CHILDRENS COURT OF QUEENSLAND

JUDGE SAMIOS

Indictment No 384 of 2012
Indictment No 385 of 2012
Indictment No 386 of 2012

THE QUEEN

v.

TFF

BRISBANE

..DATE 21/03/2012

ORDER

HIS HONOUR: There are three applications before the Court to review sentences. The sentences were imposed by the Childrens Court at Murgon on 29 September 2009; the Childrens Court at Kingaroy on the 20th of April 2010 and the Childrens Court at Murgon on the 16th of November 2011.

As to the first two in time, namely the 29th of September 2009 and the 20th of April 2010 sentences, the applications are not within the 28 days allowed by The Youth Justice Act. An extension of time is required and can be made under the Act. It appears the applicant was not advised until recently that she could apply to the Court to have the sentences reviewed. The specific aspect in relation to all three sentences which are sought to be reviewed is the recording of convictions, otherwise the sentences are left intact.

It seems to me that because of the applicant's age, she having been born on the 16th of October 1996, and as she had only recently been advised of her entitlement to review these sentences and as the applications that are out of time are not opposed to be extended and brought within time, I extend the period for the bringing of the review of these sentences that were imposed on the 29th of September 2009 and the 20th of April 2010. The application for the review with respect to the sentence of the 16th of November 2011 is within time.

The sentence on the 29th of September 2009 was six months probation with a conviction recorded. The sentence on the 20th of April 2010 was 12 months probation and 60 hours community service with convictions recorded, and the sentence

on the 16th of November 2011 was two months detention with convictions recorded.

It can be seen from the applicant's date of birth that when she was dealt with on the 29th of September 2009 she was 12 years of age. When she was dealt with on the 20th of April 2010 she was 13 years of age and when she was dealt with on the 16th of November 2011 she was 15 years of age.

At the time of being dealt with on the 29th of September 2009, the offences were one stealing, one assault and obstruct police and one wilful damage police property. The applicant was at the time subject to a six month good behaviour bond imposed by the Court on the 15th of September 2009. While that may have been eight days before the applicant committed the first offence on the 23rd of September 2009 for which she was to be dealt with by the Magistrate on the 29th of September 2009, her offending was not serious and as I have said she was very young.

The offences for which the applicant was dealt with in the Kingaroy Childrens Court on the 20th of April 2010 were three enter premises and commit indictable offence on 12 October 2009 and 15 October 2009 and 13 April 2010; one wilful damage on 12 October 2009; three stealing on 17 October 2009, 3 December 2009 and 30 December 2009; four failures to appear in accordance with an undertaking on 1st December 2009 and 6 April 2010 and one wilful damage by graffiti on 5th of May 2010.

My observation of these circumstances are, again bearing in mind that the applicant was 13 years of age, her offending was not such as to warrant the recording of convictions nor was her offending, when she was dealt with on the 29th of September 2009, such as to warrant the recording of convictions. Otherwise the imposition of probation and community service as the learned Childrens Court Magistrate imposed was quite appropriate.

The matter to be kept in mind though is that section 184 of The Youth Justice Act provides that in considering whether or not to record a conviction a Court must have regard to all of the circumstances of the case including the nature of the offence, the child's age and any previous convictions, the impact the recording of a conviction will have on the child's chances of rehabilitation generally or finding or retaining employment.

In this case the offending by the applicant would appear to be offending with peers around the Murgon and Kingaroy area, the breaking into premises to take petrol to sniff and generally being a nuisance. Notwithstanding those observations, I do not consider the recording of convictions was warranted.

Also it should be borne in mind the judgment of the Court of Appeal in R v. TX [2011] QCA 68 where although it was a decision involving a plea of guilty to one count of dangerously operating a motor vehicle with a circumstance of aggravation causing grievous bodily harm and two related summary offences, the observations of the Court is still

relevant on whether to record convictions. In that case the sentencing Judge had recorded a conviction as part of the sentence imposed on that applicant who was 16 years of age at the time of the offences. The Court of Appeal said that "Even in relation to serious offences, the prima facie position under The Youth Justice Act 1992 is that a conviction is not to be recorded against a child. The statutory position is consistent with the Court's general reluctance to record a conviction against a child even for serious offences where they are substantially the product of criminal negligence rather than of malice or conscious wrong-doing".

When the applicant was dealt with in the Murgon Childrens Court on the 16th of November 2011 it was for one count of wilful damage committed on the 6th of July 2011; one count of committing a public nuisance committed on the 8th of August 2011 and one count of failure to appear in accordance with the undertaking. The sentence imposed was two months detention but convictions were recorded. Again, as I've said, the applicant was 15 years of age and she had been appropriately dealt with by probation and community service at earlier stages and on this occasion, even though detention was imposed, I do not accept the recording of convictions was warranted.

On the hearing of these reviews today the extension of time for the two applications that require an extension of time were not opposed by the respondent. Also, in relation to the convictions on 16 November 2011 both the applicant and the respondent submitted no conviction should be recorded.

I have come to the same view, as I have indicated throughout these reasons, that at no time was it appropriate to record convictions against the applicant. The applicant may have been persistent in her offending but I do not accept persistence necessarily leads to the recording of a conviction. As far as I can see, the offences were basically stealing and entering premises and the applicant was making admissions to police and she appears to have been sniffing glue or sniffing petrol. I do not consider the offences were serious enough to warrant the recording of convictions.

Therefore, the two applications that were filed on 13 December 2011 for the extensions of time are granted; the time is extended for the filing of the applications for the review of sentences in those matters to the 13th of December 2011. In relation to all applications the sentences are reviewed and I order the recording of convictions in each instance is - I vary the orders by deleting the recording of convictions in each case.
