

CHILDRENS COURT OF QUEENSLAND

CITATION: *LRM v The Queen* [2019] QChC 3

PARTIES: **LRM**
(applicant)
v
The Queen
(respondent)

FILE NO/S: 341/2018

DIVISION:

PROCEEDING: Sentence review

ORIGINATING COURT: Brisbane Childrens Court

DELIVERED ON: 30 January 2019 (delivered *ex tempore*)

DELIVERED AT: Brisbane Childrens Court

HEARING DATE: 30 January 2019

JUDGE: Dearden DCJ

ORDER: **1. Application for sentence review granted;**
2. Discharge the sentence of detention to be served by way of conditional release order imposed on 2 October 2018 in respect of the 16 charges identified in these reasons and contained in the relevant VJR;
3. Substitute an order that the applicant undertake an intensive supervision order for a period of six months.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING OF JUVENILES - application for sentence review – where the applicant had previously been sentenced to detention to be served by way of conditional release order – where sentencing option of intensive supervision order not raised in pre-sentence report or by legal representatives when should have been – where conditional release order excessive in the circumstances

LEGISLATION: *Youth Justice Act 1992* (Qld) s 122(1), s 122(2), s 122(3), s 118, s 150, s 150(1)(b), s 175(1)(f), s 203, s 203(1)(a), s 203(1)(b), s 203(1)(c), s203(2), s 208

CASES: *R v SCU* [2017] QCA 198 [53], considered.

COUNSEL: Grundy M for the applicant
 Vanenn A H for the respondent

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

[1] This is an application for a sentence review on behalf of the child, LRM. The child was sentenced to a sentence of three months' detention to be served by way of a conditional release order for the following offences:

- (1) wilful damage (1/9/2018);
- (2) enter premises with intent (1/9/2018);
- (3) enter premises and commit indictable offence (1/9/2018);
- (4) enter premises and commit indictable offence by break (1/9/2018);
- (5) enter premises and commit indictable offence by break (1/9/2018);
- (6) attempted enter premises with intent to commit indictable offence (1/9/2018);
- (7) wilful damage (14/8/2018);
- (8) attempted unlawful use of motor vehicle (20/8/2018);
- (9) enter premises with intent (20/8/2018);
- (10) attempted unlawful use of motor vehicles, aircraft or vessels – use wilfully destroyed, damage removed (20/8/2018);
- (11) enter premises and commit indictable offence by break (20/8/2018);
- (12) wilful damage (20/8/2018);
- (13) enter premises and commit indictable offence by break (20/8/2018);
- (14) attempted unlawful use of motor vehicles, aircraft or vessels – use wilfully destroyed, damage removed (20/8/2018);
- (15) enter premises and commit indictable offence by break (20/8/2018); and
- (16) wilful damage (20/8/2018).

[2] The child was sentenced on the same date to a graffiti removal order for an offence of wilful damage by graffiti and was resentenced on the same date to a 12 month probation order in respect of a range of offences which are set out in the Outline of Submissions on behalf of the child (Exhibit 1, paragraph 1 p.2), and to a reprimand

for further offences which are also set out in paragraph 1 p.2 which are a range of trespass offences.

- [3] The sentence imposed (conviction on 5 September 2018 and sentenced on 2 October 2018) was three months' detention to be served by way of a conditional release order. That is the only sentence that is the subject of this application for sentence review, and the other sentences imposed on the same date are not relevant to this review.
- [4] The application for review was filed on 17 October 2018.
- [5] The background is that the child was born on 16 December 2005, and was therefore 12 years old at the time of the offending the subject of this review and 12 years old at the time of sentence. The child had relevant criminal history and was subject to:
- (1) a graffiti removal order imposed on 7 August 2018;
 - (2) a nine month probation order imposed 3 July 2018; and
 - (3) a six month probation order imposed on 1 May 2018 at the time of the offending the subject of the conditional release order.
- [6] I note that the probation orders were revoked and discharged on 2 October 2018, and the resentence was a 12 month probation order.
- [7] The facts and circumstances of the offences are set out in detail at paragraph 6.2 of Exhibit 1 (Outline of Submissions on behalf of the child) and I do not propose to read them into the record, other than that they reflect a number of serious offences with significant financial, personal and other consequences to organisations, persons and entities. The magistrate expressed his serious concern about the nature of the offending, and I share that concern.

The law – sentence reviews

- [8] A Children's Court judge may review the sentence order of a Children's Court magistrate (*Youth Justice Act 1992 (Qld)* [YJA] s 118).
- [9] The review must be by way of rehearing on the merits (YJA s 122(1)) and must be conducted expeditiously and with as little formality as possible (YJA s 122(3)).
- [10] In deciding the review, the Children's Court judge may have regard to a record of the proceeding from the Children's Court magistrate and any further submissions and evidence by way of affidavit or otherwise (YJA s 122(2)).

The law – sentencing children

- [11] The principles set out at paragraph 8 of Exhibit 1 (Outline of Submissions on behalf of the child) clearly guide this court and any sentencing court in respect of the imposition of a detention order. Such an order should be made only if the court is satisfied that no other sentence is appropriate in the circumstances (YJA s 208) and the court must take into account the sentencing principles within YJA s 150.

- [12] YJA s 150(1)(b) obliges the court to have regard to youth justice principles, in particular, principle 17 (sentence of custody as the last resort), and principle 13 (which mandates where practicable a child of Aboriginal or Torres Strait Islander background being dealt with in a way that involves the child's community).
- [13] Sofronoff P in *R v SCU* [2017] QCA 198 stated (para 53):
- “The effect of the provisions of the Youth Justice Act that I have referred to is that the Act is emphatic about the requirement that a court give consideration to all statutory factors relevant to a particular case, as well as the facts of the case itself in the ordinary way, before deciding upon an appropriate sentence to be imposed upon a child.”
- [14] The *Youth Justice Act* at s 175(1)(f) provides:
- “When a child is found guilty of an offence before a court, the court may... if the child has not attained the age of 13 years at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months.”
- [15] The preconditions for making an intensive supervision order are set out at YJA s 203, and the requirements of such an order are set out at YJA s 204.
- [16] The grounds on which the review are sought are that the child did not express a willingness to comply with an intensive supervised order at the time of the sentence. What is clear, is that there was no reference to such an order in the pre-sentence report which was prepared for the court, and no submission was made by the defendant's legal representative at the time of sentence. This, it would seem, has contributed to the lack of opportunity for the child to consider being placed on an intensive supervision order (which he has since expressed a willingness to comply with), and, of course, the pre-sentence report had not canvassed the suitability of the child for the order and an appropriate intensive supervision program being available. Those issues have now been dealt with by way of correspondence (affidavit of Miriam Grundy affirmed 23 January 2019, annexure F (email correspondence with Youth Justice)).
- [17] Mr Bineen who appeared for the Crown raised the issue in his outline (Exhibit 3) paragraph 6, in that, strictly speaking, the fulfilment of the requirements of the matters I've just raised about willingness to comply, suitability of the applicant and the availability of an intensive supervision program were not addressed in the pre-sentence report as required (YJA s 203(2)).
- [18] I'm satisfied that the further material provided by way of an email supplement to the pre-sentence report that was provided to the learned Children's Court magistrate satisfies YJA s 203(2). To find otherwise would be to allow a technicality which in turn would be in conflict with the provisions of YJA s 122(3) which obliges this court to proceed expeditiously and with as little formality as possible. Having said that, it's clear that without the supplementary emails, the concern raised by the Crown would have been legitimate, and it's only the provision of those emails which finally satisfies me that the sentence review can proceed.

- [19] Having been satisfied as to the relevant provisions of YJA s 203(1)(a), (b) and (c), I accept the submission that the imposition of a custodial order to be served by way of a conditional release order is excessive in the circumstances, given that the sentencing option of an intensive supervised order was not raised in the pre-sentence report and not canvassed with the learned Children's Court magistrate.
- [20] I'm satisfied that, had the matter been raised at the time it was available, it was an order that should have been utilised by the learned sentencing magistrate, given the child was 12 years and nine months at the time of sentence and had spent 31 days in custody and would clearly benefit, in my view, from the intensive supervision order.
- [21] In all of the circumstances then, the alternative to detention, being the intensive supervision order, which should have been canvassed in the pre-sentence report and should have been considered and canvassed by the applicant's legal representatives at the time is the appropriate order to make, taking into account the applicant's age, the circumstances of the case (which I accept without hesitation were very serious, particularly in their consequences) and the child's expressed willingness to comply with the order which is confirmed in the affidavit of Ms Grundy.
- [22] In all of the circumstances I make the following order:
- 1. Application for sentence review granted;**
 - 2. Discharge the sentence of detention to be served by way of conditional release order imposed on 2 October 2018 in respect of the 16 charges identified in these reasons and contained in the relevant VJR;**
 - 3. Substitute an order that the applicant undertake an intensive supervision order for a period of six months.**