

# CHILDRENS COURT OF QUEENSLAND

CITATION: *BLL v Director of Public Prosecutions* [2023] QChC 18

PARTIES: **BLL**  
(Applicant)

v

**DIRECTOR OF PUBLIC PROSECUTIONS**  
(Respondent)

FILE NO/S: CCJ 70/23

DIVISION: Childrens Court of Queensland

PROCEEDING: Sentence Review Application

ORIGINATING  
COURT: Townsville Childrens Court

DELIVERED ON: 20 March 2023 (delivered *ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 20 March 2023

JUDGE: Dearden DCJ

ORDER:

- 1. Application for sentence review granted.**
- 2. Order that the sentence imposed on 3 February 2023 at the Townsville Children’s Court of 3 months probation and associated licence disqualification periods be vacated.**
- 3. Applicant be referred to a restorative justice process under YJA s 24A(2).**

CATCHWORDS: CRIMINAL LAW – SENTENCE REVIEW – SENTENCING JUVENILES – where the applicant plead guilty to four motor vehicle offences – applicant sentenced to three months’ probation with no conviction recorded – applicant was disqualified for the minimum period of nine months - where the applicant had no criminal or traffic history

COUNSEL: N Douglas for the applicant  
J Coghlan for the respondent

SOLICITORS: Legal Aid Queensland for the applicant  
Office of the Director of Public Prosecutions for the respondent

## **Introduction**

- [1] This is an application for sentence review, filed on the 21<sup>st</sup> of February 2023 in respect of a sentence of three months probation with no convictions recorded, imposed at the Townsville Childrens Court on 3 February 2023, in respect of the following charges:-

1 x did drive UIL (motor vehicle/tram/train/vessel) (s.79)(1)(A) Transport Operations Road Use Management Act (Qld)(1995)(TORUMA).

1 x driving of a motor vehicle without a driver licence, never held a licence (s.78(1) & (3)(k) (TORUMA))

1 x vehicles used on roads must be registered (s.10)(1) (TORUM – Vehicle Registration Regulation)(Qld)(2021); and:

1 x drive uninsured vehicle (s.20)(1)(Motor Accident Insurance Act)(Qld)(1994).

- [2] The applicant seeks the following orders:-

(a) *Discharge the probation order made on 3 February 2023, that the child be released under the supervision of the chief executive for a period of three months.*

(b) *Substitute an order that some or all of the charges be dismissed (pursuant to Youth Justice Act)(YJA)(Qld) 1992 s.24A(2)), and the offences be referred to the chief executive for a restorative justice process.*

## **The law**

- [3] A Childrens Court judge may review a sentence order made by a Childrens Court magistrate.<sup>1</sup>
- [4] The review is a rehearing on the merits;<sup>2</sup> and the Childrens Court judge may have regard to the proceedings before the Childrens Court magistrate and

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<sup>1</sup> Youth Justice Act 1992 (Qld) s 118 ('YJA').

<sup>2</sup> YJA s 122.

further submissions and evidence by way of affidavit or otherwise.<sup>3</sup> The review must be conducted expeditiously and with as little formality as possible.<sup>4</sup>

- [5] The Childrens Court judge, on reviewing a sentence order, may confirm, vary or discharge the order and substitute another order within the jurisdiction of the Childrens Court magistrate to make;<sup>5</sup> and can make any other order a Childrens Court magistrate could have made with the sentence order as confirmed, varied or substituted.<sup>6</sup>
- [6] A court imposing a sentence on a juvenile must take into account the sentencing principles contained in YJA s.150, as well as general sentencing principles and the Youth Justice principles contained in YJA Schedule 1.<sup>7</sup>
- [7] The sentence review is a rehearing on the merits, and it is not necessary to demonstrate error (see, for example, R v JM [2013] QChC 11, [9]; R v MKH [2014] QChC 3, P.2; KLP v R [2017] QChC 5, [3]; MOJ v R [2019] QChC 45, [7]; RSS v R [2022] QChC 29, [26]).
- [8] The court has the power to refer an offence to the chief executive for a court diversion restorative justice process,<sup>8</sup> and the court must consider such a referral when a child enters a plea to an offence.<sup>9</sup>

### **The Offences**

- [9] The applicant has outlined briefly the circumstances of the alleged offending as follows: -<sup>10</sup>

(5) *On 3 February 2023, the applicant entered a plea of guilty before the Townsville Childrens Court to the four offences.*

(6) *All four offences can be summarised as follows:-*

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<sup>3</sup> YJA s 122.

<sup>4</sup> YJA s 122(3).

<sup>5</sup> YJA s 123(1).

<sup>6</sup> YJA s 123(2).

<sup>7</sup> YJA s 150(1) & (2); YJA Schedule 1.

<sup>8</sup> YJA ss 163 & 164.

<sup>9</sup> YJA s 162.

<sup>10</sup> Exhibit 2 – Outline of Submissions on behalf of the Respondent, [5] & [6].

- (a) *On 22 December 2022, around midnight, police became aware of a young person (the applicant) riding an off-road motorbike around the Rasmussen and Kirwan area.*
- (b) *Shortly after, police were made aware of a traffic crash involving the applicant. Upon police arrival, the applicant was receiving assistance from paramedics who had arrived.*
- (c) *Police took up with witnesses who confirmed that they saw the applicant riding and then crash his motorbike. He appeared to be under the influence of liquor.*
- (d) *The applicant was transported to the Townsville University Hospital at which time a blood sample was obtained and sent for analysis. On 4 January 2023, a certificate of analysis indicated that the applicant's blood alcohol content (BAC) at the time was 0.175 per cent.*
- (e) *At the time of the incident, the applicant held a learner's driver licence.*
- (f) *It was confirmed that the motorbike driven by the applicant did not have any number plates attached, was not registered and therefore was uninsured.*

### **The Applicant's Antecedents**

[10] The applicant helpfully outlines the antecedents as follows:-<sup>11</sup>

- (7) *The prosecutor confirmed the applicant had no previous criminal history or traffic history [exhibit 1 – affidavit of Nicholas Douglas, affirmed 15 March 2023, NED 1, p.31 26].*
- (8) *The applicant's legal representative placed the applicant's antecedents on record, which may be summarised as follows:-*
  - (a) *The applicant was 17 years old with no criminal or traffic history.*
  - (b) *The applicant had finished a year 7 level of school successfully, however had been diagnosed with severe anxiety and ADHD.*
  - (c) *The applicant lived at home with his parents. He maintained his family's full support with his mother, father and grandparents all present at court on the day of sentence.*
  - (d) *The applicant had been working as a labourer, and was looking for an apprenticeship. The applicant's character was considered*

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<sup>11</sup> Exhibit 2 – Outline of Submissions on behalf of the Applicant, [7] & [8].

*to be “reliable, and of good conduct”, which was supported by two character references.*

- (e) The applicant had attempted to “[stick] to the back roads”, and there was said to be “not much in the way of traffic on the road”, on the night in question.*
- (f) The applicant suffered a “snapped collarbone” and was hospitalised because of the incident. He required follow-up medical intervention to assist with his rehabilitation.”*

### **Sentence**

[11] Again, the applicant has helpfully outlined the sentence proceedings as follows:<sup>12</sup>

- (9) Prosecutor noted that the applicant came before the court with no criminal or traffic history. It was submitted that the applicant should be dealt with by way of a community service order, and for the mandatory disqualification periods to follow.*
- (10) The applicant’s legal representative at first instance submitted that the learned magistrate could “deal with the matter by way of a reprimand” [affidavit of Nicholas Douglas, affirmed 15 March 2023, exhibit NED-1, p.5, ll44-46]. Without further prompting, the legal representative qualified his original submission, and invited the learned magistrate to “consider probation in light of his injuries, rather than a community service order.” [exhibit 1 – affidavit of Nicholas Douglas affirmed 15 March 2023, exhibit NED-1, p.6ll1-2.]*
- (11) The learned magistrate appropriately raised with the legal representative of the court’s requirement to consider a restorative justice process [YJA s.162 (1)], noting that “There is an ability to conference on offences of this type, which would probably, I would assume, address issues around road safety and so on.” [exhibit 1 – affidavit of Nicholas Douglas affirmed 15 March 2023, exhibit NED-1, p.6ll4-7]*
- (12) Regrettably, the legal representative submitted that “given it is a Regina offence and ... that his intention is simply to move on” the applicant “had well and truly learned his lesson.”*
- (13) The applicant’s legal representative at no stage made any positive submission for the court to consider referring all or some of the offences to a restorative justice process (“RJP”).*

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<sup>12</sup> Exhibit 2 – Outline of Submissions on behalf of the Applicant, [9] – [14].

*(14) As the applicant was 17 years old at the time, his conviction of these charges triggered an automatic and cumulative licence disqualification period of 9 months [YJA s.254(4) & ss79(2AA)(a) & 86(2)(e) TORUMA].”*

[12] The applicant submits that the submissions made on the original sentence proceedings by the applicant’s then legal representative (not the legal representative before this court on the sentence review) were “unhelpful and contrary to the governing principles within the YJA”.<sup>13</sup>

[13] The applicant had not discussed with his legal representative or Youth Justice the concept of a restorative justice process (Youth Justice were unaware that the matter was likely to proceed until it came before the court), and when the learned sentencing magistrate raised this option with the applicant’s legal representative, it was effectively dismissed by the applicant’s legal representative and after initially making a submission in respect of the reprimand, the applicant’s legal representative submitted for a probation order. The effect of this, of course, was that by entering pleas of guilty and being dealt with by way of a probation order as a 17 year old, the applicant was disqualified for the minimum period of nine months, as a consequence of the interaction of YJA s.254(4) and the relevant provisions of TORUMA ss79 (2AA) (a) & 86 (2) (e).

[14] It should also be noted (this was not referenced in submissions before the Children’s Court, and was not contained in the written submissions to this court, but addressed in oral submissions by the applicant’s legal representative on this sentence review) that at the time of the offences being committed, the applicant was 16, about to turn 17 on 31 December 2022. This then raised an issue which was not addressed at the original sentencing proceedings which is that, pursuant to YJA s.254(3): –

*If–*

*(a) a child aged less than 17 years is found guilty of an offence under the criminal code, Transport Operations (Road Use Management) Act 1995 or another Act; and*

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<sup>13</sup> Exhibit 2 – Outline of Submissions on Behalf of the Applicant, [18].

*(b) a conviction is recorded; and*

*(c) were the child is convicted of the offences as an adult, the child would be disclosed by the conviction by an operation of law;*

*a child is also disqualified to the same extent.*

- [15] Although the child was not dealt with until he had turned 17, it is clearly relevant that had he been dealt with before his 17<sup>th</sup> birthday, then there was a clear pathway under that provision to the non-recording of a conviction and a non-imposition of disqualifications.
- [16] The applicant's legal representative on this sentence review also notes the lack of reference at the original sentencing proceeding to the effect of a mandatory nine month disqualification period on the applicant's rehabilitation, ability to regain employment, and also, there was a failure to advise the learned magistrate that the applicant had already ceased driving for some six months as at the date of sentence, and as of this sentence review, has now not been driving for a period of approximately three months.
- [17] The submission then made is that the probation order has had, effectively, a far more significant consequence than was immediately apparent in the circumstances of a then 16 year old committing the offences, albeit being sentenced as a 17 year old.<sup>14</sup>
- [18] The submission, then, on behalf of the applicant on this review is that the pathway to a diversion from the criminal justice system (albeit for traffic offences) in this matter would have been to proceed by way of YJA s.24A, which follows on from the provision of YJA s.11(1) that provides that a police officer must consider alternatives to starting a proceeding against a child, including administering a caution or referring the offence to a restorative justice process.<sup>15</sup>
- [19] The deciding factors include the nature of the offence, the harm suffered by anyone because of the offence and whether the interests of the community and

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<sup>14</sup> Exhibit 2, [18] – [25].

<sup>15</sup> YJA s 11(1)(b) & (c).

the child would be served by having the offences dealt with under a restorative justice process.<sup>16</sup>

[20] The offences the subject of this review are not excluded from being dealt with by a restorative justice process (as much was raised by the learned magistrate during submissions) and the Queensland Police Service Operational Procedures Manual does not prevent an officer from referring any particular offence for a restorative justice process.<sup>17</sup>

[21] At the relevant time, the applicant had no criminal or traffic history, no history of police diversions, was willing to comply with restorative justice process, and was 16 years old (albeit about to turn 17) with opportunities for employment, and no identified issues of substance misuse, homelessness, mental health, negative peer associations or repeat offending.

[22] In those circumstances, it is submitted that a police officer would have been able to divert the applicant to a restorative justice process, particularly taking into account the nature of the offending, which was the applicant's avoidance of main roads that night, the significant extra-curial punishment suffered by the applicant, who suffered a broken collarbone and had ongoing medical issues, and of course the interests of the community being better served by someone dealing with the consequences of his actions through a restorative justice process.<sup>18</sup>

[23] The other point made by the applicant on this review is that a referral to a restorative justice process would by no means be a lenient outcome, and would undoubtedly incorporate an educational program designed to address road safety and driving, and the consequences of such a referral, including an understanding of the role of alcohol, would effectively be a more than appropriate outcome in all of the circumstances.<sup>19</sup>

[24] The respondent, acknowledging that this is not a matter in which it is said that the learned magistrate has fallen into error in any way,<sup>20</sup> submits that a referral

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<sup>16</sup> YJA, schedule 1, item 5.

<sup>17</sup> Exhibit 2 – Outline of Submissions on behalf of the Applicant Child, [29].

<sup>18</sup> Exhibit 2 – Outline of Submissions on behalf of the Applicant Child, [33].

<sup>19</sup> Exhibit 2 – Outline of Submissions on behalf of the Applicant Child, [34] & [35].

<sup>20</sup> YJA s.122; Exhibit 3 – Outline of Submissions on behalf of the Respondent, [26].



to a restorative justice process pursuant to YJA s.22, by application of YJA s.24A, is not an appropriate order, given particularly the nature of the offence (a high level drink drive), the applicant's significant blood alcohol level (0.175 per cent), and the significant potential for harm to himself and others (it should be noted that the child suffered quite a significant injury in the single-vehicle collision and of course could well have injured others given the nature of his driving of the motorbike).<sup>21</sup>

[25] In the circumstances, the applicant submits that it is appropriate for the mandatory disqualification periods to be imposed, albeit that Mr Coghlan, who appeared for the respondent, acknowledged that the child was [just] 16 at the time of the offending, although sentenced as a 17-year-old.

### **Discussion**

[26] In my view, the learned magistrate (as is clearly acknowledged by the respondent) has not fallen into error in respect of the original sentence. The "error" in this process, if there be error, was the submissions by the applicant's legal representative, which failed to engage with two specific issues, the first that the child was 16 at the time, with the consequences pursuant to YJA s.254(3), and the failure to appreciate (and submit accordingly) that a restorative justice process, utilised by way of YJA s.24A order, would have a salutary effect on the applicant, but avoid the crushing consequences of the mandatory minimum disqualifications (of which the learned magistrate was well aware and has signposted in his exchange with the applicant's legal representative at the time).

[27] It follows from what I have outlined that although the offences (in particular the drink driving offence) are serious, the learned magistrate was not given the benefit of a full exposition of not only the circumstances, but the consequences, in particular, of the applicant's age at the time as well as the consequences of the nine month disqualification, and therefore an appropriate submission was not pursued for a penalty that would have avoided either discretionary or mandatory disqualification.

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<sup>21</sup> Exhibit 3, [27].

[28] I note further that the applicant is willing to partake in a restorative justice process and is considered suitable. In those circumstances, I conclude, pursuant to the power this court has to conduct a re-hearing on the merits,<sup>22</sup> that the application should be granted.

### **Orders**

[29] In all of the circumstances, I make the following orders:

- (1) Application for sentence review granted.
- (2) Order that the sentence imposed on 3 February 2023 at the Townsville Children's Court of 3 months probation and associated licence disqualification periods be vacated.
- (3) Applicant be referred to a restorative justice process under YJA s 24A(2).

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<sup>22</sup> YJA s 122(1).

