

# CHILDRENS COURT OF QUEENSLAND

CITATION: *HJ v The Office of Director of Public Prosecutions (Qld)*  
[2023] QChC 25

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

FILE NO: CCJ 376/2023

DIVISION: Children's Court of Queensland

PROCEEDING: Application for Sentence Review

ORIGINATING COURT: Rockhampton Childrens Court

DELIVERED ON: 24 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 1 August 2023

JUDGE: Richards DCJ

ORDER: **The application is dismissed.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – APPEAL AGAINST SENTENCE – where the child applicant was guilty of a series of property offences – where the child applicant has relevant but dated criminal history – where the child applicant was sentenced to five months' detention to be served by a four month conditional release order – whether the order of detention was manifestly excessive

LEGISLATION: *Youth Justice Act 1992*

COUNSEL: Mr N Honnef for the applicant  
M McLennan-Bird for the respondent

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

## Introduction

- [1] On 1 August 2023 the applicant child was sentenced to five months' detention order to be served by way of a four month conditional release order. He had spent 18 days in pre-sentence custody and had a relevant but dated criminal history, with his most recent sentence being in October 2022. He was subject to a community service order at the time of sentence. This application is based upon a submission that the order of detention was manifestly excessive in the circumstances.

### **Extension of time**

- [2] The review application is lodged out of time however the Crown does not oppose the extension of time being granted and there is no prejudice to them demonstrated in the material in relation to the granting of the extension. There has been sufficient explanation for the delay and accordingly the extension is granted.

### **Facts**

- [3] At the time of this offending, HJ had been out of trouble for approximately 18 months. He had moved in with a family friend, TB and had disassociated himself from his anti-social peer group. He had obtained employment for a period of time however, he was unemployed at the time of the offending. The offending occurred on a Monday. On that particular day he had been drinking and was under the influence of alcohol when approached by peers in a vehicle. Once in the vehicle he engaged in methamphetamine use, a drug that he had only tried once before. He was also smoking marijuana.
- [4] On 14 July 2023 at 2.20am he and others attended an address at South Gladstone. They gained entry through a rear laundry door and took a set of car keys. The co-offender then stole a motor vehicle whilst this child ran to another vehicle before leaving (enter dwelling and commit an indictable offence). At 3.00am the child attended an address at Kin Kora and went to the front screen door of the dwelling and attempted to open the screen door (attempt to enter dwelling with intent at night). He then went to another address between 3am and 3.15am, broke a door handle by using multigrips and gained access to the downstairs area of the dwelling where he was confronted by the victim's partner and fled (enter dwelling with intent by break at night). He then tried unsuccessfully to get into another residence at 3.28am by opening a screen door in the downstairs portion of the dwelling. He

moved on to the victim's vehicle and tried to get into the vehicle by pulling on the door handle (attempt to enter dwelling with intent at night and attempt to enter premises with intent to commit an indictable offence). At 3.32am he went to another address, entered a patio area at the rear of the dwelling and conducted a search where he removed a black Oakley backpack containing identification and personal protection equipment in a case. He then went to the bottom half of the dwelling and entered through a glass sliding door and searched downstairs before removing a bottle of alcohol and leaving the address (enter dwelling and commit an indictable offence). Between 3.15am and 3.45am he attempted to access the rear of a dwelling by use a set of multigrips. He broke the lock on the outer door but was unable to force entry through the screen door. He woke the victim and she disturbed him (attempt to enter a dwelling with intent at night). The police found the child applicant at 12.30pm.

- [5] HJ has a relevant criminal history starting in March of 2020 when he was sentenced to restorative justice and probation for burglary, unlawful use and stealing offences (amongst other property offences). On 19 May 2020 he was sentenced for a serious assault and property offences and was given community service and probation. On 12 August 2020 he was sentenced for further burglary offences to restorative justice and more probation. On 9 September 2020 he was given 50 hours community service for a single charge of unlawful use of a motor vehicle. On 1 December 2020 he committed more property offences including unlawful use and burglary and was sentenced to three months detention to be served by way of a condition of release order. On 18 January 2021 he received 18 months' probation for a robbery offence and a further 75 hours community service for one count of unlawful use of a motor vehicle in February. On 31 March 2021 he was sentenced for unlawful use of a motor vehicle and trespass and sentenced to three months detention to be served by way of a condition of release order. On 20 October 2021 he was sentenced in relation to further property offending to three months detention to be served by way of a condition of release order.
- [6] The pre-sentence report indicates that the applicant child's unemployment and unstructured free time was a contributing factor to his offending. He had been employed with his cousin and was spending periods away from home to work. During that time he had very little unstructured free time. Unfortunately his

employer became unwell and so the work ceased. When the employer returned to work his cousin was no longer working there and the child decided not to go back to that work.

- [7] It was assessed that he expressed genuine remorse and regret that he had fallen back into offending. He indicated that he had been thinking about the victims and how hard they work for their belongings and that what he had done wasn't fair to them. He was disappointed in his actions and had strong motivation to change. He had spent 18 days in custody, some of those days were spent in the watchhouse which he found particularly difficult. His time in the watchhouse meant that he was sleeping on a makeshift bed assembled from foam pillows. He had no access to natural light, activities or programmes and was subject to adult prisoners yelling and banging on the cell walls throughout the night. Since being in custody he had consented to a referral to Lives Lived Well and was motivated to get back into employment.
- [8] Since being on the conditional release order between 1 August 2023 and 4 September 2023 the child applicant had high compliance and only missed one day of attending programmes. He has since engaged in prosocial activities with Youth Justice including playing sports such as Oztag once a week. He continues to look for employment.
- [9] It was submitted on his behalf that the learned Magistrate was led into error by submissions from both parties that a conditional release order was appropriate. It is conceded that the Magistrate made reference to the applicant's steps towards rehabilitation, his time spent in the watchhouse, his insight into the offending, his pleas of guilty and the factors contributing to the offending. However, it is submitted that the learned Magistrate did not properly take into account the principles of the *Youth Justice Act 1992* in relation to detention being a sentence of last resort. Given that he was a child with good prospects of rehabilitation and had displayed motivation to change it was submitted that it would have been more appropriate for him to be placed on a good behaviour order, particularly now as he has completed already one month of the order.
- [10] The learned Magistrate took into account the fact that this child had a criminal history spanning 12 pages. It is fair to say that he hadn't offended for a significant

period of time in his young life, however, once he found himself with time on his hands and little by way of income he fell back into offending with his friends on this particular night.

- [11] The offending on that night although largely unsuccessful was persistent. It involved trying to get into a number of different houses and on occasion stealing goods. It was the type of offending in relation to which he had been convicted many times before. It cannot, in my view, be said to be an appropriate matter in which a good behaviour bond or even probation was appropriate, given his age. Given his past behaviour, his persistence in offending that night, and his age the Magistrate was entitled to conclude that a sentence of detention was appropriate. In my view, the order imposed was an appropriate one and the application should be dismissed.