convicted and fined \$100 on one count of disorderly behaviour in the Magistrates Court.

The appellant made submissions on her background and the sequence of events leading up to the offence, arguing that she should be afforded the Court's discretion under s 24 of the *Sentencing Act* 2017 (SA) not to record a conviction. The respondent contended that the Court cannot be satisfied that the appellant is unlikely to commit such an offence again.

Held, allowing the appeal, and resentencing the appellant:

1. The appellant be fined \$105.00.
2. Utilising the Courts discretion under s 24 of the *Sentencing Act* 2017 (SA) that the penalty be imposed without a conviction being recorded.

Summary Offences Act 1953 (SA) s 7(1)(a); *Sentencing Act* 2017 (SA) s 24, referred to.

On Appeal from MAGISTRATES COURT OF SOUTH AUSTRALIA (MAGISTRATE GRANT)
MCCRM-25-046930

Appellant: MASOUMA HUSSAINI Counsel: MR N VADASZ - Solicitor: VADASZ LAWYERS

Respondent: COMMISSIONER OF POLICE Counsel: MS E HARPER - Solicitor: CROWN SOLICITOR (SA)

Hearing Date/s: 25/05/2026

File No/s: SCCRM-26-010855

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McGregor v Police (1995) 66 SASR 269; *R v Lambert* [2009] SASC 307; *Pollard v Police* [2010] SASC 23; *Buttigieg v Police* (1999) 74 SASR 229; *R v Briese* (1996-7) 92 ACrimR 75, applied.

HUSSAINI v COMMISSIONER OF POLICE
[2026] SASC 104

Magistrates Appeal: Criminal

BOCHNER J.

1 Following a plea of guilty for the offence of disorderly behaviour contrary to s 7(1)(a) of the *Summary Offences Act 1953* (SA), on 15 January 2026 the appellant was convicted and fined \$100. The appellant has now appealed that sentence. Prior to the hearing of the appeal, the respondent conceded that the grounds of appeal had been made out and agreed that the sentence should be quashed and the appellant resentenced. In light of that concession, the parties agreed that it was appropriate for this Court to resentence the appellant. The matter proceeded on that basis.

The circumstances of the offending

2 On 5 October 2025, the police were called to a domestic disturbance. On arriving at the subject address, the police were approached by the appellant. When she was asked for her version of events, she became upset and used increasingly offensive language, both towards the police officers in attendance, and the other person involved in the disturbance. She was given numerous warnings by the police to cease her abusive behaviour; when she did not, she was arrested and conveyed to the Christies Beach Police Station.

3 The appellant was intoxicated at the time of her arrest. She remained in custody for a short period of time and was then released on bail.

The legislative background

4 Section 24 of the *Sentencing Act 2017* (SA) provides:

24—Imposition of penalty without conviction

If a court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service, or both, and the court is of the opinion—

- (a) that the defendant is unlikely to commit such an offence again; and
- (b) that, having regard to—
 - (i) the character, antecedents, age, or physical or mental condition, of the defendant; or
 - (ii) the fact that the offence was trifling; or
 - (iii) any other extenuating circumstances,

good reason exists for not recording a conviction,

the court may impose the penalty without recording a conviction.

5 In *McGregor v Police*,¹ DeBelle J considered the matters that should be taken into account when determining whether a conviction should be imposed. He said:²

The criminal law exists for the protection of the public and the protection of the public must remain the first concern of the court. But public concern about crime should not displace the fundamental concepts of justice and mercy which should animate criminal tribunals of civilised nations. Whilst the protection of the public is the first concern of the courts, if, consistently with that, the courts can, in their compassion, assist another human being to avoid making ruin of his life, they ought to do so. These observations will immediately be recognised as those made by King CJ in *Yardley v Betts* (1979) 22 SASR 108 at 112-113. Many years earlier, like observations had been made by Napier CJ in *Webb v O'Sullivan* [1952] SASR 65 at 66 where his Honour said:

"The courts should endeavour to make the punishment fit the crime, and the circumstances of the offender, as earlier as may be. Our first concern is the protection of the public, but, subject to that, the court should lean towards mercy. We ought not to award the maximum which the offender will warrant, but rather the minimum which is consistent with the due regard for the public interest."

6 In *R v Lambert*,³ Sulan J discussed the factors that the Court must consider when determining whether a conviction should be recorded. He also addressed the effect that a conviction might have on a person's life. He said:⁴

The pre-conditions to enliven the discretion are that the court must propose either that a fine be imposed, that a sentence of community service be undertaken, or both. The court must form the opinion that the defendant is unlikely to commit a similar offence again. The court is then required to have regard to the factors referred to in s 16(b) and reach a conclusion that good reason exists for not recording a conviction.

The recording of a conviction has a punitive aspect. In *R v Yousef*, Sulan and Layton JJ observed:

"A conviction does not merely record a finding that the person committed the crime charged: it condemns him for the crime; it is a communicative act, communicating censure to the convicted person. The recording of a conviction acts as a general deterrent to others who may be inclined to offend in a similar way.

There is an important public interest in convictions being recorded to express community disapproval of a defendant's conduct. A court will be more inclined not to record a conviction where the offending has had no direct effect on a victim, and where the breach is not deliberate and blatant."

The recording of a conviction can have serious consequences for an individual, as it may affect his future employment prospects, his ability to travel and his acceptance into professional or trade associations linked with his profession or trade. A submission to a court not to record a conviction is a matter that requires detailed consideration by the court.

In *R v Briese*, the Queensland Court of Appeal observed that the question of whether to record a conviction is one of considerable importance. The Court observed that there are

¹ (1995) 66 SASR 269.

² *Ibid*, 272.

³ [2009] SASC 307.

⁴ *Ibid*, [18]–[22].

persons and organisations, including prospective employers, companies such as credit providers, and government departments such as immigration authorities, which have a legitimate interest in knowing the truth about the character of persons who deal with them. Furthermore, if a court concludes that, in the circumstances of a particular case no conviction is to be recorded against an offender, that fact is of significance to any person or organisation which may have a legitimate interest in the background and character of that offender.

Parliament has recognized that the recording of a conviction can have a significant deleterious effect upon an offender. The offender will carry the conviction with them into many walks of life. It acts as continual punishment and may be a factor adverse to the rehabilitation of an offender. It follows that power has been given to courts not to record a conviction. I agree with the observations made in *Briese*, that a court will be more easily persuaded against the recording of a conviction where there are no prior convictions, or a very minor history, and where the offence in question is a so-called “victimless” crime.

7 In *Pollard v Police*,⁵ Gray J addressed the criteria set out in s 24’s predecessor and the exercise of the discretion conferred. He said:⁶

The exercise of the section 16 discretion is enlivened if the court is satisfied of a number of preconditions. First, the court must propose to impose a fine, a sentence of community service, or both. Secondly, it must be satisfied that the defendant is unlikely to commit such an offence again. Thirdly, the court must be satisfied that there is good reason not to record a conviction, having regard to one or more of the factors set out in section 16(b). These factors are the character, antecedents, age or physical or mental condition of the defendant, the fact that the offence was trifling or any other extenuating circumstances.

If those preconditions are satisfied, the discretion is enlivened; however that discretion is not necessarily required to be exercised. The Court must consider whether, notwithstanding the satisfaction of those preconditions, it is, in all the circumstances, appropriate to exercise the discretion.

In that case, Gray J provided a useful summary of a number of authorities addressing the exercise of the discretion, including *Lambert*, *McGregor* and *Buttigieg v Police*.⁷

8 It is clear from these authorities that, in order to assess whether the discretion conferred by s 24 should be exercised, the Court must examine each of the matters set out therein. It must also weigh the consequences to the accused of receiving a conviction, against the seriousness of the offence.

The appellant’s submissions

9 Counsel for the appellant made submissions about the appellant’s background and the sequence of events leading up to the offence. The appellant’s family is from Afghanistan. The appellant, the youngest of five children, was born in Indonesia on 5 November 2001; at the age of one week, she and her family left Indonesia on a small boat to Australia. On the journey to Australia, the boat caught

⁵ [2010] SASC 23.

⁶ *Ibid*, [34]–[35].

⁷ (1999) 74 SASR 229.

fire and the appellant and her family were rescued by the Royal Australian Navy. They lived in a detention centre on Christmas Island until 2004.

10 Following their release from the detention centre, the appellant and her family settled in Adelaide. The appellant's father was abusive and physically violent to all members of the family, including her. He suffered a brain injury in 2008, but remained violent and aggressive, even though he no longer lived with the family. Eventually, the appellant's mother obtained a restraining order against him; this was breached numerous times, with the police being called to assist the family. Her last contact with her father was in about 2023.

11 The complainant in the domestic incident that led to her arrest was her partner. He is approximately twenty years older than her. On 4 October 2025, the appellant and the complainant had an argument. She then went to her mother's house. The next day, the complainant attended at her mother's house and the argument resumed. The appellant had been drinking alcohol and became very distressed. The complainant called the police. On their arrival, the appellant went outside; she says that her abuse was directed at the complainant and not the police; nonetheless, she accepts that her behaviour was unacceptable.

12 The appellant finished Year 12 and completed a Certificate III in Individual Support. Since then, she has been employed as an aged care worker by a number of aged care providers. In June 2025, she commenced a course of study to become an enrolled nurse. The appellant submits that, as a result of the conviction, she did not pursue the course, as she was concerned that the conviction would adversely affect her employment prospects as an enrolled nurse. She wishes to resume the course.

13 The appellant is also concerned that the conviction will affect her employment prospects as an aged care worker. Each time she has commenced work with a new aged care provider, she has been required to provide a police clearance. One of her employers requires a new police clearance to be provided on a yearly basis. She obtained employment with a new employer in January 2026, prior to the conviction being recorded.

14 In 2025, the appellant was diagnosed with anxiety, depression and a borderline personality disorder. On 12 January 2026, she attended her general practitioner who formulated a Mental Health Treatment Plan for her. She was referred to a psychologist for treatment; the goals for her treatment include finding ways to manage stress, anxiety and depression, learning coping skills, learning conflict resolution skills and learning anger management skills. The appellant's first appointment with the psychologist was on 27 May 2026.

15 The appellant has committed one similar offence, in August 2024, when she pleaded guilty to a disorderly behaviour offence. On this occasion, she was discharged without conviction and was fined. Otherwise, the appellant submitted that she is of good character. She is now receiving treatment for her mental health

conditions, which may be viewed as a contributor to her behaviour in the past. As a result, the Court should conclude that she is unlikely to commit such an offence again. She further submitted that the fact that there has been one similar offence which was dealt with without conviction does not preclude the exercise of that discretion a second time.

- 16 In submitting that no conviction should be recorded, the appellant relied on authorities such as *Lambert*, *Pollard*, *McGregor* and *R v Briese*.⁸

The respondent's submissions

- 17 The respondent submitted that a conviction should be recorded. In particular, Ms Harper, who appeared on his behalf, submitted that, in order not to record a conviction, I would need to be satisfied that the appellant was unlikely to commit such an offence again. She submitted that I would not be able to reach the requisite level of satisfaction, because the appellant had committed the same offence only fourteen months previously. She noted that despite being treated with leniency on that first occasion, she reoffended just over a year later.

- 18 As to the effect that a conviction would have on the appellant's employment, Ms Harper submitted that no evidence has been put before the Court to suggest that it would be affected. She noted that the conviction had not currently affected her employment. She also noted that there was no evidence that the appellant was currently enrolled in a course to qualify as an enrolled nurse.

- 19 In summary, the respondent's submissions were largely focused on the fact that the Court could not be satisfied that the appellant would not reoffend, given that this was her second offence of this nature.

Consideration

- 20 The circumstances of the appellant's early life are such that the Court must be inclined to extend leniency to her. She clearly had a difficult childhood, starting her life as she did in a detention centre, and living with an abusive and violent father. It is clear that she has also made attempts to better her life, by finishing school, undergoing tertiary education, and seeking, in this last year, to progress her education and qualifications further.

- 21 It is also clear that, at the time of this offence and most likely at the time of the earlier offence in 2024, she was suffering from an untreated mental health condition, which may well have been a causative factor in her offending. She is now undergoing treatment with a registered psychologist, and under the auspices of her general practitioner, with a view to managing her conditions in a better way and so as to avoid reoffending in the future.

- 22 Given that she is now proactively seeking treatment, I am satisfied that she is unlikely to commit such an offence again. I also consider that her time (albeit

⁸ (1996-7) 92 ACrimR 75.

short) in custody and the realisation that a conviction may well have a deleterious effect on her career will have been salutary lessons for her that will have a deterrent effect.

23 I accept that the appellant's offence is serious; it is, however, at the lower end of the scale in terms of its seriousness.

24 In the circumstances, I consider that good reasons exist for not recording a conviction. I consider that the conviction should be quashed.

25 I note that the maximum penalty for the offence of behaving in a disorderly or offensive manner in a public place is a fine of \$1,250 or imprisonment for three months. I impose a fine of \$150. The appellant is entitled to a 30 per cent reduction given her plea of guilty more than four weeks after her first court appearance.

26 I sentence the appellant to a fine of \$105 with no conviction recorded.