CHILDRENS COURT OF QUEENSLAND

CITATION:	*R v JPL* [2019] QChC 4
PARTIES:	**R** **v** **JPL** (applicant)
FILE NO/S:	483/2019
DIVISION:	Appellate
PROCEEDING:	Sentence review
ORIGINATING COURT:	Childrens Court of Queensland
DELIVERED ON:	5 April 2019
DELIVERED AT:	Brisbane
HEARING DATE:	25 March 2019
JUDGE:	President Richards DCJ
ORDER:	**Application Granted. Conditional release order set aside. The child is sentenced to 12 months' probation.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – REVIEW OF SENTENCE – SENTENCING OF JUVENILES – application for sentence review – where a head sentence of six months detention with no conviction recorded was imposed – where the applicant child was 13 years of age and had a criminal history at the time of offending – where the offences were committed whilst the applicant child was subject to a probation order – where the applicant child had spent 60 days in pre-sentence detention – where the applicant child's lack of family support could not go to imposing a more severe sentence – where the *Youth Justice Act* stipulates that detention should only be imposed as a last resort
COUNSEL:	D. J. Law for the applicant child N. K. Aittola for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Office of the Director of Public Prosecutions for the respondent

[1] The child was convicted on 5 November 2018 and sentenced on 23 November 2018. He pleaded guilty to ten charges of wilful damage, three charges of enter premises

and commit an indictable offence, two charges of common assault, three charges of commit public nuisance, one charge of fraud, two charges of unlawful use or entry of a motor vehicle, one charge of interfere with a fire apparatus, three charges of trespass, three charges of evade fare, three charges of enter premises and commit an indictable offence by break, one charge of animal cruelty, one charge of failure to appear, six charges of stealing, one charge of assault occasioning bodily harm whilst armed in company.

[2] He was 13 at the time of the offences and 14 at the time of sentence. He had a criminal history involving offences of graffiti and property offences. At the time of sentence he was subject to a nine month probation order. The offences were committed over a seven month period.

[3] The offending generally involved the child breaking into premises or cars, stealing items and causing significant damage or generally causing damage indiscriminately and behaving in a manner which was distressing to the public. On one occasion he was involved in a nasty assault in company with others. The animal cruelty charge involved removing a fish and crab from a tank in a Chinese restaurant and kicking them across the floor. The summary offences were dealt with by way of reprimand.

[4] His performance on probation was not good. He had been subject to a formal warning and it had been extended by 15 weeks following a period of non-compliance. His graffiti removal order was also subject to a formal warning but he did eventually complete the order. Whilst he was under Youth Justice supervision he was offered speech pathology, drug and alcohol counselling [he attended 50 per cent of the sessions], education reengagement [he attended 50 per cent of the sessions], renavigating anger and guilt emotions [he attended 30 per cent of sessions], and a mental health assessment [he attended 3 out of 8 sessions], and a Uhelp program which he completed. There were two other interventions which were planned but unable to be progressed due to non-compliance.

[5] In preparation of a pre-sentence report, attempts were made to contact the child's parents. The mother could not be contacted and the father was in custody at the time. The child has a child protection history dating back to 2013 including exposure to significant domestic violence perpetrated by his father towards his mother and exposure to parental substance misuse and criminal behaviours. The

child first witnessed his mother overdose at the age of six and it wasn't uncommon to witness his mother in an inebriated state most days as a result of methamphetamine use. At the time of the offending he was no longer attending school. He has established an anti-social peer network where he has actively engaged in offending and substance misuse. He has been using inhalants and methamphetamines and was using inhalants at the time of the offending. At the time of the sentence he had spent 60 days remand in custody and celebrated his fourteenth birthday in jail.

[6] It is clear that the child in this case has an offending history which is of serious concern. He had very little support in terms of his parents and his grandmother told the court she was willing to take him home with her but he wouldn't stay there. It is accepted that the offending was extensive, took place over a number of months and included unprovoked violence. He was described as running amuck and her Honour commented that he had no empathy for anybody or anything however, it was pointed out that he has never had an appropriate role model and he was very young. It was submitted that a restorative justice order would be appropriate and helpful, the magistrate however questioned whether he would be likely to attend any restorative justice process. This was a legitimate concern. It was indicated that in relation to his previous orders there was some compliance. Her Honour stated that [1]-[9]:

> "I think I would not be doing my duty if I release this child with nothing but a probation order to keep him out of trouble and try to address his offending behaviour."

[7] There was a warrant out for the arrest of his mother at the time of sentence. Her Honour's concerns about compliance with the orders were properly raised. However, the fact remains that the child was thirteen at the time of the offending and fourteen at the time of sentence. He has an appalling personal history defined by family violence, parental drug use and lack of supervision. He has a drug problem and an inhalant problem which is unsurprising given his upbringing. He had at the time of sentencing, spent 60 days in pre-sentence detention, a significant period of time for a thirteen year old.

[8] Section 150 of the *Youth Justice Act* 1992 requires mandatory consideration of the youth justice principles and the special considerations in subsection (2) are that:

(a) "a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and
(b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and
(c) the rehabilitation of a child found guilty of an offence is greatly assisted by—
    (i) the child's family; and
    (ii) opportunities to engage in educational programs and employment; and
(d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and
(e) a detention order should be imposed only as a last resort and for the shortest appropriate period."

[9] The relevant special considerations in this case include the following:

- The child was very young – only 13 at the time of offending
- The sentence imposed was one of detention and as such was a sentence of last resort
- The fact that the child did not have meaningful family support could not count against him
- The sentence of detention was appropriate only as a last resort

[10] In *R v SCU* [1] the President noted at paragraph [55]:

> "Section 150(1)(d) requires that the court have regard to the nature and seriousness of the offence. Otherwise, the *Act* emphasises considerations that, when they exist, would tend to be factors in mitigation of a sentence. This emphasis on the child's future at the expense of aggravating factors is understandable because judges need little reminder to take into account aggravating factors. Too often, they are very plain and painful to see. Yet, in the sentencing of a child it is vital that a sentencing judge not permit aggravating circumstances to overshadow considerations that are peculiar to the situation of children. One of these considerations is the short life history to which a judge can have regard in assessing likely reoffending and by contrast the large unknown future that awaits children."

[11] Her Honour was right to be concerned about the nature of the offending, the length of time and the elements of cruelty and violence involved however, taking into account the lengthy period of time on remand, a longer period of supervision would have been preferable in this case. The child had spent his first time on remand and it

[1] [2017] QCA 198.

was appropriate given that experience that he be given the chance to take advantage of the support of the department for a lengthy period of time.

[12] In my view given the age of the child and the time on remand a sentence of 6 months detention did not reflect the considerations of s 150 of the Youth Justice Act. The sentence is set aside and 12 months' probation [subject to the child's agreement] is imposed.