

CHILDRENS COURT OF QUEENSLAND

CITATION: *JRE v Office of the Director of Public Prosecutions* [2020]
QChC 20

PARTIES: **JRE**
(applicant)

v

**OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS**
(respondent)

FILE NO/S: 146/2020

DIVISION: Childrens Court of Queensland

PROCEEDING: Sentence Review

ORIGINATING COURT: Dalby Childrens Court

DELIVERED ON: 10 July 2020

DELIVERED AT: Brisbane

HEARING DATE: 3 July 2020

JUDGE: Richards DCJ

ORDER:

- 1. Application allowed.**
- 2. The sentence is set aside so far as the terms of detention and the conditional release order.**
- 3. The child is sentenced to 12 months' probation on those offences.**
- 4. No convictions are recorded.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING JUVENILES – where the child was sentenced on 11 offences – where the learned Magistrate sentenced the child to detention and a conditional release order – where the child was 15 years of age – where the child had relevant criminal history – where the learned Magistrate was provided with a pre-sentence report – where the learned Magistrate told the child during the sentence that if he was unwilling to comply with a conditional release order it may extend his time in detention – where the learned Magistrate indicated she took all matters into account including the sentencing principles set by the *Youth Justice Act 1992* (Qld) – where the learned Magistrate failed to give reasons as to why a period of lengthy detention was appropriate – whether the time already spent in detention by

the child was adequately taken into account – whether the learned Magistrate imposed a manifestly excessive sentence

Legislation

Youth Justice Act 1992 (Qld)

Cases

R v SCU [2017] QCA 198

SOLICITORS: Ms L Barnes of Legal Aid Queensland for the applicant child
Ms G Cho for the respondent

- [1] The applicant pleaded guilty on 1 April 2020 in the Dalby Childrens Court to offences of enter premises and commit an indictable offence by break on 27 June 2019; enter premises and commit and indictable offence and unlawful use of a motor vehicle and stealing on 9 July 2019; two charges of unlawful use of a motor vehicle on 19 July 2019; unlawful use of a motor vehicle, possession of a dangerous drug and trespass on 8 November 2019; unlawful use of a motor vehicle on 28 December 2019 and attempted unlawful use of a motor vehicle on 10 January 2020.
- [2] He was sentenced as follows in relation to those charges: on the enter premises on 27 June 2019, he was sentenced to 12 months' probation with no conviction recorded; on 9 July offences, he was sentenced to three months' detention immediately suspended to be served by way of a conditional release order with no conviction recorded; and the remainder of the offences, he was sentenced to 203 days detention with no conviction recorded. It is against the periods of detention that the review is sought.
- [3] On 27 June 2019, the child and four other offenders gained entry to the Target Country department store, by throwing objects at glass doors and windows. They damaged money tills and a phone display cabinet. They took several mobile phones, two Xbox game consoles and money. The child was identified from CCTV footage. He made admissions.
- [4] On 9 July, the applicant entered a home by opening an unlocked front door, he stole the complainant's wallets and keys to a Volkswagen. He drove away in the Volkswagen and stole petrol from a fuel station.

- [5] On 19 July, he was a passenger in a Volkswagen which had been stolen from Chinchilla. A police chase followed and he and his co-offenders fled the car and got into another car. They tried to drive away, but were ultimately stopped by the complainant.
- [6] On 8 November 2019, the applicant was a passenger in a Holden Commodore which had been stolen. They drove the car at speed along the Balonne Highway. Police found the applicant child, who fled through neighbouring yards and took him to the Cunnamulla watch house where he was found with 1.6 grams of cannabis.
- [7] On 28 December 2019, he was a passenger in a Subaru vehicle stolen from Toowoomba. Again, the police tried to stop the group. They fled the scene.
- [8] On 10 January 2020, the owner of a Toyota Hilux woke up to rattling sounds in her backyard. She went out and saw three males, one jumped over the fence, another ran from the backyard and the third had to exit the driver side of the car. The car had been moved several metres in an attempt to start it.
- [9] The Magistrate in imposing the period of 203 days detention and the conditional release order, failed to apply the appropriate sentencing principles as enunciated in *R v SCU* [2017] QCA 198, in particular, at para 57:

“The Act requires a Judge to be satisfied positively, for reasons that he or she must state, that none of the courses of action that do not involved incarceration would be likely to serve their intended purpose, which is the prevention of reoffending, before imposing the final alternative, that of incarceration. And even then, that a Judge is bound to consider whether it might be enough to order detention with conditional release, an order that presupposes the existence of satisfactory programmes to modify a child’s behaviour and attitudes.

The wide liberty for a Court to fashion conditions for this purpose as ‘an option instead of detention of a child’ conferred by the statute to which enjoins Courts to order actual detention of a child ‘only as a last resort’ casts a heavy burden upon a Court by process of exhausted reasoning to eliminate all the options offered by the Act before making a detention order.”

- [10] The child had a criminal history which was relevant. He was at the time subject to a good behaviour bond and he had previously been sentenced to a combined detention and probation order community service.

- [11] A presentence report was prepared by the Department. It detailed that he was the second born and youngest child of his parents. He lived a transient lifestyle in his younger years. His mother advised they relocated after his offending behaviour started to become an issue and moved in the hope of immersing him in a more culturally appropriate setting. His grandfather was described as very strict and kept the family together as well as passing on his knowledge of cultural practices. The child enjoyed doing these cultural activities with his grandfather. While the family lived with the grandfather, he did not get into trouble, but the grandfather passed away four years ago and that was a tough time for the family.
- [12] After he passed, they moved to Cairns and the child started getting into trouble. Around that time, the parents separated and the child was going back and forth between Cairns and Chinchilla. It was stated by the mother that the separation was extremely difficult on the child. There was conflict between the child and his mother as he rejected boundaries and rules that she tried to impose.
- [13] He was said to be under the influence of cannabis at the time of the offending. He was using cannabis daily.
- [14] He is disengaged from his education.
- [15] He said in relation to the motor vehicle offences he was bored and gave no thought to the potential consequences for himself and others.
- [16] In relation to the offending itself, it is noted that most of the offending involved him being a passenger in a vehicle. On only one occasion did he drive a vehicle.
- [17] At the time of sentence, the child was 15 years of age having been born on 4 April 2004. He was 15 at the time of the offending. At the time of sentencing, the child had indicated in the presentence report he was unwilling to comply with a conditional release order. The Magistrate in speaking to him, indicated that if he was unwilling to comply with the conditional release order, it may extend his detention because a supervised release order might result in more time being served.¹

¹ See transcript 1-12.

- [18] Ultimately, the child did agree to the conditional release order, but it can be implied from the magistrates remarks and his reaction, that he understood the alternative was likely to be more time in custody. At the end of the discussion, the Department submitted that taking into account the 203 days that the child spent in custody, the conditional release order and probation order was possibly excessive.
- [19] The Magistrate indicated that it was her intention to give him probation, a three month conditional release order and “declare” the 203 days that he served in detention.
- [20] In sentencing the child the Magistrate indicated that she took all matters into account, including the sentencing principles set by the *Youth Justice Act 1992* (Qld). She did not state specifically why she thought it was appropriate to impose a term of detention on the child, particularly an additional term of detention to be served by way of a conditional release order. Whilst the Magistrate was entitled to, and should have taken into account the fact that he spent 203 days in custody prior to sentence, it was not appropriate, in my view, to sentence him to 203 days in custody. Nor is it possible to declare the 203 days as time served.
- [21] The Magistrate failed to give detailed reasons why she decided that these offences dictated such a lengthy period of detention nor why a conditional release order was appropriate for the offences of 9 July. This alone amounts to an appealable error.
- [22] The offending itself was serious but the child had spent a considerable period of time in detention. The time in detention was time that the Magistrate could and should have considered in arriving at the appropriate sentence.
- [23] The Crown has conceded that he sentence is manifestly excessive and submits that in all the circumstances a term of probation was appropriate. I agree with that proposition.

ORDER

The application for sentence review is allowed. The sentence is set aside so far as the terms of detention and the conditional release order are concerned and the child is sentenced to 12 months’ probation on those offences. No convictions are recorded.