

CHILDRENS COURT OF QUEENSLAND

CITATION: *RYN v Director of Public Prosecutions* [2023] QChC 39

PARTIES: **RYN**
(applicant)

v

DIRECTOR OF PUBLIC PROSECUTIONS
(respondent)

FILE NO/S: CCJ 210/2023

DIVISION: Childrens Court of Queensland

PROCEEDING: Bail Application

ORIGINATING COURT: Townsville Childrens Court

DELIVERED ON: 26 May 2023 (delivered *ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 26 May 2023

JUDGES: Dearden DCJ

ORDER:

(1) Application for bail granted.

CATCHWORDS: CRIMINAL LAW – YOUTH JUSTICE – APPLICATION FOR BAIL – where the applicant child applies for bail in respect of 2 counts of unlawful use of a motor vehicle, aircraft or vessel – where the applicant child is in custody in connection with a charge of a prescribed indictable offence – where the applicant child allegedly committed a similar offence while at large subject to a notice to appear – where the applicant child has a relatively minor criminal history – where the applicant child has spent 12 days on remand

COUNSEL: L Fabian for the applicant
NJ Phillips for the respondent

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

Introduction

[2] This is an application for bail by the applicant child, RYN, in respect of two counts of unlawful use of a motor vehicle, aircraft or vessel. The applicant child has now spent 12 days in remand and is a 13 year old Aboriginal & Torres Strait Islander

boy. It is clearly arguable that the likely outcome of any sentencing process for a 13 year old child in these circumstances with a relatively minor criminal history will not involve actual detention.

Background of offending

- [3] The circumstances are, however, concerning. On 7 May 2023, the child was charged with one count of unlawful use of a motor vehicle and given a notice to appear, requiring an appearance on 12 May 2023, but did not appear on that date. A warrant was issued, but the matter was then adjourned for mention on 2 June 2023. Meanwhile, the child was then charged on 14 May 2023 with another count of unlawful use of a motor vehicle in company. Bail was objected to and was refused at the Townsville Childrens Court on 15 May 2023, both for the offence of 14 May 2023 and the earlier offence charged on 7 May 2023. The matter has been adjourned for mention to the Townsville Childrens Court on 1 June 2023.¹
- [4] The circumstances of the offences are summarised at exhibit 1, [11]. The vehicle for which the applicant was charged on 7 May 2023 was stolen from a residence on 1 May 2023, was located by police at a shopping centre on 4 May 2023, and one of the group of juveniles identified on CCTV footage as exiting that stolen vehicle when police approached is the applicant child. The applicant child was arrested on 7 May 2023 and given a notice to appear.
- [5] As identified, the child failed to appear on 12 May 2023, and on 14 May 2023, a witness observed a Toyota sedan parked in a street in Aitkenvale which contained four juveniles, including, it is alleged, the applicant child.²

Applicants antecedence

- [6] The applicant's criminal history has two entries with a restorative justice order for five offences, and a remand for one offence on 11 April 2023 and a three-month probation order for two offences on 17 April 2023.³

¹ Exhibit 1 – Outline of submissions for the child, [6]-[10].

² Exhibit 1 – Outline of submissions for the child, [11].

³ Exhibit 1 – Outline of submissions for the child, [12]-[14].

The law

- [7] The current law in respect of bail and custody of children is comprehensively summarised by the applicant's counsel at exhibit 1, [15] - [26]. I accept that summary of the relevant law.
- [8] The applicant identifies, correctly, that the child is in custody in connection with a charge of a "prescribed indictable offence",⁴ and the offence is alleged to have been committed whilst the child was released into the custody of a parent or was at large with or without bail for another indictable offence.⁵
- [9] The applicant identifies the purposes of conditions on any granted bail at exhibit 1, [24] - [26] and fundamentally, of course, the conditions must be designed to ameliorate or mitigate identified risks but must do so taking into account the matters outlined in YJA s 52A(2)(c).

Discussion

- [10] The circumstances here are that the child is 13 years old, of Aboriginal & Torres Strait Islander descent, is in a show cause position because he is alleged to have committed the offence of unlawful use of a motor vehicle in company while at large without bail for another indictable offence (in this case, another unlawful use of a motor vehicle), and has now spent 12 days on remand.
- [11] The circumstances of this offending, concerning as they are, do not, in my view, amount to offences which are likely to bring a detention order which is a sentence of last resort,⁶ and this child has already spent 12 days on remand.
- [12] There are clear factors which appear to contribute to the offending, including the lack of engagement with schooling and negative peer associations, and the submission on behalf of the applicant is that the proposed conditional bail program which has been provided to the court will, together with very strict bail conditions including a residential condition, a curfew condition between 6 pm and 6 am, no contact conditions with a co-offender, and compliance with the conditional bail

⁴ *Youth Justice Act 1992* (Qld) ('YJA'), sch 4.

⁵ YJA s 48AF.

⁶ YJA s 150(2)(e).

program, sufficiently ameliorate the risk of re-offending such that this child, although in a show cause position, should be granted bail.

- [13] I should note that the bail application is opposed and the respondent, quite properly in my view, identifies the particularly concerning aspect of the child's re-offending, while at large subject to a notice to appear on which he then failed to appear, and committed (it is alleged) a similar offence.

- [14] I note from the summary of material that I have received that there is nothing that would indicate that this child was other than a passenger in either of these two vehicles. The party provisions, of course, make him as guilty as whoever it was who actually unlawfully obtained each of the two vehicles, but it does place his level of criminality, at worst, at a lower level than the person or persons responsible for stealing or otherwise unlawfully obtaining each of these two vehicles.

- [15] The obvious risk is the risk of committing further offences. The child's criminal history, although relatively modest, has occurred over a space of some two months with two sentences being imposed approximately one week apart in April 2023 and the alleged offending occurring shortly after those sentences. There is undoubtedly a concerning risk. The issue is, of course, whether that risk can be sufficiently ameliorated by the proposed bail program.

- [16] Taking into account, as I have identified, the risk that the child would not receive a detention order on sentence, and that the child has already spent 12 days in custody, it is my view that the proposed conditions on the bail, in particular the residential condition, the curfew condition, the no contact with the co-offender and the compliance with a comprehensive and supportive conditional bail program, are in total conditions that would persuade me that the relevant risk of re-offending is sufficiently ameliorated that bail should be granted.

- [17] As the applicant's counsel is no doubt well aware, any further offending by this applicant while subject to bail and these conditions is firstly likely to result in a refusal of bail with a far less - or significantly less prospect of being granted bail, and of course, a very reduced prospect even of the Legal Aid office granting aid for such an application. That is, of course, speculative, but no doubt the applicant will

receive appropriate advice from his legal representatives about the risks if this grant were breached.

Order

[18] Accordingly, I make the following order:

(1) Application for bail granted.