

CHILDRENS COURT OF QUEENSLAND

CITATION: *R v KRM* [2020] QChC 4

PARTIES: **R**
v
KRM
(Applicant)

FILE NO/S: 452/19

DIVISION: Appellate

PROCEEDING: Application for Sentence Review

ORIGINATING COURT: Childrens Court of Queensland

DELIVERED ON: 11 March 2020

DELIVERED AT: Brisbane

HEARING DATE: 12 February 2020

JUDGE: Richards P

ORDER: **Appeal allowed.**
Sentence of 9 months probation set aside. The child is sentenced to 3 months probation.
Sentence otherwise to remain

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – SENTENCING OF JUVENILES – where the applicant child was sentenced to 13 offences – where the applicant child was 14 or 15 at the time of the relevant offending – where the applicant child spent 31 days in pre-sentence detention – where a nine month probation order was imposed – whether time in pre-sentence detention was adequately taken into account – whether sentence imposed was manifestly excessive

COUNSEL: Mr T Finter for the applicant
Mr J Daniels for the respondent

SOLICITORS: Legal Aid Queensland for the applicant

Office of the Director of Public Prosecutions for the
respondent

- [1] On 4 September 2019, the applicant was sentenced in relation to 13 offences. He was cautioned for an offence of failing to appear in accordance with an undertaking on 19 September 2018, possession of a knife in a public place on 29 November 2018 and driving a motor vehicle without a driver's licence (never held licence) on 12 January 2019. A nine month probation order was imposed for the remaining offences and convictions were not recorded.
- [2] The facts of the offences were as follows:
1. On 28 April 2018, the applicant stole bicycles from the roof rack of a vehicle parked in a shopping centre carpark. They were later found damaged and they were written off for insurance purposes. The complainant was required to pay an excess of \$1,200. The bikes were worth \$23,000. [Stealing, wilful damage]
 2. On 16 June 2018, the applicant was found by police to be in possession of a stolen bicycle. [Possession of tainted property]
 3. On 19 September 2018, the applicant failed to appear at court in accordance with this undertaking of bail and said that he had forgotten to attend. [Failure to appear]
 4. On 29 November 2018, the applicant threatened a person by holding a Stanley knife near the person's chest. He then resisted arrest, acted aggressively towards police and caused a public nuisance by yelling at police while he was being transported to the Stockland Police Beat. [Possession of a knife in a public place, obstruct police, commit public nuisance]
 5. On 12 January 2019, the applicant received the keys to a Hyundai vehicle and unlawfully used that vehicle both as a passenger and as the driver. He drove it at excessive speed and on the wrong side of the road in a populated area. [Receiving tainted property, unlawful use of a motor vehicle, unlicensed driving, dangerous operation of a motor vehicle]
 6. On 29 April 2019, he stole a money tin containing charitable donations. [Stealing]

7. On 4 July 2019, he unlawfully used a Holden motorcycle. That motorcycle has not been recovered. [Unlawful use of a motor vehicle]
- [3] His criminal history comprised a single entry on 15 February 2017 in a Children's Court in Townsville for unauthorised dealing of shop goods and wilful damage a week earlier. He was reprimanded on those charges.
- [4] A presentence report was ordered by the Magistrate. That report, dated 2 September 2019, detailed that he had spent 31 days remanded in custody in relation to these offences.
- [5] He was 14 years old for the majority of the offences and 15 for the last two offences. The report noted that he was disengaged from school as a result of an increasing level of truancy and problem behaviours which resulted in suspensions. When he started high school in 2016, he started associating with an antisocial peer group and would often be away from the family home for days at a time without telling his parents. His behaviour at school deteriorated significantly during this period. His current peer group is known to police. He became involved with that peer group through an older extended family member who was attending the same school. At the time of committing a number of the offences he was also under the influence of substances. He started using marijuana at the age of 13. He also abuses alcohol. He lacks any real insight into the impact his offending may have on victims of the offences. He was not interested in participating in restorative justice.
- [6] At the time of sentence it was submitted that he had recommenced schooling and was about to enrol in a Get Set for Work Program. He was interested in becoming a mechanic and wanted to stay out of the Cleveland Detention Centre in Townsville. It was noted that he had left the friendship group that he was involved with at the time of offending. He was helping around the house with chores such as mowing the lawn. A lengthy period of probation was submitted by the defence. There were no submissions in relation to penalty by the prosecution.
- [7] It is unfortunate, given the fact that the child spent 31 days in custody, that his own representative submitted for a lengthy period of probation as it is conceded by the Crown that that period of probation is outside the sound exercise of the sentencing discretion. The Crown submits that a period of probation is still appropriate but it should be for a shorter period of time, taking into account the 31 days spent in

presentence detention and given that the Magistrate did not seem to take into account those 31 days in arriving at the sentence. The defence submit that a good behaviour bond is appropriate.

- [8] Given the persistent nature of the offending, the significant value of some of the stolen property, the threatening with a knife and the dangerous operation of a motor vehicle, a good behaviour bond is not appropriate even making full allowance for the time spent on remand. I do, however, accept that the magistrate did not take into account the time in detention in arriving at the sentence that was imposed.
- [9] The appeal is allowed, the sentence is set aside to the extent that a period of 3 months probation is substituted for the original period of 9 months. The sentence otherwise remains unchanged.