SUPREME COURT OF QUEENSLAND

CITATION:	*R v T* [2003] QCA 484
PARTIES:	**R** v **T** (applicant)
FILE NO/S:	CA No 279 of 2003 DC No 263 of 2003 DC No 264 of 2003 CC No 8 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED EXTEMPORE ON:	4 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	4 November 2003
JUDGE:	McPherson and Williams JJA and Mullins J Separate reasons for judgement of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Grant the application** **2. Allow the appeal** **3. Set aside each of the sentences and in lieu make a detention order against the applicant for 12 months** **4. Declare that 105 days spent in presentence custody between 19 September 2002 and 22 October 2002, 9 November 2002 and 11 November 2002, 23 November 2002 and 25 November 2002, and 27 December 2002 and 5 March 2003 be deemed time already served under the sentences**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER SENTENCE – APPEAL AGAINST SENTENCE – where applicant was sentenced as a juvenile to 15 months' imprisonment after pleading guilty to one count of enter dwelling with intent, one count common assault, one count of unlawful use of a motor vehicle and one count of attempted robbery with actual violence - where sentencing a juvenile requires that a detention order be imposed for the shortest appropriate period – having regard to the insufficient weight given to the guilty pleas the shortest appropriate

	period of detention would have been 12 months – appeal allowed
COUNSEL:	T Moynihan for the applicant M Copley for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

MULLINS J: The applicant, who was born on 23 April 1987, was sentenced as a juvenile on 15 August 2003 after pleading guilty to one count of enter dwelling with intent, one count of common assault, both of which were committed on 12 August 2002; one count of unlawful use of a motor vehicle, which was committed on 25 August 2002; and one count of attempted robbery with actual violence, which was committed on 19 November 2002.

He was sentenced to 15 months' detention for each offence and a declaration was made that 105 days' presentence custody was time already served under the sentences.

The applicant applies for leave to appeal against the sentences on the basis that the learned sentencing Judge failed to adequately take into account the pleas of guilty and that the sentences were manifestly excessive.

The facts of the enter with intent and common assault were that at 7.30 p.m. the applicant entered the home of the 68-year-old complainant and his wife through a screen door and demanded money.

The complainant attempted to push the applicant from the house and then the applicant punched the complainant to the inside of his elbow and the applicant ran from the house.

The unlawful use of a motor vehicle offence arose out of the applicant driving a motor vehicle which he knew had been stolen. The vehicle was recovered next day and was undamaged.

The attempted robbery was committed inside the grounds of a school where the applicant confronted a 13-year-old schoolboy and demanded cigarettes. When the complainant told the applicant that he did not have any, the applicant pushed the complainant in the face and caused some minor swelling.

When the complainant attempted to run toward a teacher, the applicant pursued and tripped him. The applicant then returned to harass other students and search their bags before leaving the school grounds.

All offences were committed whilst probation orders imposed on the applicant in January and March 2002 remained current. The attempted robbery was committed whilst the applicant was on bail for the enter with intent and common assault.

Apart from the presentence custody for which the applicant was given the benefit of an express declaration, he was also held in custody for other offences for about two and a half months immediately prior to being sentenced on 15 August 2003.

The applicant has an extensive history of offending and had previously been sentenced to periods of community service, probation and detention coupled with immediate release orders.

Although the detention orders appear according to the criminal history, to have been coupled with immediate release orders, it appears from the presentence report that the detention orders that were imposed on 8 May 2002, comprising a total of 130 days, may in fact have been served.

According to the presentence report, the applicant's offending could be attributed to his unstable family background, peer influence which also led to sniffing glue and chronic paint sniffing and drug and alcohol misuse.

According to the presentence report, the applicant did not wish to receive any sentence other than detention. He wished to spend his time in detention, continuing his grade 10 studies. The presentence report indicated that the applicant had a lack of understanding and remorse about the impact of his offending behaviour on the victims.

It was common ground at the sentencing that detention had to be imposed, although neither counsel made any submission as to what period of detention would be appropriate.

Sentencing a juvenile requires that a detention order be imposed for the shortest appropriate period. This is

consistent with rehabilitation being the primary objective of sentencing a juvenile.

The applicant relies on *R v. Werribone* [2003] QCA 301 to submit that the shortest appropriate period should have been 12 months or less. The respondent relies on *R v. S* [2000] QCA 364 and *R v. B* [2001] QCA 151 to support a range of 15 months' to 12 months' detention. Of these decisions, that of R v. B is the most comparable. In that decision, a period of 12 months' detention was imposed.

In this matter, for the learned sentencing Judge it was a matter of balancing the seriousness of the offences committed by the appellant against a background of an extensive criminal history for one so young with sentencing principles applicable to juveniles including that a detention order had to be imposed for the shortest appropriate period.

On the hearing of this application it was submitted that if the learned sentencing Judge took all these relevant factors into account and that resulted in the period of detention of 15 months, it meant that the learned sentencing Judge did not give sufficient weight to the guilty pleas of the applicant. I consider that there is substance in this submission, having regard to the applicant's history and the length of previous detention orders that had been imposed.

In view of the guilty pleas for these offences, the shortest appropriate period of detention for the applicant had to be a

significant period but a significant period in these circumstances would have been less than 15 months. I consider that consistent with the authorities, it would have been 12 months.

I would grant the application, allow the appeal, set aside each of the sentences and in lieu make a detention order against the applicant for 12 months and declare that the 105 days spent in presentence custody between 19 September 2002 and 22 October 2002, 9 November 2002 and 11 November 2002, 23 November 2002 and 25 November 2002, and 27 December 2002 and 5 March 2003 be deemed time already served under the sentences.

McPHERSON JA: I agree.

WILLIAMS JA: I agree.

McPHERSON JA: The order will be as Justice Mullins has stated.
