

CHILDRENS COURT OF QUEENSLAND

CITATION: *R v BNE* [2020] QChC 19

PARTIES: **THE QUEEN**

v

BNE

FILE NO/S: 154 of 2020

DIVISION: Childrens Court

PROCEEDING: Sentence Review

ORIGINATING COURT: Cairns Childrens Court

DELIVERED ON: 10 July 2020

DELIVERED AT: Brisbane

HEARING DATE: 3 July 2020

JUDGES: Richards DCJ

ORDER: **1. Application allowed.**
2. Sentence set aside.
3. The child is resentenced to an order of 40 hours community service on the standard conditions. The child must report within 72 hours to the Chief Executive.

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING JUVENILES – where the child was convicted of unlawful use of a motor vehicle and enter premises and commit an indictable offence by break – where the child was sentenced to three months detention to be served by way of conditional release order for a period of two months – where the child was 12 at the time of offending and 12 at the time of sentence – where the learned Magistrate took into account his history of offending and factors contributing to his offending – whether the learned Magistrate adequately took into account the child’s age – whether the learned Magistrate gave adequate reasons for sentencing the child to detention – whether the sentence of detention was manifestly excessive

SOLICITORS: Mr Gill of Legal Aid for the child
Ms J Daniels of the Office of the Director of Public Prosecutions for the respondent.

- [1] The child was convicted on 27 March 2020 of one count of unlawful use of motor vehicle (on 21 March 2020) and one count of enter premises and commit an indictable offence by break (on 23 March 2020). He was sentenced on 7 April 2020 to three months detention to be served by way of a conditional release order for a period of two months.
- [2] In relation to the unlawful use of a motor vehicle, the child was with friends, they approached a vehicle when the owner had gone inside to get pizza. One of his friends got into the driver's seat and drove to another location where the child and another friend got into the car. In relation to the entering premises, they used a metal grate to smash open the front glass window and gain entry to a store, they took a computer, a guide dogs donation tin, and Rexona deodorant cans. The cans were used for chroming.
- [3] The child was 12 at the time of the offending and 12 at the time of sentence. He is now 13 years of age. He had previous convictions starting in January 2019 when he was 11 years old. The offending was mostly property offending. He had been placed on probation on four different occasions. He has since committed further offences. A pre-sentence report was supplied to the Court. It indicated his previous compliance with orders as being unsatisfactory and that he had spent 15 days remanded in custody in relation to these offences.
- [4] The report detailed his background which involved childhood trauma related to suffering physical abuse and neglect and being exposed to domestic family violence, a lack of supervision and substance misuse.
- [5] The child advised that in relation to the break and enter offence, he had absconded from his residential placement, (he is currently in the care of the Department) and had come across a friend of his who suggested they break into a shop. He indicated that he did not steal the cans of deodorant and he no longer used deodorant to chrome. He said his motivation for committing the offence was to obtain money to buy food, clothing, cigarettes and bus fare. He advised the author of the report he does not want to commit any crimes anymore, (although, apparently he has said that previously to other report writers). He indicated a desire to attend school at TWQ upon release.

- [6] The child was born in Townsville. There were child safety concerns raised prior to his birth and for the first two months of his life in relation to frequent physical domestic violence between the parents. He was culturally adopted at two months of age and moved to the Cairns area until he was seven. During that time, again he was exposed to pervasive domestic violence and both his adopted parents were noted to frequently drink excessive amounts of alcohol and leave the siblings alone with no parental supervision or care. At five years old, he was found alone at night on the street in Mooroolbool. Thereafter, he went back and forth from various relatives and moved from town to town.
- [7] Unsurprisingly the report noted that this was likely to lead to insecurity, transience and attachment issues, and of course poor school attendance. This in turn has led to poor problem solving skills, impulsivity, lack of consequential thinking, poor social ties and lack of integration within the community.
- [8] In 2019 and early 2020 he was described as being highly transient to the extent that several of his family members named others as being his primary caregivers and being responsible for his safety, wellbeing and supervision, although no one seemed to know who was actually caring for him. He was introduced to sniffing aerosol deodorants in September 2019 by another young person and that became a way to escape the negative emotions he was experiencing due to his home and family circumstances.
- [9] In imposing a sentence on the child, the Court must take into account the sentencing principles within s 150 of the *Youth Justice Act 1992 (Qld)*. Some of those principles include having a regard to the Youth Justice Principles, the nature and seriousness of the offence and the fitting proportion between the sentence and the offence. Special considerations should be given to the child's age, that a non-custodial order is better than detention in promoting a child's ability to reintegrate, and that a detention order should only be imposed as a last resort and for the shortest appropriate period.
- [10] In sentencing the child, the Magistrate did take into account his history of offending and the factors contributing to his offending, namely childhood trauma and lack of supervision, the influence of his peers and substance misuse. He then indicated that, having a regard to his history, the only appropriate sentence is one

that he be sentence to a period of detention and then placed him under conditional release order.

- [11] He did not refer to the significant matter of his age, namely that he was only 12 years of age. Nor did he give any particular reasons for his decision that detention was the only appropriate sentence, other than his criminal history. The offences themselves were not as serious as many that come before the Court. Given his young age and his lack of supervision and the fact that he had already spent 15 days in detention, it was not appropriate in my view for him to be sentenced to a further period of detention, namely three months.
- [12] The Crown has conceded that a community service order is appropriate in the circumstances. The child has been taken through a community service order and has agreed to abide by the conditions.
- [13] He is now living with family and is in contact with the Department regularly and those factors tend to suggest that there is hope that he may comply with a community service order. In all of the circumstances that is the appropriate order to make.

ORDER

The application is granted, the sentence is set aside, and instead an order of 40 hours community service on the standard conditions is imposed. The child must report within 72 hours to the chief Executive.