

# CHILDRENS COURT OF QUEENSLAND

CITATION: *YSN v Director of Public Prosecutions* [2023] QChC 37

PARTIES: **YSN**  
(applicant)  
v  
**DIRECTOR OF PUBLIC PROSECUTIONS**  
(respondent)

FILE NO/S: CCJ 8/23

DIVISION: Children's Court of Queensland

PROCEEDING: Bail Application

DELIVERED ON: 22 February 2023 (delivered *ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 22 February 2023

JUDGES: Dearden DCJ

ORDER:  
**(1) Application for bail granted.**

CATCHWORDS: CRIMINAL LAW – YOUTH JUSTICE – APPLICATION FOR BAIL – where the applicant child is charged with 31 counts including one count of rape and one of indecent treatment of child under 16, under 12 - where the applicant child has spent 89 days in custody – where the applicant child's proposed bail address is in close proximity to that of the complainants - whether a 24 hour curfew will mitigate the risk of reoffending

COUNSEL: D Iliffe for the applicant  
A Hall for the respondent

SOLICITORS: Legal Aid Queensland for the appellant  
Office of the Director of Public Prosecutions for the respondent

## Introduction

- [1] This is an application for bail by the child, YSN, in respect of 31 counts, which are identified in the amended application for bail, which has been given leave to read and file this morning. That amendment follows on the police amending one of two rape counts to a count of indecent treatment of a child under 16, under 12. That slightly reduces the seriousness of the sexual offences (four in total) which the applicant faces, but one rape charge remains, and the seriousness is obvious and apparent.

- [2] The history of the matter is outlined by the applicant at exhibit 1, paragraphs 2 - 9. The applicant was arrested and charged with nine offences, refused watch-house bail, and remanded in custody on 25 November 2022, was at the time already subject of bail for 17 offences, no application was made for bail on 26 November 2022 in the Cairns Childrens Court, then charged with a further four offences between 26 November and 20 December 2022, then refused bail on 20 December 2022 at the Cairns Childrens Court in respect of all offences subject of the application and remanded in custody. The applicant then appeared again on 13 January 2023 at the Cairns Childrens Court, no application was made for bail, and then appeared on 20 January 2023 in respect of one count of serious assault, adjourned to the Cairns Childrens Court for mention on 10 February 2023 with no application for bail being made, and at that further appearance on 10 February 2023, the matter was adjourned for mention to 3 March 2023 with no application for bail made.
- [3] The applicant has now been remanded in custody for 89 days.<sup>1</sup>
- [4] The facts of the offending are set out in exhibit 1, paragraph 11 in summary form. Primarily, the offences include an assault at the Cleveland Youth Detention Centre, various property offences, including enter premises, unlawful use, stealing, some minor drug offences, and most concerningly, the offences of rape and indecent treatment of two male complainants at a park in [redacted], which as exhibit 4 (a map of the area) indicates, is at the end of the applicant's road where he resided with his family prior to his remand in custody, and immediately adjacent to the park.
- [5] I will return to that issue during the course of these reasons.
- [6] The applicant has no criminal history.<sup>2</sup> The applicant is 13, born on 27 July 2009.

### **The law**

- [7] The applicant's outline (exhibit 1) at paragraphs 13 - 25 comprehensively and accurately sets out the law in respect of the bail and custody of children.

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<sup>1</sup> Exhibit 7 – Remand in custody report.

<sup>2</sup> Exhibit 1 – Outline of submissions for the child, [12].

## Discussion

- [8] The applicant acknowledges that he is in a “show cause” position. The risks are clear, which is the risk of committing further offences and in particular, the concern that he would be residing, at least in the short term, at a residence that is close to the two complainants in respect of the most serious offences, being the rape and indecent deals, and further, depending on the outcome of, in particular, the rape charge, there is on the other side of the ledger the risk of spending too much time on remand (the applicant has spent just a shade under three months in remand to date).
- [9] The applicant has support from his family. His mother has indicated that she is exploring the opportunity of seeking social housing at another residence, which would remove him from the immediate proximity to the complainants in respect of the sex offences and although not able to reside full time with maternal and paternal grandmothers in [redacted] and [redacted], they are available to assist in what is effectively “supervision” if the applicant is granted bail.
- [10] The respondent identifies the very obvious concerns about further offending and has identified at exhibit 5, paragraph 7, the pattern of offending which is broken down into six bundles.
- [11] The respondent’s outline of the history identifies at length, a parallel version of the events that I have relayed from the applicant’s outline.<sup>3</sup>
- [12] The obvious concern also identified by the respondent (and acknowledged by the applicant) is the risk of reoffending and the associated risk of endangering the safety and welfare of others.
- [13] Mr Hall, who appears for the respondent, notes that in respect of the two alternative draft orders that have been proffered by the applicant’s counsel, Ms Iliffe, if this court were persuaded that the risks of reoffending and associated risks could be sufficiently ameliorated, then it is the 24-hour curfew that the respondent would consider appropriate in those circumstances. As I indicated to Mr Hall, if I am persuaded that the risk can be sufficiently mitigated, that would be the alternative that I would choose.

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<sup>3</sup> Exhibit 5 - Outline of submissions for the respondent, [8]-[13].

- [14] The submissions that Ms Iliffe makes in respect of the mitigation of risk are that the conditional bail program would provide an intensive 72 hour support plan to assist the transition from detention back into the community, the conditional bail program will provide ongoing support, the applicant is able to live with his mother and family who will assist with both access to support services and compliance with bail conditions, the applicant himself shows some insight, has not previously been in detention, has missed out on family visits and business, and has a keen understanding, it would seem, of the likely consequences of any breach of these very strict bail conditions. I note, in particular, there is not only a no-contact condition but a no-go condition, as well as the 24 hour curfew proposed in one of the two alternate bail draft orders that have been provided to me.
- [15] Not without some hesitation, the strictness of a 24 hour curfew together with the other provisions which include the residence condition (it is noted that the applicant's mother is taking steps to access alternate social housing, which would reduce the risks with the current proposed residence), the no-contact with co-offenders, Crown witnesses, and a no-go condition, as well as a conditional bail program ultimately persuade me that the clear and obvious risks of reoffending and the safety of others can be sufficiently ameliorated by the proposed conditions. In that respect, I acknowledge the contents of annexure A of the draft order, which proposes a 24-hour curfew and endorse those matters identified pursuant to section 52B of the *Youth Justice Act 1992* (Qld), which mitigates the risks of the matters listed in section 52A(2)(a) of the *Youth Justice Act 1992* (Qld).

### **Order**

- [16] Accordingly, I make the following order, and sign the draft order which contains a 24 hour curfew:

(1) Application for bail granted.