CHILDRENS COURT OF QUEENSLAND

CITATION:	*TWA v Office of the Director of Public Prosecutions* [2020] QChC 17
PARTIES:	**TWA** (applicant) **v** **OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS** (respondent)
FILE NO/S:	138 of 2020
DIVISION:	Appeal
PROCEEDING:	Sentence Review Application
ORIGINATING COURT:	Childrens Court of Queensland
DELIVERED ON:	10 July 2020
DELIVERED AT:	Brisbane
HEARING DATE:	1 July 2020
JUDGE:	Richards DCJ
ORDER:	**1. Application allowed.** **2. The sentence is set aside.** **3. A restorative justice order is made in relation to all of the offences pursuant to s 162(1) of the Youth Justice Act 1992 (Qld).**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING JUVENILES – where the child was sentenced on twelve offences – where the child was 14 years of age at the time of offending – where the child had no criminal record and was not known to police – where the learned Magistrate sentenced the child to a number of orders including a 50 hour community service order, a 12 month restorative justice order and was reprimanded in relation to four to offences – whether the learned Magistrate adequately considered a restorative justice process as a diversionary process instead of sentencing the child pursuant to Section 162(1), *Youth Justice Act 1992* (Qld) - where it is mandatory for the learned Magistrate to consider referring the child to a restorative justice process rather than sentence – where the learned Magistrate erred in not considering 162(1), *Youth Justice Act 1992* (Qld).

Legislation

Youth Justice Act 1992 (Qld)

Cases

R v PBD [2019] QCA 19

LEGAL REPRESENTATIVES:	L Barnes for the applicant T O'Brien for the Office of the Director of Public Prosecutions

Introduction

[1] The child was convicted on 26 March 2020 in relation to offences as follows:

1. Enter premises and commit by break and unlawful use of a motor vehicle on 19 February 2020.

2. Stealing and contravene a requirement on 4 March 2020.

3. Enter premises and commit by break, unlawful use of a motor vehicle and stealing on 8 March 2020.

4. Enter premises with intent between 5 March 2020 and 9 March 2020.

5. Enter premises and commit by break, wilful damage, trespass and possession of tainted property on 21 March 2020.

He was sentenced to a number of orders including a 50 hour community service order, a 12 month restorative justice order and was reprimanded in relation to four of the offences.

[2] He was 14 years at the time of the offences and at sentence. He had no criminal history and had not previously come to the attention of the police. The restorative justice orders attached to the enter premises by break and unlawful use of a motor vehicle on 19 February, the enter premises with intent between the 5 and 9 March 2020 and the enter premises and commit by break and unlawful use of a motor vehicle on 8 March 2020. In relation to the contravene a requirement on 4 March 2020 and the wilful damage, trespass, and possession of tainted property on 21 March he was formally reprimanded. In relation to all the other offences, including

the offences for which a restorative justice order was made, he was sentenced to 50 hours community service. No conviction was recorded.

[3] If a child enters a plea of guilty for an offence a court must consider referring the child to a restorative justice process instead of sentencing the child.[1] That restorative justice process can take place either as a diversionary process instead of sentencing the child[2] or as a presentence restorative justice process to assist in sentencing the child.[3] It is accepted that the requirement to consider referring the child to a restorative justice process rather than sentence the child is mandatory.[4]

[4] It is conceded by the Crown that the Court fell into error by not having a regard to the mandatory requirement to consider referring the offences to a restorative justice process rather than sentencing the child. The learned Magistrate was led into error by the parties who did not draw the Court's attention to the requirement and the Crown concedes that the child should therefore be sentenced afresh although the Crown submits that the appropriate sentence is that which was imposed by the Magistrate.

[5] The applicant submits that this child was very young, namely 14 years of age. He had spent five nights in custody and it was his first time in custody. He had no juvenile history and had not come to police attention prior to this offending.

[6] It was submitted on his behalf at sentence that he did not partake in sniffing or chroming or drugs and really does not drink. He was starting to associate with some more "prominent offenders". He was still at school, although his attendance was poor, and he was described as being just at the beginning of a downwards trend.

[7] The offending took place over a period of a month and that is a concern. Some of the offending was serious, in particular the breaking into the Childcare Centre and stealing a minibus. (The minibus was later consumed by flames and destroyed).

[8] In relation to the unlawful use charges he was a passenger in both of the vehicles. The van that caught on fire did so because of erratic driving rather than a deliberate arson and in fact all his possessions were in the vehicle and destroyed.

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1 Section 162, *Youth Justice Act* 1992 (Qld).
2 Section 162(1), *Youth Justice Act* 1992 (Qld).
3 Section 162(2), *Youth Justice Act* 1992 (Qld).
4 *R v PBD* [2019] QCA 19 per Sofronoff P, p 5, ll 29-31.

[9] His mother indicated that he was normally a good boy but once he had started high school he met up with some children that were a bad influence on him and that he wanted to go out with those children. She said she normally did not let him do that and a large amount of the offending was due, in the mother's estimation, to boredom.

[10] In sentencing the child the Magistrate agreed with the submissions of the defence and imposed the sentence that was submitted by the defence. However, given that the Magistrate did err in not considering s 162(1) of the Act, it falls upon this Court to resentence the child.

[11] The child as a young first time offender, had spent five nights in custody and that is a significant punishment for a child in his situation. He had not previously been in the courts. He came from a good family. In those circumstances it was appropriate in my view for him to be diverted away from the courts and offered a restorative justice order in relation to all of the offences.

ORDER

The application is granted. The sentence is set aside and instead a restorative justice order is made in relation to all of the offences pursuant to s 162(1) of the *Youth Justice Act* 1992 (Qld).