

CHILDRENS COURT OF QUEENSLAND

CITATION: *CEE v The Office of the Director of Public Prosecutions (Qld)* [2023] QChC 27

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

FILE NO: CCJ 384/23

DIVISION: Children's Court of Queensland

PROCEEDING: Application for Sentence Review

ORIGINATING COURT: Townsville Childrens Court

DELIVERED ON: 25 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 19 October 2023

JUDGE: Richards P

ORDER: **The applications are granted in relation to the sentences imposed on 16 August and 12 September 2023. The sentence of three months detention imposed on 16 August 2023 is set aside and a good behaviour order pursuant to s 175(1)(b) of the *Youth Justice Act 1992 (Qld)* is imposed for those offences. In relation to the sentence imposed on 12 September 2023 the sentence is set aside and the child is formally reprimanded pursuant to s 175(1)(a) of the *Youth Justice Act 1992 (Qld)*.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – APPEAL AGAINST SENTENCE – where the child applicant was guilty of a series of entering dwelling and committing indictable offences and unlawful use offences – where the child applicant was 14 years of age and had relevant criminal history – where the child applicant had spent a significant period of 122 days in pre-sentence custody – where the child applicant had served longer on remand than the likely sentence to be imposed – whether a detention order was excessive in the circumstances

CRIMINAL LAW – SENTENCE – APPEAL AGAINST SENTENCE – where the applicant child was guilty of unlawful use of motor vehicle and sentenced to three months' detention with a three month conditional release order – where the applicant child had been complying with his

supervised order in the community and engaging with rehabilitative services at the time of the sentence – where the applicant child had spent 20 days in pre-sentence custody and eight days in the watchhouse – whether three months’ detention order was excessive in the circumstances

LEGISLATION: *Youth Justice Act 1992* (Qld) s 175, s 208.

CASES: *R v MDD* [2019] QCA 197

COUNSEL: L Fabian for the applicant
E Conran for the respondent

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

Introduction

- [1] The applicant has applied for a review of sentences imposed on 16 August and 12 September 2023.
- [2] On 16 August 2023 the child was sentenced to three months’ detention order for offences of unlawful use of a motor vehicle, entering a dwelling with intent to commit an indictable offence, unlawful use of a motor vehicle in the night in company and two charges of enter a dwelling and committing an indictable offence. The child was also reprimanded for offences of common assault, stealing, and two charges of entering a dwelling and committing an indictable offence. This sentence review relates to the detention order only.
- [3] On 12 September 2023 he was sentenced in relation to a single charge of unlawful use of a motor vehicle to three months’ detention to be served by a way of a conditional release order.

Sentence imposed on 16 August 2023

Facts

- [4] On 13 April 2023, the child was identified as a passenger in a stolen car when it stopped at a petrol station (unlawful use of a motor vehicle).
- [5] On 16 April, the child committed a number of offences. At 12.37am three offenders went into a unit and stole keys and a pair of shoes (enter dwelling and commit an indictable offence). The keys were used to steal a Subaru Forester (unlawful use of a motor vehicle). Between 12.30am and 2am the offenders went into a house and

stole keys (enter dwelling and commit an indictable offence). The Forester was left near this house. Stolen keys were used to steal a Toyota Prado (unlawful use of a motor vehicle). At 1.10am, the child attended Coles Express in Garbutt in the Forester. He went into the store and stole various food items to the value of \$26.50 (enter premises and commit an indictable offence). He also put petrol in the Forester and left without paying for the fuel (stealing).

[6] At 2.55am, the victim woke to a torch being shone inside his caravan at Wulguru (enter dwelling and commit an indictable offence). He chased the child, who threw a dinner plate at him and hit him in the head. The victim held the child until police arrived (common assault). He later discovered his Ford Ranger had been entered and coins taken from the inside of it (enter premises and commit an indictable offence).

[7] The offences of common assault, stealing of petrol and enter premises and commit an indictable offence (stealing coins from inside a Ford Ranger) are the offences for which he was formally reprimanded. There is no application in relation to these charges.

Discussion

[8] The child had a relevant criminal history. He was given his first supervised order in October 2022 at the age of 13. He has since had restorative justice orders, three probation orders and two community service orders. At the time of the offending he was subject to a restorative justice order, a 30 hour community service order and a 20 hour community service order. He was non-compliant with his probation orders and was in breach of probation at the time of sentence.

[9] At the time of committing the offences he was 14 years and three months of age. The pre-sentence report indicated that although the child was able to articulate the effects his actions may have had on others, he acknowledged that during the offences his immediate wants were placed ahead of any concern for his victims. The report opined that this reflected his attachment to, and prioritisation of, his negative peer relationships. At the time of sentence he had spent 122 days in custody.

- [10] The child struggled with mainstream schooling and has been unwilling to explore alternate options. However, after this period of custody he indicated he would be willing to look at alternate environments for schooling. He has been diagnosed with possible ADHD and has been prescribed medication to assist him to manage those symptoms. He also commenced working with Lives Lived Well during his time in custody to address his cannabis use.
- [11] During the sentence hearing, the prosecution submitted that 122 days in custody was a sufficient period of time in detention and sufficient punishment but that a probation order could be made.
- [12] Section 208 of the *Youth Justice Act* prescribes:
- “That a court may make a detention order against a child only if the court after –
- (a) considering all other available sentences; and
- (b) taking into account the desirability of not holding a child in detention;
- is satisfied that no other sentence is appropriate in the circumstances of the case.”
- [13] As was discussed in *R v MDD* [2019] QCA 197 it does not follow that the appropriate order is detention simply because the child has been subject to non-custodial orders previously and has re-offended.
- [14] The Magistrate acknowledged that the child was young and had spent a significant period of time in custody. He acknowledged that for this offending, which mostly occurred over three hours on one night, that ordinarily if he were to impose detention it would have been no more than three months and even then probably to be served by way of a conditional release order. The child had served longer than that waiting for his sentence to be heard. He pleaded guilty at a timely stage and he had begun to show insight into his behaviour and was working and well behaved within the detention centre. The learned Magistrate did consider restorative justice however he ruled this out in this particular occasion because he was advised that the child really needed victim participation for restorative justice to work and there was a lack of available victim participation.

- [15] It is always unsatisfactory that the Court's sentencing powers are hampered by the time spent on remand. It leaves the court in the position where it is imposing a sentence it might otherwise not have imposed. However, the fact that the child has spent 122 days in pre-sentence custody leaves the court with little by way of options. The Crown concedes that the sentencing discretion miscarried in this case. That given the age of the child that the appropriate order is to take into account the time spent in pre-sentence custody and impose a good behaviour order in relation to the offences. This would not have been an appropriate sentence had the child been on bail, however, the time on remand was so significant that the court cannot properly reflect that time in any other manner.

Sentence imposed on 12 September 2023

Facts

- [16] The applicant child was again before the court on 12 September 2023 charged with one count of unlawful use of a motor vehicle. On 23 August 2023, he was sentenced to three months' detention to be served by way of a conditional release order. He was 14 years and eight months at the time of the offending and it was submitted by the prosecutor that he should be sentenced to one to two months' detention.
- [17] On his behalf it was pointed out that he had gone to a friend's place and he was trying to get home but the buses would not let him on. He accepted a lift to get back home and accepted that that was a very poor decision. He was not the driver of the car. He had been complying with his orders for the week that he was in the community and had been assisting his parents with some catering work. His mother was unwell and had spent a long period of time in hospital. At the time of sentencing he had spent 20 days in custody, eight days of which were in an adult watchhouse.
- [18] At sentence the learned Magistrate was concerned about the child's offending history, particularly for unlawful use of a motor vehicle. However, the Magistrate tempered that consideration by taking into account the unusual features of this particular offence. The child was a passenger in the vehicle, he needed to get home, and he missed medication for the day that he was at his friend's place. He was unable to otherwise return to his home because he was not allowed on the buses.

This offending represented a de-escalation in his previous offending behaviour and he had spent a considerable period of time in an adult watchhouse.

- [19] The pre-sentence report that was ordered for this particular matter annexed an earlier pre-sentence report which referred to his poor attitude and to his negative peers. However, by the time of this sentence he had started working with the Lives Lived Well Drug and Alcohol Counselling Service and intended to continue that post release.

Discussion

- [20] In relation to this offending, the Crown submits that the Magistrate should have taken into account the pre-sentence custody as well as the child's role in the offending and, in doing so, imposed a reprimand for this particular offending. They concede that the sentence of detention was not appropriate in this instance.
- [21] In my view the concession is properly made given the fact the child spent 20 days in custody and is still only 14 years of age. He continues to have the support of his parents. The Magistrate was not in a position to find that the only appropriate sentence in this case was a sentence of detention.

ORDER

- [22] **The applications are granted in relation to the sentences imposed on 16 August and 12 September 2023. The sentence of three months detention imposed on 16 August 2023 is set aside and a good behaviour order pursuant to s 175(1)(b) of the *Youth Justice Act 1992 (Qld)* is imposed for those offences. In relation to the sentence imposed on 12 September 2023 the sentence is set aside and the child is formally reprimanded pursuant to s 175(1)(a) of the *Youth Justice Act 1992 (Qld)*.**