

# CHILDRENS COURT OF QUEENSLAND

CITATION: *ABA v The Office of the Director of Public Prosecutions*  
[2023] QChC 24

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

FILE NO: CCJ 370/23

DIVISION: Children's Court of Queensland

PROCEEDING: Application for Sentence Review

ORIGINATING COURT: Hervey Bay Childrens Court

DELIVERED ON: 24 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 29 September 2023

JUDGE: Richards DCJ

ORDER: **The application is allowed to the extent that the curfew and residence conditions are deleted. The order is otherwise to remain.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – APPEAL AGAINST SENTENCE – where the child applicant was guilty of entering dwelling to commit an indictable offence, unlawful use of motor vehicle – where the offending was committed in breach of a probation order and bail condition - where the child applicant spent 23 days in remand and 6 of those days in an adult watch house - where the applicant child was sentenced to nine months' probation with a residential and curfew condition – whether the sentence of probation with additional conditions excessive in the circumstances

LEGISLATION: *Youth Justice Act 1992*

COUNSEL: N Honnef for the applicant  
R Byrne for the respondent

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

- [1] The applicant was sentenced on 16 August 2023 in relation to charges of enter a dwelling and commit an indictable offence and unlawful use of a motor vehicle (24 July 2023) and breach of bail (23 July 2023). She was sentenced to nine months' probation with a condition that she must live at [redacted], Tinana and until 16 October 2023 she must not be away from that address after 8.00 pm or before 6.00 am unless in the company of a youth worker or a Child Safety Officer. A conviction was not recorded.
- [2] The applicant was 14 years and 10 months old when she committed these offences and had been sentenced, only four days previously, to a nine-month probation order in relation to 56 separate offences many of which were offences of a similar nature. In relation to that earlier sentence, she had spent 62 days in pre-sentence custody.
- [3] The applicant was young, and she had spent a further 23 days in custody between her arrest and her sentence. Six of those days were spent in an adult watchhouse which was extremely onerous. The offending however was serious. In relation to the breach of bail she was in the company of a person whom she was prohibited from seeing at 11.30 pm at night. At 2.00 am the next morning she and co-offenders broke into a unit at Hervey Bay where an 80-year-old man was holidaying. They stole two mobile phones, a Samsung tablet and an MG Zs motor vehicle. They drove the motor vehicle away and police observed them driving across a footpath to drive around a police vehicle before fleeing. They were later discovered at 8.30 am at a truck stop.
- [4] The applicant child had been sentenced in February 2023 in relation to offences of enter a dwelling with intent by break at night in company, wilful damage and unlawful use of a motor vehicle and was placed on a six-month good behaviour bond. The 56 offences and these offences breached that bond.
- [5] A pre-sentence report was ordered in relation to these offences. The report outlines her background.
- [6] The applicant is the third of eight children and has been brought up in a house where domestic violence was rife and the children both witnessed and were victims of that domestic violence. That abuse culminated in her arm and collarbone being broken and Child Safety intervened. Since that time she has been transient between

kinship and State care arrangements. Despite this she has a close relationship with her family and has been in regular and consistent contact with her mother and siblings.

- [7] The applicant was also exposed to substance use throughout her upbringing and is a regular user of marijuana and alcohol. She was largely disengaged from schooling and is disconnected from pro social activities. She has committed these offences with her cousins.
- [8] The applicant is described as demonstrating mixed insight into her offending and knows that she and her co-offenders have done the wrong thing.
- [9] It was submitted on behalf of the applicant that given the 23 days spent in pre-sentence custody (including six days in the watchhouse), her young age and the fact that probation had not had any time to take effect, that a good behaviour bond or a restorative justice order would be appropriate. At the hearing of this matter, it was submitted on behalf of the applicant that restorative justice would not be of benefit to her as she still lacked insight into the offending and was deflecting and more concerned about herself than the victim.
- [10] The Magistrate found the offending was serious. There was a significant amount of property taken, the offences took place at night and in company and involved driving recklessly. They were committed in breach of probation and a good behaviour order. In those circumstances, a sentence that added a short extra period of probation cannot be said to be inappropriate. The applicant child is clearly in need of ongoing supervision.
- [11] However, it was conceded by the Crown, and I accept that the curfew condition, even though it was only for a short period time, was inappropriate as was the residential condition. It did not allow for the Department of Child Safety to change her address even if it was no longer appropriate. Accordingly, the application is allowed to the extent that the curfew and residence conditions are deleted. The order is otherwise to remain.