

SUPREME COURT OF QUEENSLAND

CITATION: *R v D* [2003] QCA 32

PARTIES: **R**
v
D
(applicant)

FILE NO/S: CA No 375 of 2002
DC No 163 of 2002
DC No 175 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Mackay

DELIVERED ON: 14 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 7 February 2003

JUDGES: Davies and Williams JJA and Cullinane J
Separate reasons for judgment of each member of the Court;
each concurring as to the orders made

ORDERS: **1. Application for leave to appeal against sentence granted**
2. Appeal allowed only to the extent of setting aside the order recording convictions in all cases, except in relation to the count of armed robbery where the order recording the conviction stands

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – where juvenile applicant convicted of armed robbery, fraud, wilful damage, stealing and other property offences while on probation – where juvenile applicant sentenced to six months detention – whether detention was appropriate – whether convictions ought to have been recorded

Juvenile Justice Act 1992 (Qld), s 4, s 109(2)(e), s 125

COUNSEL: B G Devereaux for the applicant
M J Copley for the respondent

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

- [1] **DAVIES JA:** I agree with the reasons for judgment of Cullinane J and with the orders he proposes.
- [2] **WILLIAMS JA:** I agree with the reasons of Cullinane J and with the orders proposed.
- [3] **CULLINANE J:** The applicant seeks leave to appeal against sentences imposed in the District Court at Mackay following his pleas of guilty to a number of offences contained in two indictments.
- [4] In one indictment he was charged with:
- (a) seven counts of entering a dwelling with intent;
 - (b) eight counts of stealing;
 - (c) one count of receiving;
 - (d) one count of entering premises and stealing;
 - (e) one count of wilful damage;
 - (f) one count of fraud;
 - (g) one count of armed robbery in company.
- [5] In addition, he faced two counts on another indictment, namely:
- (a) one count of entering premises and stealing;
 - (b) one count of attempted entering premises with intent.
- [6] These offences were committed between 29 November 2001 and 29 July 2002.
- [7] The applicant is a child born on 27 July 1987. All of the offences were committed when he was 14 except for one of the counts of stealing.
- [8] On each count, the applicant was sentenced to six months detention and 12 months probation under the *Juvenile Justice Act*. He had served eight days in pre-detention custody.
- [9] He has now completed almost 70 per cent of the term of detention and should be released in about two weeks time.
- [10] The applicant had a criminal history which appears at pp 22 and 23 of the record. He had appeared before the Childrens Court on some seven occasions in relation to a number of property offences.
- [11] In February 2001, he was given a probation order for some nine months and a similar order was made on 7 March 2001. Thus many of the offences were committed during the currency of probation orders.
- [12] The applicant had not previously been convicted of any offences for violence.
- [13] A summary of the offences the subject of this application was provided to the learned sentencing judge and forms part of the record.
- [14] Most of the offences were committed with one or more associates.
- [15] The most serious of the offences was the count of armed robbery. A 60 year old man known to the applicant's co-offender was on his boat when he saw the applicant trying to conceal himself near the vessel. The applicant distracted the complainant by calling out to him and the complainant shortly after saw the co-offender standing

nearby with a short-bladed knife pointed towards the complainant's stomach. The knife was waved at the complainant who feared that he would be stabbed. The applicant reached into the boat and stole tobacco and cigarette papers while the co-offender stole a lighter. When later questioned about this the applicant acknowledged that he knew the co-offender was armed.

- [16] Many of the other offences involved entering dwellings or other buildings. After being spoken to by the police about some of the earlier matters, he nonetheless continued to offend, committing further offences.
- [17] One of the counts concerned the damaging of part of his mother's vehicle after an argument between them.
- [18] It seems that one of the co-offenders with whom most of the offences were committed was somewhat older than the applicant and from material placed before his Honour it was thought that loyalty to this associate and to others was a factor in his offending.
- [19] A pre-sentence report placed before the court canvassed the various sentencing options, including an immediate release order and an immediate release order program was attached to the report. The prospects of a detention order were also canvassed. The view was expressed in the report that such an order might expose the applicant to further deviant behaviour and disrupt the current positive changes that he had made.
- [20] This appears to be reference to a number of factors which it was said had been major contributors to the commission of the offences and it was accepted that they had been successfully addressed by the time the applicant appeared for sentence. These were: his family circumstances, his lack of suitable accommodation, undesirable peer influence, drug and alcohol abuse, anger management and his lack of schooling.
- [21] The learned sentencing judge was of the view that whilst these steps were positive and pointed to a positive outcome in the future, the applicant nonetheless had to be punished for what he had done. His Honour referred to the benefit of the earlier probation orders and the fact that the offences were committed whilst he was on probation.
- [22] Convictions were recorded in all cases.
- [23] Whilst there were, as has already been set out, positive indications that augured well for the applicant's future, there were a number of matters which his Honour was entitled to consider as calling for a detention order.
- [24] The offences were undoubtedly serious particularly the offence of armed robbery. The applicant continued to offend after being interviewed by the police in relation to some of the offences. He had a significant criminal history and of particular importance was the fact that all of the offences were committed during the currency of one or more probation orders. The applicant commenced to commit these offences within a very short time of receiving one of the probation orders. There would have been little point in a further probation order without more or a community service order.

- [25] Pursuant to the *Juvenile Justice Act* 1992 a detention order may be made only if the court is satisfied that no other sentence is appropriate in the circumstances of the case. See s 109(2)(e) and s 4. His Honour must have reached this conclusion.
- [26] I think that this is a conclusion which his Honour was entitled to reach given the circumstances just outlined.
- [27] I am not therefore persuaded that his Honour's order of detention should be disturbed. Whilst his Honour might have also considered an immediate release order the applicant has now almost completed his detention and there would be little point in this Court making such an order at this time. In addition to the order for detention, the applicant was placed on probation for 12 months.
- [28] Leave was given to amend the notice of appeal to add a ground challenging the recording of convictions.
- [29] Given the policy of the *Juvenile Justice Act* in relation to the recording of convictions in the case of children (s 125) I think that, except in the case of the count of armed robbery, convictions ought not to have been recorded.
- [30] I would grant leave and allow the appeal only to the extent of setting aside the order recording convictions in all cases, except in relation to the count of armed robbery where the order recording the conviction should stand.