VIRGIN PILOT FOUND OVER THE LIMIT BEFORE COMMERCIAL FLIGHT LOSES APPEAL

News / Airlines

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A Virgin pilot who failed a breath test before he was due to fly out of Canberra with 96 passengers has lost a bid to clear his name.

The pilot was selected for the test at Canberra Airport at about 8am on the morning of his birthday in August 2013.

A Virgin pilot has lost an appeal against his conviction for being over the limit before a commercial flight.

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A Virgin pilot has lost an appeal against his conviction for being over the limit before a commercial flight. *Photo: Kate Geraghty*

He had just arrived and was in the Virgin crew area sitting at a computer when a Civil Aviation Safety Authority officer approached him.

The pilot was due to later fly a commercial flight between Canberra, Brisbane, and Townsville with up to 96 passengers on board.

The initial test was positive, meaning a second, confirmatory test needed to be done 15 minutes later.

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The pilot would give evidence that he'd had two vodka, lime and sodas, shared a bottle of red wine, and another three glasses of wine, before going to bed at 10pm the night before.

The confirmatory test revealed a blood alcohol reading of 0.059, which is more than the legal driving limit, let alone the legal aviation limit of 0.02.

The pilot was grounded, and was never allowed to fly for Virgin again.

He was charged with a criminal offence and pleaded not guilty, before eventually being convicted in the ACT Magistrates Court by Chief Magistrate Lorraine Walker. Ms Walker convicted and fined the pilot.

The pilot appealed to the ACT Supreme Court, arguing the magistrate made a series of errors.

He also argued he should have been given a non-conviction order, in light of his impeccable 20-year flying history and the fact he had already lost his employment with Virgin.

Justice John Burns handed down a decision late last week, throwing out the appeal on all grounds.

The pilot, in one of many appeal points, argued that the amount he drank was not capable of giving such a high reading the next morning.

He argued the accuracy of the reading was in doubt, and the magistrate erred by not concluding such a doubt existed.

But Justice Burns found the pilot had not been able to tell the court how many standard drinks he had consumed, and could not give the specific volumes of drink or their alcohol content that he consumed.

"There was, in addition, no evidence that the appellant could not have had a reading of 0.059 grams of alcohol per 210 litres of breath at 8.00 am on August 11, 2013, based on his reported alcohol consumption," he wrote.

To be guilty of the offence, the prosecution also had to prove the pilot was either available for, or actually performing, what is known as a "safety sensitive aviation activity", such as flying or checking the weather, for example.

The magistrate found the pilot was performing such an activity, something that Justice Burns found to be an error.

But the judge said it was of no consequence, because the pilot was clearly "available for" an activity, which is all the law requires.

The pilot also questioned whether the CASA officer had properly waited the 15 minutes between the initial and confirmatory tests, saying the magistrate was in error by finding that the rule had been followed.

The magistrate had relied on documentary evidence and evidence from the officer that he had used a timing device to ensure 15 minutes had elapsed.

Justice Burns found she was entitled to do so.

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