# CHILDRENS COURT OF QUEENSLAND

| | |
|---|---|
| CITATION: | *R v TSL* [2023] QChC 21 |
| PARTIES: | **THE KING**<br>**v**<br>**TSL**<br>(defendant) (anonymised) |
| FILE NO/S: | 70 of 2023 |
| DIVISION: | Criminal |
| PROCEEDING: | Sentence |
| ORIGINATING COURT: | Childrens Court of Queensland |
| DELIVERED ON: | 4 October 2023 (delivered *ex tempore*) |
| DELIVERED AT: | Cairns |
| HEARING DATE: | 3, 4 October 2023 |
| JUDGE: | Fantin DCJ |
| ORDERS: | **The defendant is sentenced as follows:**<br>**1. Pursuant to ss 175(1), 193(1) and (2) of the *Youth Justice Act 1992* (Qld) order that the defendant be released under the supervision of an authorised Youth Justice officer for a period of probation of 12 months and must comply with the requirements set out in s 193(1) of the *Youth Justice Act 1992* (Qld) and report within one business day of release from detention to the Chief Executive.**<br>**2. Conviction not recorded.**<br>**3. Decline to make a restorative justice order.**<br>**4. Decline to declare child a serious repeat offender.** |
| CATCHWORDS: | CRIMINAL LAW – SENTENCE – plea of guilty to one count attempted armed robbery in company – where child was 15 years old at the date of offence – where child had a lengthy criminal history – pre-sentence report ordered – where child had a profoundly disadvantaged childhood and upbringing – where the child meets criteria for intellectual disability – where the child spent 197 days remanded in pre-sentence detention – conditions in detention – 58 days where time out of cell less than two hours – where 12 month probation order imposed and no conviction recorded – where court declined to declare the child a serious repeat offender<br><br>*Youth Justice Act 1992* (Qld), s 128, s 150, s 150A, s 105B, s 175, s 193, s 245 & sch 1 |

*Bugmy v The Queen* (2013) 249 CLR 571; [2013] HCA 37
*R v MDD* [2019] QCA 197

COUNSEL: P Ah Gee (solicitor) for the Crown
J Jacobs for the defendant
T Reedy appeared for the Chief Executive of the Department of Children, Youth Justice and Multicultural Affairs

SOLICITORS: Office of the Director of Public Prosecutions for the Crown
O'Reilly Stevens Lawyers for the defendant

**FANTIN DCJ** (*ex tempore*): [TSL], I can tell you that the order I plan to impose, if you agree to it, is going to be a probation order. I cannot make that order unless I explain it to you and you agree to comply with it, so please listen carefully. You have received a probation order before so you know about the conditions, but I have to tell you what they are again. I intend to make a probation order of 12 months, if you agree to comply with it. The order will be subject to these requirements: you must report in person to the Chief Executive – that just means speaking to Youth Justice …

**HER HONOUR**: … this order would start when you are released from detention. Within one business day after your release from detention, you would need to report to Youth Justice. They will contact you to arrange that. During the period of probation, you must not commit other offences. You must attend programs as directed by Youth Justice. You must obey any reasonable direction. You must report and receive visits as directed. You or your carer through the Department of Child Safety must notify Youth Justice within two business days of any change in where you are living or if you are going to school or if you have a job. You must not leave or stay out of Queensland within that period of the probation order.

The probation order is intended to help support you and supervise you once you are released from detention; to give you support to do programs, to do some training that helps you with your education, and to help you get a job; to support you to find accommodation; and to see speech pathologists and medical professionals to help you as well. All of that is designed to support you once you are out of detention so that you do not commit other offences and come back to the detention centre.

Now, the probation order can be changed or it can be cancelled, if you apply to the Court through your lawyers for that to happen, or if the Prosecution asks for that, or if Youth Justice ask for that.

So what I am proposing to do is impose a probation order for 12 months. That is one year. It would start once you are released from detention. You are currently serving a sentence for other offences. I am not sure exactly when you will be released but when you are, you will be under this probation order. Do you understand the probation order I am planning to make and what it involves?

**[TSL]**: Yeah.

**HER HONOUR**: Do you agree to comply with that order?

**[TSL]**: Yeah.

**HER HONOUR**: I order that you be released under the supervision of the Chief Executive for a period of 12 months and you must comply with the requirements set out in section 193(1) of the *Youth Justice Act* and report within one business day of your release from detention to the Chief Executive. That probation order commences on your release from detention. I do not record a conviction for this offence.

I need to explain and give reasons for why I have decided to make that order, rather than sentence you to some other order. That is going to take a little while. You might not understand all of what I am saying, [TSL], but I need to give reasons for it.

You have pleaded guilty to one count on indictment: one offence of attempted armed robbery in company. It is a very serious offence. At the time you committed that offence, you were 15 years old. You are now 16 years old.

The facts of the offending are agreed and set out in exhibit 2. The offence happened on the 8th of June 2022. That is about one year and four months ago. You were on a bus with two other boys, [T] and [D]. [T] was a similar age to you: 15. It is not clear how old [D] was. The three of you were already on the bus at the northern beaches and later that afternoon, a young man who was 17 years old got onto the bus. One of your friends, [D], approached that man and sat behind him and asked him for money, so it was [D] who instigated the contact with the man and asked for money. You were not sitting behind him; you were sitting with [T] further back in the bus.

You and [T] began yelling at the man and demanding he give you his necklace. [T] went up to the man and sat in the seat right behind him and [D] also went up to the man and sat opposite him. The young man tucked his necklace into his jumper; he was obviously worried. Those two boys, [D] and [T], continued to demand that the young man give them things. They asked for his phone and then the PIN number but the man refused. They asked for his headphones and he refused. [T] came back to the back of the bus and sat next to you. [D] moved back to his original seat. So, again, both of them approached the man, while you had remained in your seat.

You then involved yourself in it. You had a pair of bolt cutters and you held them at the man, saying, "Give us all your stuff or we'll fucking stab you. We'll crush your head open." The man ignored you. You hit the bolt cutters on the back of the chair and threatened him again.

You and your friends then got off the bus at Smithfield Shopping Centre, but then you got back on and you continued on the bus. [T] sat right behind the man. You did not,

but you did keep holding those bolt cutters and you repeated that you would use them to crush the man's skull. The bus got to the Tobruk Pool stop and all of you got off. The man stayed on the bus. He spoke to his mother and then he spoke to police and told them what had happened.

All of the offending was captured on the CCTV cameras in the bus. More than two months later, you were arrested for this offence and other matters. You were taken to the police station. You did participate in an interview and you did make admissions to the police, which is something in your favour, in mitigation. You denied possessing a weapon but you accept, by pleading guilty to this offence, that you were holding the bolt cutters.

You were charged and released on bail. You were later remanded in custody, and I will say more about your time in custody in due course.

The young man would have been frightened and upset about what happened. There is no victim impact statement from him, but I accept he would have suffered emotional harm.

Properly characterised, this was an opportunistic and spontaneous decision by a group of three children, boys, to gang up on and bully an older boy on a bus. It was very unsophisticated. There was no attempt at disguise. You were always going to get caught because of the camera. It did not escalate beyond demands or threats. There was no actual violence inflicted on the man. No property was actually taken from him. You were not the person who instigated the conduct, although you did become involved in it after the other two started the process. You all then gave up and got off the bus at the stop that suited you. I accept that you were holding a serious weapon and that you threatened the young man with it and that that would have been frightening for him. But in the scheme or range of seriousness for an attempted armed robbery in company, it is at the lower end of that range, for the reasons I have identified.

Police did not end up, or the prosecution did not end up proceeding against [D] so there is no sentence involving him to take into account. [T] was sentenced by me on the 7th of June 2023. He was sentenced to a reprimand, with no conviction recorded. [T] was about the same age as you but he had a less serious criminal history to you. He offended in breach of two probation orders but he had not previously been sentenced for this offence and he had not previously been sentenced to detention. So his criminal history was less serious than yours. His involvement was different. He was actively involved; indeed, he was involved in menacing the man earlier than you were. He did not have a weapon. In my view, your involvement, although different, is similar and there is no significant basis to distinguish between the two of you in terms of your involvement.

There was an unacceptably long delay in having the matter dealt with, as there is in your case. It is completely unacceptable that a young person should have to wait one year and four months to be dealt with for an offence of any kind, let alone this offence. No explanation was proffered for that long delay.

By the time I came to sentence [T], he had also spent a long time in detention, 186 days, which was about six months. I said in sentencing him that if not for that long period of detention, I would have imposed a probation order on him. Restorative justice was not appropriate. There were no instructions from the victim that they were willing to participate in that. I declined to impose a restorative justice order.

[T] had a very dysfunctional upbringing which was quite tragic. He also had a number of medical diagnoses. His personal circumstances and those medical diagnoses, which I will not repeat the detail of, amounted to significant mitigating factors on sentence. I accepted that there was a causal link between his diagnoses and the offending which reduced the sentence I imposed. I also was satisfied that because he had spent so long in custody, he had already been sufficiently punished for the offence and it was not appropriate that there be any additional punishment. As a result, he was reprimanded, with no conviction recorded.

Now, you are going to receive a heavier penalty than [T] because you have a much more serious criminal history. It is longer, it contains more serious offences, you have been dealt with by the Court more often, and you have been dealt with for other offences since then. But your criminal history cannot be allowed to overwhelm the objective gravity of this offence, and the things which have happened to you since then and the degree to which you have already been punished, in my view, is significant.

At the time you committed this offence, you were subject to a probation order of 12 months for one offence of robbery with personal violence committed when you were 14 years old. It was a bag snatch of a woman at night in the street which involved actual violence by you, pushing her to the ground. She suffered some physical injury. You had, by then, served 198 days in juvenile detention. You were sentenced to 12 months' probation with no conviction recorded. And you breached that probation order by committing this offence.

However, this offence is, on any analysis, less serious than the offence for which you were sentenced on the 28th of January 2022. The fact that you offended in breach of probation is an aggravating factor which I take into account. That probation order has now expired. I find a breach of the probation order of 12 months imposed in the Childrens Court of Queensland on 28 January 2022. I find the breach proved. I take no further action pursuant to section 245(1)(d)(iii).

You are an Aboriginal child. There is no information from a Community Justice Group to assist me on sentence, despite me making an order that the pre-sentence

report obtain information from the [relevant] Community Justice Group, which is where your family is from. No information was able to be obtained by the author of the pre-sentence report within time.

You are currently serving a sentence of detention of five months, imposed by a Childrens Court Magistrate on 25 July 2023, to be released after serving 70 per cent of that. The sentencing remarks for that are not available to me. In effect, you were sentenced for a string of property and motor vehicle offences committed in June 2023 over a short period of time. And you were dealt with for breach of a conditional release order imposed in October 2022, again, to be released from custody after serving 70 per cent of that. When you are released from detention, which I understand will be in October, that will be on a supervised release order.

After you received bail for this offence in June, you did go on to commit other offences and you were sentenced for those after this. As a consequence, you have been in and out of detention since then.

In October, on the 11th of October 2022, you were sentenced by a Childrens Court Magistrate to four months' detention, to be served by way of conditional release order for offences committed before and around the same time of this offence. They were less serious offences: repeat property offending. For all of those offences, you received that order I have indicated and then, clearly enough, you breached it by re-offending by October of 2022.

The fact that you continued to re-offend on release in the community is an aggravating feature. But you have already been punished for all of those offences because you have served lengthy periods in detention since then and you are currently subject to other orders.

Your criminal history is a matter that I take into account and is aggravating, but it cannot be allowed to overwhelm or detract from assessing the objective seriousness of this particular offence. The sentence imposed on you today cannot be out of proportion to this particular offence.

I take into account the special considerations in section 150 of the *Youth Justice Act* including your relatively young age and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community, and the considerations with respect to rehabilitation.

I also specifically take into account that a child who has no apparent family support or opportunities to engage in educational programs or employment should not receive a more severe sentence just because of that lack of support or opportunity. You are on a long-term guardianship order with the Department of Child Safety and you have been subject to the Department of Child Safety orders for much of your young life.

I also take into account that a detention order should be imposed only as a last resort and for the shortest appropriate period. It by no means follows that the appropriate order is one of detention simply because a child has been subject to non-custodial orders previously and has re-offended or has even re-offended while subject to detention orders, as the Court of Appeal observed in *R v MDD* [2019] QCA 197.

I take into account that you co-operated with police and made admissions.

Your compliance with previous probation orders has been mixed. For some, you have completed them without formal warning or breach action. For some, your performance has been unsatisfactory because you have breached them by re-offending or failing to engage in programs.

You have now spent 197 days in detention, specifically remanded for this offence. That is over three periods: from 3 October 2022 to 11 October 2022 inclusive, a period of eight days; from 12 November 2022 to 24 February 2023 inclusive, a period of 104 days; and, from 15 March 2023 to 8 June 2023 inclusive, a period of 85 days. That is a total of 197 days specifically on remand for this offence, or, approximately six and a half months.

However, you have remained in custody since 8 June 2023 serving out other sentences, or, on remand for other offences. That is a period from 8 June 2023 to 4 October 2023, a period of 119 days, or, approximately four months; not specifically remanded for this offence but time I also take into account. I will return to the issue of your conditions of detention later.

It is, despite the very long delay, an early plea of guilty and I take that into account in mitigation by reducing the sentence I would have otherwise imposed because you have pleaded guilty.

I take into account all of the mitigating factors identified by your barrister, as well as all of the information in the pre-sentence report.

You are a boy who has had a profoundly disadvantaged childhood and upbringing. You are one of five children born to Aboriginal parents. Child Safety has been involved in your life since a very young age. You were exposed to domestic and family violence; and to your parents misusing substances. They did not supervise you adequately. They did not give you adequate care and housing and supervision. None of that is your fault. Your upbringing was unstable. You were exposed to anti-social role models, people committing criminal offences. That has led you to a position where committing criminal offences seems normal to you. It is not normal to most people, [TSL]. And your exposure to other people committing offences and to peers doing that has contributed to your offending. You have not been to school for years and you have not had the benefit of structured education to protect you from reoffending. That has also contributed to you reoffending.

In addition, in August of 2022, you were finally diagnosed with a number of conditions. I have taken into account the psychologist's report which is attached to the pre-sentence report. Your reading fluency is at year 2 or 3 level. That report affirms your chaotic and traumatic history. It includes homelessness, as well as the inconsistent schooling I indicated. You suffered a brain injury at two years of age which has affected your development and progress.

You were courteous and co-operative with the psychologist during the assessment. You did a number of tests.

The effect of that is summarised at the end of the report under the heading, Summary and Recommendation. I will not repeat that in detail. In effect, you meet the criteria for an intellectual disability. You also meet criteria for some aspects of Attention Deficit Hyperactivity Disorder. Those diagnoses or conditions affect your ability in a variety of different ways. They affect your ability to communicate, your speech and language skills, your cognitive functions, that is, your ability to reason through a situation and to respond appropriately. They affect your ability in education.

There are a number of positives in the report which I take into account. The report recommended that you be assessed for an application for the National Disability Insurance Scheme. That has finally happened and you do now have a NDIS package with a plan for various supports to be provided. Significantly, I am informed by Child Safety that none of those supports are going to be provided while you are in detention and they will only commence on your release. They will include occupational therapy, psychology, speech pathology and community access through support workers - if, of course, you do receive the supports that are recommended for you. There is a plan in place for that. That plan seems to me to be best achieved by a probation order which would permit those things to occur, once you have served the sentence you are currently serving and you are released from detention.

The report and other parts of the pre-sentence report support a finding that there is a causal link between those diagnoses and your conditions and your offending behaviour, because those diagnoses make it harder for you to make good decisions. They make your behaviour more impulsive and they affect your ability to regulate your emotions. I am satisfied that those diagnoses reduce your moral culpability, as distinct from your legal responsibility. That means that general deterrence and personal deterrence are less significant in sentencing you, as is denunciation.

Those conditions also have a bearing on the kind of sentence to be imposed. I accept that further detention would be more onerous for you than it would be for a person, a child, who did not have those disabilities. Specific or personal deterrence is not eliminated because, unfortunately, the conditions also mean you may be at increased risk of re-offending, which is a matter I do take into account.

But I am satisfied that you have already been sufficiently punished for this offence because of the lengthy period of detention you have already served. The conditions mean that a sentence of detention would necessarily weigh more heavily on you than it would on a child without those disabilities.

And I am satisfied that extended periods of detention, particularly in the circumstances where you are confined to your cell for lengthy periods a day, are likely to have an adverse impact on your mental health and cause it to deteriorate, which is also a factor that tends to mitigate punishment.

Returning to the pre-sentence report, you advised the author of the report that you never intended to use the weapon and you did not really want to commit the offence. You showed insight and some remorse. You understood that your behaviour was wrong, and you understood that the offence was not worth the outcome. That is, doing that one stupid thing that day, was not worth the punishment you have now received, which is a very long period in detention. You have demonstrated some remorse but you also explained how important your friends are to you and their attitudes influence you. You understood that the victim would have been scared and you have expressed that you would like to apologise, if afforded the opportunity.

I take all of those matters into account in your favour as mitigating factors. In my view, you have demonstrated such remorse as is appropriate for a child with your background and your diagnoses.

You want to live with your mother on your release, although you understand that that is not a placement approved by Child Safety. Child Safety are seeking short-term accommodation for you and housing for you.

While you have been in detention, you have engaged in aggression replacement training which is a form of anger management training to manage violent behaviour. You have expressed interest in obtaining a White Card and you will be supported to obtain this. You have expressed interest in joining a football club on your release. I encourage you, [TSL], to do those things. Those are good plans. You will be supported also to get counselling for cannabis use, which has been a factor in the past, although not for this offence.

The Crown does not seek a restorative justice order because of a lack of information from the victim or a lack of willingness to participate in it. Nonetheless, you were willing to comply with a restorative justice order. That is also something in your favour which I take into account. In circumstances where there cannot be victim participation in the process, I decline to order a restorative justice order.

You are willing to participate in a probation order. A probation order will permit you to attend programs which will assist you in not reoffending.

You are also willing to participate in programs that would attach to a conditional release order, if such an order were made. All of those are maters in your favour.

For completeness, I return to the question of the conditions in which you have served your time in detention. I ordered the pre-sentence report include a separation history which sets out the amount of time that you have been allowed out of your cell while you have been in detention. That document is very lengthy and detailed. It was summarised by Youth Justice and your legal representatives in a different document.

Before I come to it, I note that, summarising, for large periods of the time you have been remanded in detention in a detention centre, you have been locked in your cell for most of the day.

The separation history document records that on occasions where you were locked in your cell for many hours of the day, you became abusive and threatened workers.

For example, on the 4th of July 2023, when you were locked in your cell for 23 hours and 40 minutes, being allowed out of your cell for only 20 minutes in the entire day, you were abusive and threatening towards staff. On the 7th of July 2023, when you were allowed out of your cell for only 44 minutes, on your return from that visit, you jumped onto the kitchen bench and refused to get down. A similar incident occurred on another date. There are other examples in July of you not complying with staff direction and engaging in harmful behaviour while out of the cell with other young people. On the 19th of July, when you were locked in your cell for all of the day except for 14 minutes, it records you threatened to assault staff and you covered your viewing window, preventing observations being conducted. In August, when you were allowed out of your cell for only five minutes in the entire day, you jumped on the kitchen bench, refusing to get down and staff intervention was required. On the 16th of August, when you were allowed out of your cell for only three hours of the day approximately, you caused damage to the smoke detector. You did that again on the 23rd of August, when you were locked in your cell for 24 hours of the day.

In my view, that poor behaviour is unsurprising in circumstances where a young person, particularly one with your impairments, is confined to their cell for such lengthy periods of time. Those are only examples from the separation report; there are others.

Summarising then the information in exhibit 11. It provides, and there is no dispute about this, that for 58 days that you were remanded in a detention centre, on each of those days you spent less than two hours out of your cell. Many of those 58 days involved you being out of your cell for a matter of minutes only. For 13 days, you spent no time out of your cell at all; that is, you were locked in your cell for a full 24 hour period.

The separation history document, in recent times, includes new information which notes when a nurse or a case worker or a psychologist or some officer attends the unit in which young people are detained. There is no dispute that those things may have occurred. But they are no substitute for allowing a child out of their cell for the period of time they are meant to be out of their cell, so that they can engage in normal human interaction with other people and access educational and rehabilitative programs. The fact that a staff member may visit the unit is not a substitute for time out of a cell.

Another new addition to the information in the separation report is a note that the child is able to access television in their room. I apprehend that this information may be included, in part, to reduce the apparent severity of detaining a child in a cell for up to 24 hours a day. Again, being able to access a television is not a substitute for being allowed normal human interaction, nor is it a rehabilitative activity, nor is it educative.

In addition to those days I have described in exhibit 11, you spent 18 days in adult watch houses: two days in the Cairns watch house from 3 October 2022 to 5 October 2022; nine days from 12 November 2022 to 21 November 2022; and five days from 15 March 2023 to 21 March 2023. So, solely on remand for these offences, you spent 16 days in watch houses in Queensland, in fact, in Cairns, and then since 26 June, you have spent a further two days in the watch house. The latter is not strictly time on remand for these offences but I take it into account.

The circumstances in which you have been detained have been harsh, particularly because of the length of time you have been locked in your cell and also, because of the length of time you have been detained in watch houses. Those conditions have, in addition, been more onerous than they would have been for a child without your disabilities.

There is no information, other than what I have already referred to, to suggest you have had any significant access to education programs while you have been in detention. Child Safety reports that to the extent you were able to attend classes, you actually did well and the report was that you are to be commended for your effort, so that is a positive matter in mitigation for you.

I take into account in sentencing you the general principles that apply in sentencing of punishment, rehabilitation, personal deterrence, general deterrence, denunciation, and community protection. For the reasons I have recorded, in my view, punishment is already served by the lengthy and harsh period you have spent in detention. That also satisfies the requirements for general deterrence, denunciation, and community protection.

Your rehabilitation looms large. It is about time that you were given the supports that you need to thrive and be a functioning member of society. And the responsibility for

doing that lies with government agencies, given the orders you are on. That is because you do not have parents in a position to properly care for you.

I take into account all of the Youth Justice principles. In my view, the purposes of sentence and those principles are best served by releasing you on probation for a period of 12 months, to support and supervise you in the community.

I am not satisfied that a detention order is appropriate or necessary, for the reasons already identified.

I am not even satisfied that a detention order immediately suspended by way of a conditional release order is appropriate or necessary, for the reasons I have identified.

A 12 month probation order is, in my view, the appropriate order, balancing all of those considerations.

In my view, it is not appropriate to record a conviction. The starting position under the Act is that no conviction should be recorded unless the Court is satisfied, having regard to all of the circumstances of the case, that the discretion should be exercised in favour of recording a conviction. Although the offence, the nature of the offence is objectively serious and you have entries in your criminal history for similar offending in the past, the objective gravity of the offence was low level. You have not had any convictions recorded. You are still a young person. You ought have the opportunity of being rehabilitated without having convictions recorded. A conviction will necessarily have an adverse impact on your rehabilitation and your chances of finding and keeping a job. I decline to record a conviction.

… The Crown made an application pursuant to section 150A of the *Youth Justice Act*, that you be declared a serious repeat offender. I decline to make such a declaration.

I am satisfied that the necessary preconditions enlivening my discretion to make such a declaration exist. That is, at least one detention order has previously been made against you for a prescribed indictable offence. This is a sentence for a prescribed indictable offence. A pre-sentence report has been provided and I have received and considered it. I have had regard to your previous offending history and bail history, and your efforts of rehabilitation and any other matter I consider relevant.

Such a declaration has apparently been made by a Childrens Court Magistrate on a later occasion, that is, since this offence was committed. However, the joint position from the legal representatives is that, by virtue of section 150B of the *Youth Justice Act*, that declaration does not affect this sentence because it was not made by a Court of like or higher jurisdiction and is not a matter directly relevant to me making the declaration for this offence.

I accept that your previous offending history is poor and involves repeated offending of a similar nature, particularly for property offences. I accept that you have offended on bail in the past. There is some evidence of rehabilitation or attempts at rehabilitation at different periods, and some failures.

There is some possibility that, when released, you will commit a further prescribed indictable offence, but that is not the test.

The Court must also take into account matters it considers relevant. In this case, they include the low objective gravity of the single offence you committed, the significant punishment already suffered, the matters in the pre-sentence report including your dysfunctional and disadvantaged childhood, and the diagnoses in the psychologist's report. In all of the circumstances, I cannot be satisfied that this is an appropriate matter in which to make such a declaration and I decline to do so.

For completeness, I also record that I have taken into account the principles in the High Court decision in *Bugmy v The Queen* (2013) 249 CLR 571 about where an Aboriginal offender's history of significant disadvantage and dysfunction can constitute a mitigating factor on sentence, and that those impacts do not diminish over time. I take into account those principles in the orders I have made today.

…

**HER HONOUR**: If it is not already abundantly clear, I take into account the 197 days served by [TSL] solely on remand for these offences.[1]

…

**HER HONOUR**: [TSL], I do not know when you will be released from detention because that is under the other order. But, remember, when you are released for this one, you will be on probation. You need to work hard not to make bad decisions. You will just end up back in detention if you do.

…

---

[1] Pursuant to section 128(4)(b)(i) of the *Youth Justice Act*, the Crown applied to reopen the sentencing proceeding heard by me in relation to this child. In my sentencing remarks, I referred to the child having served 197 days in pre-sentence custody, remanded in detention, which was taken into account and not declared. After I completed my sentencing remarks, the officer appearing on behalf of the Crown sought to have me correct my remarks to refer to 198 days remand in custody time. I made that correction on the basis of his submission. It now appears the submission was incorrect and the correct amount of remand in custody time was the amount originally stated by me, 197 days. I correct my sentencing remarks to refer to 197 days taken into account.