

CHILDRENS COURT OF QUEENSLAND

CITATION: *ECM v Office of Director of Public Prosecutions* [2020] QChC 35

PARTIES: **ECM**
(Applicant)
v
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
(Respondent)

FILE NO/S: 298/20

DIVISION: Appeal

PROCEEDING: Sentence Review

ORIGINATING COURT: Brisbane

DELIVERED ON: 18 November 2020

DELIVERED AT: Toowoomba

HEARING DATE: 11 November 2020

JUDGES: Richards DCJ

ORDER: **1. Application allowed.**
2. The sentence is set aside.
3. The child is placed on a 12 month good behaviour bond.

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – SENTENCING JUVINILES – where the child was sentenced for trespass and common assault – where the child was 14 years old at the time of offending and at the time of sentence – where the child had relevant criminal history – where the child spent 19 days in pre-sentence custody – where the child had significant mental health issues – where the child was sentenced to a 10 month probation order – whether the sentence imposed adequately took into account all of the mitigating factors in favour of the child – where 12 months probation is the maximum period of probation that can be imposed upon a 14 year old child – whether the sentence imposed by the learned Magistrate was manifestly excessive

SOLICITORS: P Dent – Legal Aid for the applicant
Mr T O’Brien – Office of the Director of Public Prosecutions for the respondent

- [1] On 13 August 2020 the applicant child was convicted and sentenced on charges of trespass and common assault. She was sentenced to 10 months probation. No convictions were recorded.
- [2] On 17 July 2020 at 9.19pm the child spat in the face of her mother approximately five times after her mother tried to intervene to calm her down and prevent damage to her home. The child made full admissions to the police. On 8 August 2020 at 4.00pm she trespassed when she rode a bicycle through a nearby school.
- [3] She was held in custody from 17 July 2020 until 4 August 2020 when she was placed on a conditional bail program.
- [4] She was 14 years old at the time of the offences and at the time of sentence. She had a criminal history beginning on 8 January 2020 when she was charged with a large number of trespass offences and other related incidents which occurred between September and December 2019. She was sentenced again in March 2020 for offences of trespass, wilful damage and assault and then on 9 July 2020 for wilful damage. She had previously received probation, two community service orders, a restorative justice order and a reprimand. At the time of the offending she was subject to the community service and probation orders. The learned magistrate ordered a pre-sentence report be prepared in relation to the child.
- [5] The pre-sentence report indicates that her offending occurred predominantly within the family home or within close proximity to it and was largely nuisance, property and assault-related. At the time of sentence Child Safety Services were engaged with the family and were looking at ways to support the child and her family. She had been seeing a range of mental health clinicians. She had been diagnosed with autism spectrum disorder, attention deficit disorder, oppositional defiance disorder and post-traumatic stress disorder. It was noted at page 6 of the pre-sentence report:

“ECM’s presentation is underpinned by her exposure to trauma, poor emotional regulation strategies, poor attachments, low self-esteem and low intellectual functioning. It has been assessed that ECM’s experiences of trauma are likely to have impacted her ability to appropriately perceive threat leading to hypervigilance and quickly responding even when there is no threat. This may be portrayed in her engaging in violence or aggression towards others or self-harming due to being unable to regulate the emotional response which is being triggered.

ECM continues to struggle with ongoing anxiety and her risk of harm to self remains moderate to high with ECM regularly presenting to the emergency department. As a result ECM has the support of a mental health care team, both in the community and in custody. ECM's treatment continues to prioritise individual psychotherapy sessions, emotional regulation strategies, art therapy and engagement in pro-social activities."

- [6] The report detailed that at the time of the common assault she had been the subject of a review of her medication on 16 July and she was scheduled to commence new medication on 17 July 2020. She had, throughout the past 12 months, had a number of alterations to her medications which had resulted in high levels of anxiety as she was unaware of how her body would react to the medication. Her mother was attempting to encourage her to take the new medication at the time of the offence and she was very stressed as a result. She had also indicated that she had experimented with chroming in the hours before the offence and was under the influence at the time of the assault, having chromed a whole deodorant can.
- [7] The applicant had been previously sentenced to a restorative justice order; that had to be discharged due to her mental health and several hospitalisations. Although she had been compliant, it was assessed that it was not in her best interest to proceed with the conference. She indicated she was unwilling to comply with a restorative justice order on this occasion.
- [8] In relation to the offending itself, the child was having, in the prosecutor's words a "mental disturbance" and was throwing rocks at the home in which she lived with her mother. She was also armed with a large stick. Her mother placed herself between the child and the house to stop her attempts to damage the house. She then went up to her mother and spat in her face five times and spat on her vehicle. Her mother then went inside the house and called the police. The police attended. She was verbally abusive towards her parents. She was disarmed and she made admissions.
- [9] In relation to the trespass, she was on school grounds having been told not to be there before.
- [10] She was apparently very responsive in relation to her probation and has started to reflect on her behaviours. She started to work on her anger management issues.

Apparently she has been working through her community service and was a good worker.

- [11] In sentencing her the learned magistrate noted that the act of spitting in someone's face was very serious. It was submitted on her behalf that she was remorseful and was embarrassed by her behaviour. She was currently being treated by a psychologist and a psychiatrist.
- [12] The magistrate noted that she had been offending consistently this year and he reduced the 12 month probation order by two months to take into account the time she had spent in custody.
- [13] It was submitted on her behalf that in arriving at the sentence of 10 months' probation the learned magistrate gave insufficient weight to the circumstances of the offence, the fitting proportion between the sentence and the offence, her plea of guilty, her pre-sentence detention, her antecedents and her age.
- [14] The sentence of 12 months' probation was the maximum period of probation that could be imposed upon a child of 14 years. Nineteen days in pre-sentence custody was a significant amount of time and the Crown accepts that the sentence imposed in the circumstances of her mental health issues, the change of medication and her age, was manifestly excessive. I agree with that submission.
- [15] The sentence is set aside and instead the child is placed on a 12 month good behaviour bond.