[2002] QCA 265

COURT OF APPEAL

DAVIES JA
WHITE J
WILSON J

CA No 156 of 2002

THE QUEEN

v.

H Applicant

BRISBANE

..DATE 25/07/2002

JUDGMENT

DAVIES JA: The applicant was convicted after a trial in the District Court on 9 May this year of stealing a mobile phone on 14 March 2001. He was sentenced to 18 months probation and 25 hours community service and he was required to pay $193 compensation. No conviction was recorded. At the date of commission of this offence the applicant was 15 years of age. He was 16 when he was sentenced. He was previously convicted on 7 November 2001 in the Childrens Court of having in his possession a mobile phone suspected of being unlawfully obtained on 31 July 2001. It can be seen from this sequence of events that this offence, for which he was convicted before the conviction for the present offence, was committed after the present offence. He was reprimanded for that offence and no conviction was recorded.

In the present case he was videotaped going into another student's bag at the school of which he was a student and removing something from this bag. A mobile phone which had been purchased by the other student's father was found to be missing from that bag. It is unclear, in those circumstances, what defence the applicant could possibly have had.

The applicant lives with his mother and his uncle. At the time of commission of the offence he did not have regular contact with his father and have not had that contact for about 12 months. It is apparently since being resumed. He was apparently having some difficulties at school because he

had been subjected to bullying. He is now in full-time employment undergoing a cooking traineeship.

The applicant plainly has some reasonable prospects of rehabilitation, being now in employment which he apparently finds satisfactory and which will lead to a career, and having achieved substantial success in the sport of archery. In those circumstances the learned sentencing judge rightly thought that it was appropriate to impose some non-custodial punishment.

For the applicant before us, it was submitted by Mr Thompson that the combination of a probation order and an order for community service was manifestly excessive. It was submitted initially that a good behaviour order without any order for community service but requiring compensation represented the top of the appropriate range for this offence. However, it was not suggested, and I do not believe it could have been, that the applicant was not a person who needed appropriate supervision or that he did not have time to devote to community service.

In my opinion it was appropriate for his Honour, in the circumstances of this case, to order the applicant to undergo probation. It was clear that he was in need of some supervision which, it appeared, he had so far lacked.

On the other hand it seems to me that the combination of that period of probation of 18 months with 25 hours community

service was an excessive punishment for the seriousness of the offence and one which, the totality of, might impede rather than improve his prospects of rehabilitation.

Given that he is now in full-time employment but required to pay $193 compensation, I do not think that, as well as probation, he should have had to undergo a community service. Accordingly, I would grant the application and allow the appeal only to the extent of setting aside the order for community service.

WHITE J: I agree.

WILSON J: I agree.

DAVIES JA: The orders are as I have indicated.
