

# CHILDRENS COURT OF QUEENSLAND

CITATION: *HTD v Office of the Director of Public Prosecutions* [2020] QChC 27

PARTIES: **HTD**  
(applicant)  
v  
**THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
(respondent)

FILE NO/S: 162/2020

DIVISION: Appellate

PROCEEDING: Sentence Review

ORIGINATING COURT: Gladstone Childrens Court

DELIVERED ON: 3 September 2020

DELIVERED AT: Brisbane

HEARING DATE: 30 July 2020

JUDGE: Richards P

ORDER: **1. The application is dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – SENTENCING JUVENILES – where the child was sentenced to 61 offences – where the child was further re-sentenced on 14 offences - where the child was 15 and 16 at the time of offending – where the child was on probation and community service at the time of offending – where the child breached those orders by reoffending - where the child was sentenced to a nine month order of detention to be served by way of conditional release order, 12 month probation order and 60 hours community service – where the child’s childhood had been one of minimal supervision and structure - where the child had spent 124 days in custody at the time of sentence - whether the learned Magistrate adequately considered all other sentencing options before imposing detention – where the offending was prolific and persistent by the child

## Cases

*The Queen v SCU* [2017] QCA 198

*R v RBB* [2019] QCA 277

COUNSEL: P Lammersdorf, solicitor of Aboriginal and Torres Strait

Islander Legal Service for the applicant child  
Mr S Sherrie instructed by the Office of the Director of  
Public Prosecutions for the respondent

### **Introduction**

- [1] The applicant child pleaded guilty to 61 charges. A pre-sentence report was prepared and he was sentenced on 6 April 2020. He was also resentenced for a further 14 charges for which he had previously been given community service and probation which he breached by reoffending. A pre-sentence report was ordered and considered during the sentence.
- [2] He was sentenced to a nine month order of detention to be served by way of a conditional release order, a 12 month probation order and 60 hours community service. He seeks a review of that sentence on the basis that it is manifestly excessive.

### **Summary of offences**

- [3] On 21 July 2019 the child and a co-offender gained entry to a house by cutting the flyscreen of an open window. They stole property. On the same night they also gained entry to an unlocked vehicle and searched it but did not steal any property (burglary and commit indictable offence, enter premises with intent to commit indictable offence).
- [4] On 23 July 2019 the child and a co-offender entered a vehicle which they drove away. On that same night they tried to enter a house by pushing a flyscreen but it resulted in a loud noise and they ran away. They then gained entry to a vehicle by smashing the driver's side window and stole money from the glovebox. They gained entry to a further two unlocked vehicles and stole money and keys and cards (unlawful use of motor vehicles aircraft or vessels, attempt to enter dwelling with intent at night in company, enter premises and commit indictable offence by break x 2).
- [5] On 3 August 2019 they again entered a vehicle and stole property (enter premises and commit indictable offence by break). This pattern continued the next night with a two further offences of a similar nature. On 4 August they also broke into a private house and searched the dwelling. They located a motorcycle in the garage

- and stole that (burglary and commit indictable offence, unlawful use of a motor vehicle).
- [6] On 5 August 2019 the child and two others gained entry to a vehicle which was unlocked and stole it (unlawful use of a motor vehicle). They also went into an open carport and stole three fishing rods and a detachable fuel tank (stealing). They then entered a vehicle and took some money (enter premises and commit indictable offence by break).
- [7] On 6 and 7 August they entered three vehicles and stole property (enter premises and commit indictable offence by break x 3).
- [8] On 8 August the child and three others entered a private dwelling. They were located by the victim who asked who they were and they ran away (enter dwelling with intent by break at night in company).
- [9] On 11 August 2019 they entered a house and stole an iPhone and car keys. They then went to the garage and entered the motor vehicle and searched the vehicle. They took another motor vehicle and stole property. On that same day police searched the child's property and found a bong (burglary and commit indictable offence, enter premises and commit indictable offence by break x 2, possession of utensils).
- [10] On 12 August 2019 the child and another entered a vehicle and stole property. They then entered a private property and located a vehicle key and stole the vehicle (enter premises and commit indictable offence by break, unlawful use of motor vehicle).
- [11] On 13 August 2019 they entered a vehicle and stole property. They then entered a private dwelling and stole property (enter premises and commit indictable offence by break). (There is an additional charge of burglary and commit indictable offence but there are no additional facts).
- [12] On 15 August 2019, the child and another entered a motor vehicle and tried to remove it but were unsuccessful. They then entered a house and stole property. They then entered a business premises and tried to get into four vehicles but were unsuccessful. They went into a shed via a closed but unlocked door and stole some

- property from a vehicle inside the shed (enter premises and commit indictable offence by break x 6, attempted unlawful use of a motor vehicle.)
- [13] On 16 August 2019, police found the applicant and went to arrest him. Upon sighting the police, the child fled. He ignored their direction to stop (obstruct police).
- [14] On 21 August 2019, the child was in custody at the Gladstone Watch House and scratched words in two doors of a cell with his fingernails (wilful damage of police property).
- [15] Between 5 January and 10 January 2020, the child with co-offenders entered vehicles and stole property and entered a property via a garage door and removed keys. They then drove a vehicle away. They also drove a trail bike out from a yard (enter premises with intent to commit indictable offence, enter premises and commit indictable offence x 3, burglary and commit indictable offence, unlawful use of motor vehicle x 2).
- [16] Between 6 January and 11 January 2020, the child and others entered vehicles and stole property and entered houses and stole property (burglary and commit indictable offence, enter premises and commit indictable offence by break x 3, enter premises and commit indictable offence by break at night).
- [17] On 9 January 2020, the child and two others entered a dwelling and stole property, they entered a garage area and stole property from a vehicle, they were discovered by the owner of the house and they ran away. After being discovered, they went to another property which had three vehicles parked on the front lawn. They went into those three vehicles and were discovered entering the third vehicle and ran away. The police tracked down the applicant and the two co-offenders and found them in possession of cannabis and a water pipe (enter premises and commit indictable offence by break, burglary and commit indictable offence, enter dwelling with intent by break at night in company, enter premises and commit indictable, enter with intent to commit indictable offence, enter premises with intent to commit indictable offence, possession of dangerous drugs and possession of utensils or pipes).

- [18] For all those offences, the child received nine months' detention to be served by way of a conditional release order, no convictions were recorded. There are a further five offences of burglary and unlawful use of a motor vehicle x 2, enter premises and commit indictable offence by break and serious assault of a police officer causing bodily harm. In relation to the serious assault he punched a police officer in the face with a closed fist. For those five offences he received 12 months' probation and 60 hours community service, no convictions recorded.
- [19] On the same day he was sentenced to nine months' detention to be served by way of a conditional release order as a result of a breach of probation and community service in relation to 14 property offences which were largely similar to the preceding offences already outlined.

### **Discussion**

- [20] The solicitor appearing for the child has summarised the offences in this way. The first offending period is from 21 July 2019 to 21 August 2019, the second offending period is 5 January to 11 January 2020. There are 15 different private dwellings and 30 different motor vehicles. There were nine charges of unlawful use of a motor vehicle plus other miscellaneous charges. He made full admissions to the police.
- [21] The child was 16 at the time of sentence and 15 and 16 at the time of the offending. He had at the time of the sentence a four page criminal history involving property offending. He was on probation and community service at the time of the offences.
- [22] The pre-sentence report indicates that the child is a twin sibling and the youngest of five children. His father passed away in 2014. His parents were separated at the time and he has lived between the two households growing up.
- [23] His childhood has been one of limited supervision and structure. His mother was transient from the family home and he was left unsupervised for extended periods of time. There are no rules or expectations at his mother's house. At the time of the commission of the offences he was couch surfing between friends' houses and his mother was unaware of his whereabouts or activities. At the time of the offences for which he was resentenced he and his sister were staying in Gladstone while their mother was in Toowoomba and there were no adults living in the household.

- [24] He has not attended mainstream schooling at all since early 2019 and he has not attended school consistently since Grade 6 and 7. He began smoking cannabis when his father passed away in 2014 at the age of 11.
- [25] He uses cannabis daily and has begun alcohol and drug counselling. At the time of the offending he was using cannabis and methamphetamine. It was assessed that he was also suffering from poor mental health and depression. He presents as someone who felt little sympathy for his victims and he had difficulty providing insight into his offending behaviour. The child advised in his pre-sentence report that prior to being remanded in custody he was having issues with his family and was not staying in any of the family's houses. He said he was without money. He indicated that he was motivated to stay away from drugs.
- [26] At the time of sentencing he had spent 124 days in custody. The Youth Justice representative at sentencing indicated that he'd had good compliance initially with his conditional bail program but that had fallen off track. They indicated that when he was stable and off drugs he was compliant with his bail conditions. On his behalf it was submitted that a detention order was required but that he should be released immediately and subject to a conditional release order. It was submitted that when he had structure and stable accommodation he was able to comply with programs.
- [27] On appeal it is submitted that having regard to the principles that a detention order should be imposed only as a last resort and for the shortest appropriate time, that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community and that a Court should make a detention order only if the Court, after considering all other available sentences and taking into account the desirability of not holding a child in detention, is satisfied no other sentence is appropriate in the circumstances.
- [28] The child's representative relied on the comments of the Court in *The Queen v SCU* [2017] QCA 198 and *R v RBB* [2019] QCA 277 where the Court reaffirmed the requirement that all sentencing options must be considered before detention is imposed and even then a conditional release order must be considered.
- [29] The submission was that the child had never been previously sentenced to restorative justice, a conditional release order or actual detention. Ultimately,

relying on a number of comparable sentencing decisions, it was submitted that the child should have been sentenced to 124 days detention (the time he had already served).

[30] In this case the child was 15 and 16 years of age. The offending was almost identical to the previous offending for which he was on probation and community service at the time. The child was persistent in his offending having offended from July to August. He then presumably was placed on bail and then started offending again from January to February. The offending was prolific. He had little empathy or remorse for his offending. He did cooperate with the authorities and that is a matter to his credit but given the persistence of the offending, the volume of the offences and the fact that the Magistrate considered the conditional release order instead of further actual time in custody, in my view it was an appropriate sentence and should not be set aside.

[31] The application is dismissed.