

# CHILDRENS COURT OF QUEENSLAND

CITATION: *R v OCH* [2020] QChC 13

PARTIES: **THE QUEEN**  
**v**  
**OCH**  
(applicant)

FILE NO/S: 35/20

DIVISION: Appellate

PROCEEDING: Sentence Review

ORIGINATING COURT: Childrens Court of Queensland

DELIVERED ON: 25 May 2020

DELIVERED AT: Brisbane

HEARING DATE: 8 April 2020

JUDGE: Richards P

ORDER: **The application for Sentence review is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – SENTENCING JUVENILES – where the child was sentenced to 3 offences – where the child was 12 years old at the time of the relevant offending – where the learned Magistrate imposed a three month probation order – where the child entered an early plea of guilty – whether the child should have been referred for restorative justice - whether the learned Magistrate adequately took the child’s young age and lack of criminal history into account when imposing the probation order - whether the sentence imposed was manifestly excessive due to a more lenient sentence being available to the learned Magistrate – where the child meaningfully engaged with the supervision afforded by probation in the five weeks prior to the orders being suspended - whether the learned Magistrate erred in sentencing the child to a short period of probation.

COUNSEL: Mr J Alcorn of Legal Aid Queensland for the applicant  
Mr S Sherrie for the Office of the Director of Prosecutions

- [1] The applicant child was convicted on 8 January 2020 of three charges of stealing occurring on 31 October, 7 November and 9 November 2019. He was 12 years of age at the time of the offences and 13 at the time of sentence. He had not previously been subject to any orders but he had been reprimanded on two occasions. He was sentenced to three months' probation in relation to the offences and convictions were not recorded.

### **Circumstances of the offences**

- [2] On 31 October 2019, the child was on a bus with three other people. Once the bus pulled up a female child grabbed five \$20 notes out of the money tin near the driver's seat and ran from the bus in company with the child and two other young people.
- [3] On 7 November 2019, the child ran past a female who was walking along a footpath listening to music. The child snatched her phone from her grip and ran away.
- [4] On 9 November 2019, the child was with another child and approached a business counter. One of the children distracted the employee and as he turned away this child grabbed the money bag next to the register and they ran away. The money bag contained \$140.
- [5] The Magistrate, in sentencing the child was concerned that there was an escalation in offending and particularly regarded the stealing offences as particularly serious offences. [There was a further offence of assault occasioning bodily harm which he pleaded guilty to at the same time and a restorative justice order was imposed for that.]
- [6] The Magistrate had regard to his early plea of guilty and his young age at the time of the offending but she remarked that the probation order was made with his welfare in mind and that a more serious sentence would be imposed if he came back before the court. The applicant's lawyer conceded that a period of probation was within range.
- [7] The Crown submits that the mere fact that a more lenient sentence might have been available to the Magistrate did not by itself render the sentence imposed excessive, and the Crown points to the fact that the child has meaningfully engaged with the supervision afforded by probation in the five weeks prior to the orders being

suspended. The defence submit that the offending could only be characterised as opportunistic and spontaneous and that his role in the first offending was simply as a party decamping with the principle offender. It was a prompt plea, and he was a very young offender. It submitted that taking into account his age and his lack of criminal history, that the matter should have been referred for restorative justice.

- [8] Little is known of his personal circumstances other than he is in grade nine at school. There were no submissions made about his background or upbringing. His mother was present at court but she did not participate in the hearing. It is true that he was extremely young at the time of the offending but it was persistent offending over a period of ten days and then a later offence of assault occasioning bodily harm which is not the subject of this appeal but which was undoubtedly part of the learned magistrate's consideration of the overall criminality of the offending. The child was involved in offending in a group and the offending on 9 November showed some planning. In all the circumstances it cannot be said that the sentencing discretion miscarried or that the learned magistrate erred in sentencing the child to a short period of probation.
- [9] The application is refused.