

# CHILDRENS COURT OF QUEENSLAND

CITATION: *OFA v The Office of the Director of Public Prosecutions*  
[2023] QChC 26

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

FILE NO: CCJ 378/23

DIVISION: Childrens Court of Queensland

PROCEEDING: Application for Sentence Review

ORIGINATING COURT: Redcliffe Childrens Court

DELIVERED ON: 24 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 19 October 2023

JUDGE: Richards P

ORDER: **The application is allowed. The sentence is set aside pursuant to section 162 of the *Youth Justice Act 1992 (Qld)*, the child is diverted to a restorative justice process.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – APPEAL AGAINST SENTENCE – where the child applicant was guilty of entering a dwelling and commit, possessing dangerous drugs and possessing drug utensil and sentenced to six months’ probation – where the applicant child was 17 years old with limited criminal history – where there was no discussion of restorative justice or diversionary restorative justice during sentencing proceedings – whether the sentencing Magistrate adequately considered restorative justice – whether the sentence to six months’ probation was excessive in the circumstances

LEGISLATION: *Youth Justice Act 1992 (Qld)* s 162.

COUNSEL: Ms A Acreman for the applicant  
Ms L Maleckas for the respondent

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

## **Introduction**

- [1] The applicant child was 17 years old when he was sentenced in the Redcliffe Childrens Court. He spent 1 day on remand in an adult watchhouse. He had a very limited criminal history at the time but was on a good behaviour bond when he committed the offences.
- [2] The applicant child entered pleas of guilty to three charges: entering a dwelling and commit on 15 May 2023 where he went to an address at Spring Mountain at 9.23am and entered through a partially open garage and removed tools and on 15 June 2023 possession of a clip seal bag of marijuana weighing 189 grams and a cone piece. On 4 August 2023 he was sentenced to six months' probation for these offences. No convictions were recorded.

## **Discussion**

- [3] It was submitted on his behalf that he was a 17 year old child who was living at home with his mother. He is currently employed as a landscaper on a full-time basis and was in the process of getting a learner's licence. He left school at grade 12. He had a disturbed upbringing. His father was schizophrenic and left the home when he was two years of age. He currently has no contact with his father but has experienced domestic violence perpetrated against his mother. He is seeing a psychologist on a monthly basis and a drug and mental health counsellor through Child and Youth Mental Health Service. He had been using drugs since the age of 15. He had one previous entry on his criminal history.
- [4] In sentencing the child the Magistrate said he took into account the nature and circumstances of the charges before him as well as the plea of guilty and reduced the penalty accordingly. He noted there was no application to make an order for restorative justice and he thought it was not appropriate because he thought some supervision was required.<sup>1</sup>
- [5] Since being placed on probation and before it was suspended on 31 August 2023 he reported on 5 out of 5 occasions, commenced drug and alcohol counselling,

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<sup>1</sup> Transcript of Decision 4 August 2023, page 2 ll 1-9

continued to work full-time, obtained his learner's licence and engaged in the CHART intervention. He is deemed to be suitable for restorative justice.

- [6] He has been seeing a psychologist for more than a year and has been diagnosed with post-traumatic stress disorder, major depression, ADHD and ODD and intends to obtain medication for some of these conditions.
- [7] During the sentence proceedings there was no discussion of restorative justice or of section 162 of the *Youth Justice Act 1992 (Qld)* which mandates that the Court must consider whether diversionary restorative justice is appropriate. The parties did not make any submissions in relation to restorative justice and that was noted by the Magistrate who nonetheless thought it was appropriate to impose probation on the basis that some supervision was required.
- [8] It is clear that the child has been participating in counselling and is now participating in drug and alcohol counselling. He has been able to commit to and maintain full-time employment. He is making extremely positive steps towards rehabilitation. In those circumstances the Magistrate should have given more consideration to the restorative justice process. The child had little need for additional supervision given that he was doing everything that was appropriate to turn his life around. The Crown concedes that the Magistrate did not properly consider restorative justice and that restorative justice would be appropriate. I agree with this submission.

## **ORDER**

- [9] **The application is allowed. The sentence is set aside pursuant to section 162 of the *Youth Justice Act 1992 (Qld)*, the child is diverted to a restorative justice process.**