SUPREME COURT OF QUEENSLAND

CITATION:	*R v RW* [2003] QCA 301
PARTIES:	**R** **v** **RW** (applicant)
FILE NO/S:	CA No 87 of 2003 DC No 31 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Toowoomba
DELIVERED EX TEMPORE ON:	18 July 2003
DELIVERED AT:	Brisbane
HEARING DATE:	18 July 2003
JUDGES:	de Jersey CJ, Davies JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND APPEAL AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – GENERALLY – where learned trial judge correctly took into account need for deterrence – where learned trial judge incorrectly took into account applicant's criminal history – whether, notwithstanding error, sentence was appropriate *Juvenile Justice Act* 1992 (Qld), s 114(3)
COUNSEL:	A Moynihan for the applicant M Copley for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: Having just turned 17, indeed the day before, the applicant committed on the same evening at Toowoomba two offences of robbery in company with personal violence. She was intoxicated at the time. The offences involved her approaching passers-by and demanding money, including persisting when limited amounts were offered to the point of assaulting one of the complainants who had got into her car - although there was no substantial residual injury, and scuffling with the other complainant, continuing notwithstanding the intervention of another male person.

The learned Judge sentenced the applicant following her pleas of guilty to 12 months imprisonment of which she would in the ordinary course have to serve eight. Unfortunately, the Judge wrongly took into account that the applicant had previously been before the Court and the subject of a community service order, a probation order and a good behaviour bond.

That approach was impermissible because of section 114(3) of the Juvenile Justice Act. It does seem to me, however, that his Honour was probably more strongly influenced by the need to deter street crime of that character in Toowoomba where it is prevalent. That local consideration is an aspect warranting particular deterrence.

Notwithstanding the error, the 12 months penalty was, in my view, within an appropriate range even allowing for the applicant's youth, and there was no particular warrant for ameliorating that penalty by suspension or by ordering that

the term be served by way of intensive correction order as was submitted. The absence of that amelioration does not, in my view, render the 12 months term inappropriate. I would refuse the application.

DAVIES JA: I agree.

MACKENZIE J: I agree.

THE CHIEF JUSTICE: The application is refused.
