SUPREME COURT OF QUEENSLAND

CITATION:	*Re JRP* [2022] QSC 33
PARTIES:	**COMMISSIONER OF POLICE (QLD)** (Applicant) **v** **JRP** (Respondent)
FILE NO/S:	SCR No 131 of 2022
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Cairns
DELIVERED ON:	10 March 2022
DELIVERED AT:	Townsville
HEARING DATES:	10, 11, 21 February, 2022
JUDGE:	North J
ORDER:	**1. The order issued in the Townsville Childrens Court on 8 February 2022 granting bail to the child be revoked.** **2. A warrant issue for the apprehension of the child pursuant to 19D Bail Act 1980 (Qld) to appear before the Childrens Court at Townsville; and** **3. That child be remanded in custody.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – BAIL – REVOCATION, VARIATION, REVIEW AND APPEAL – where Police Prosecutions applied pursuant to s 19B(2) *Bail Act* 1980 (Qld) for a review of a Magistrate's decision to grant the respondent bail – where the charges for which the respondent was granted bail included enter a dwelling and commit an indictable offence and unlawful use of a motor vehicle – where the alleged offending involved breaking into a residential property and the unlawful use of a vehicle stolen from this property – where the respondent is a juvenile – where the respondent had a significant criminal history – where the respondent was on bail for periods of the alleged offending – whether burglary and unlawful use of motor vehicles by juveniles endangers the safety of the community – whether if released there is an unacceptable risk that the

child will commit an offence that endangers the safety of the community – whether it is not practicable to adequately mitigate that risk by imposing particular conditions – whether the bail granted to the respondent should be revoked

Bail Act 1980 (Qld), s 14B, s 19B

Youth Justice Act 1992 (Qld), s 47AF, s 48, s 48A, s 48AA(4)(b), s 48AAA, s 48AE

COUNSEL: K Read for the Applicant
K Koelmeyer for the Respondent
K Coffison for Youth Justice

SOLICITORS: Townsville Prosecution Services for the Applicant
Legal Aid Queensland for the Respondent

[1] The respondent is 15 years of age and comes from a disadvantaged indigenous background.

[2] He has a long and concerning history of offending.[1] A summary of the most relevant convictions or court proceedings found in Exhibit 7 is set out in the outline of submissions on behalf of the applicant[2] the summary is:

> " a. He has multiple entries pertaining to violent offending. These include:
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> i. Robbery with actual violence/in company dated 26/01/2019; and
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> ii. Threatening violence by words or conduct dated 05/01/2019.
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> b. Most concerningly, he has a prior conviction for dangerous operation of motor vehicle causing grievous bodily harm dated 10/04/2019.
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> c. He has significant number of prior convictions for property related offences and offences involving the unlawful use of motor vehicles. These include:
>
> i. 12 convictions for enter premises and commit indictable offence;
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> ii. 12 convictions for unlawful use of motor vehicles;
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> iii. 2 convictions for burglary."

[3] The charges that concern this application are ten in number. They are currently before the Childrens Court in Townsville[3].

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1 See 10 page history, Exhibit 7 to the Affidavit of Erin Collis filed 9 February 2022.
2 MFI 1 at para 32.
3 See MFI 1 at para 15, MFI 2 at para 5 and para 10b to the Affidavit of Erin Collis and for completion Exh. 6 to the Affidavit of Collis (the QP9).

[4] These events are alleged to have been committed between the 4th and 13th of January 2022.

[5] The details of the charges together with the dates of the alleged offending are set out comprehensively in paragraph 15 of the Outline of Submissions[4] on behalf of the applicant:

> "15. On 17 January 2022, the Respondent was arrested and charged with the offences the subject of this Application namely:
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> a. Attempted enter dwelling with intent at night dated 04/01/2022 (charge 1 of 10);
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> b. Attempted enter dwelling with intent at night date 04/01/2022 (charge 2 of 10);
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> c. Attempted enter dwelling with intent at night dated 04/01/2022 (charge 3 of 10);
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> d. Burglary and commit indictable offence dated 13/01/2022 (charge 4 of 10);
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> e. Receiving tainted property dated 13/01/2022 (charge 5 of 10);
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> f. Unlawful use of motor vehicles aircraft or vessels – use dated 13/01/2022 (charge 6 of 10);
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> g. Fraud – dishonest application of property of another dated 13/01/2022 (charge 7 of 10);
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> h. Fraud – dishonest application of property of another dated 13/01/2022 (charge 8 of 10);
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> i. Driving of motor vehicle without a driver licence never held a licence type 2 vehicle related offence dated 13/01/2022 (charge 9 of 10); and
>
> j. Receiving tainted property dated 10/01/2022 (charge 10 of 10).

[6] Before this alleged offending the respondent was arrested and charged before the Magistrate's Court at Hughenden with five charges.

[7] On 24 October 2021 he was granted police bail for those five charges.

[8] Whilst on bail for those five charges he committed the offence of unlawful use of a motor vehicle at Mt Isa on 8 November 2021. Subsequently he was arrested, refused bail and on 30 November 2021 he was convicted and sentenced at Mt Isa. The five charges outstanding from Hughenden were not dealt with.

[9] The five charges were not the subject of a further specific bail order with a consequence that when, in January 2022, he allegedly committed the 10 charges the subject of this application, he was at large with or without bail within s 48AF(1)(a) of the *Youth Justice Act* 1992 ("*YJA*").

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[4] MFI 1 at para 15.

[10] Following the respondent's arrest for the 10 January charges (on 17 January) the respondent made a number of applications for bail which were refused. Ultimately however on 8 February 2022 he was granted bail in respect of all 15 outstanding charges (being the 5 charges from Hughenden and the 10 January charges).

[11] The applicant seeks to review the decision by the Magistrate, in respect of the 10 January charges, to grant bail under s 19B of the *Bail Act* 1980 ("*BA*").

[12] Section 19B expressly applies to a review by the Supreme Court of a decision by a Magistrate about release under the *YJA* (consider s 19B(2) and (3)). In such a review additional or substitute evidence may be given and the reviewing court may make any order it considers appropriate (see s 19B(6)). The effect is that this review is a hearing de novo.[5]

[13] After hearing the argument on 10 February 2022 at the resumption on 11 February I raised with the parties the question of the application of s 48AF of the *YJA* and specifically whether it had application on a review when a child was not in custody but was at large under a bail order. At the hearing on 10 February the submission of both parties had been, to the effect, that s 48AF did apply in that circumstance with the consequence that s 48AF(2) applied requiring the child respondent to show cause why his or her detention in custody was not justified. My concern was whether s 48AF did apply because of the express words that the "section applies in relation to a child in custody".[6]

[14] On 11 February I made directions that both parties file further written submissions and the application was ordered to be relisted for further submissions.[7]

[15] For the applicant emphasis was placed upon s 19B(6) and (7) of the *BA* and that each of sections 48, 48AAA, 48AE and s 48A of the *YJA* is specifically mentioned in s 19B(7) of the *BA* in the context of a review of a decision. In this circumstance it was submitted that the failure to expressly mention s 48AF in s 19B(7) of the *BA* created an ambiguity and that the interpretation that best suits the purpose of both the *BA* and the *YJA* was, applying s 14A of the Act's *Interpretation Act* 1954, to read the Acts with the effect that s 48AF applied in a review where the child was on bail under an order of a Court because, it was submitted, it best achieved the purpose of the Acts.

[16] The difficulty with that submission is that s 48AF(1) is expressly worded to apply "to a child in custody". When this is combined with the *BA* s 19B(7) which refers to the *YJA* and mention is made to only sections 48, 48AAA, 48AE and s 48A it is difficult to accept the legislation is ambiguous. Consistent with the *YJA* and its provisions[8] it is not a surprise that s 48AF has an application in a review from a refusal of bail but does not apply in a review hearing from a grant of bail.

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5 See *re JTL* [2021] QSC 211 at [4].

6 See s 48AF(1).

7 Both parties provided written submissions on 17 February. See MFI 3 AND MFI 4. (And both parties were given the opportunity to make written submissions.)

8 Consider for example s 48(2) and the emphasis upon releasing a child from custody. Consider also the Objectives of the *YJA* at s 2 and the Youth Justice Principles established by s 3. In particular note Schedule 1 para 18.

[17] For the respondent it was submitted that s 48AF(2) had no application upon a review from a grant of bail. In fact the respondent's submission went so far as to submit that s 48AAA and other sections in Part 5 *YJA* had no application. This aspect of the respondent's submission is difficult to accept in light of the expressed revisions of s 19B(7) that provides that upon a review (see s 19B(6)) of a decision "about release" (see s 19B(2)) is "limited by" s 48AAA. Section 19B(7) expressly identifies four sections of the *YJA* that limit the order that may be made. I have identified s 48AAA. In addition there are s 48, s 48E and s 48A.

[18] Section 48AF is not included with those mentioned in s 19B(7).

[19] While this may be viewed as a curious drafting circumstance it does not necessarily lead to ambiguity. One way of understanding this curiosity is to understand that s 48AF applies when the child who is in custody in circumstances contemplated by s 48AF(1) applies for a release. In that circumstance the child must show cause in the way required by s 48AF(2). But having secured bail in the face of the onus cast upon a child under s 48AF(2) it seems consistent with both notions of justice but also the other provisions of the *YJA* indicating that custody is a last resort that upon a review of a grant of bail the strict onus provided for by s 48AF(2) should not apply but that the onus should be upon the party applying to return the child to custody to satisfy the requirements of the Act. A harmonious goal of understanding s 14B of the *BA* and s 47AF of the *YJA* is achieved by applying s 48AF(2) when a child in custody seeks release but, having been granted bail, on a review under s 19B(6) s 47AF(2) does not apply.[9]

[20] For these reasons I hold that s 48AF does not apply in this review hearing. But my interpretation does not undermine the significant provision s 19B(6) of the *BA* that the review hearing is "de novo". Further I do not accept the broader submission made by the respondent that s 48AAA of the *YJA* does not have application in a review hearing where a grant of bail was made. While s 48AAA is worded in the context of a consideration as to whether to keep a child in custody[10] the section itself has its inherent ambiguity. Even if the respondent submission that s 48AAA had no application in the context of a review hearing where the child was at large enjoying bail the considerations expressed in s 48AAA(2) would be relevant considerations in the context of an application to revoke or set aside a bail order. In other words my interpretation of s 48AAA(2) in the context of the legislation is that it has application whether the review concerns a child in custody or a child enjoying bail.

[21] In argument the applicant relied upon the considerations expressed in s 48AAA(2) of the *YJA* to justify the respondent's detention in custody.

[22] It was submitted:

a. That if released there was an unacceptable risk that the Respondent would commit an offence that endangers the safety of the community; and

b. It was not practical to adequately mitigate that risk by posing particular conditions on bail.

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[9] See generally *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 at [69] – [71].

[10] See s 48AAA(1) and (2).

[23] Concerning the risk of endangering the safety of the community in context of an application such as that before me the applicant relied upon the observations of Henry J in *Re JTL*[11]

> "[3] It is as well to reiterate, as I have in previous reviews, that juveniles breaking into homes and later unlawfully using vehicles stolen from those homes are committing offences which endanger the safety of the community, including themselves. That is because of the risk of violence occurring as between them and the dwelling occupants, many of whom will be tempted to apply force to detain or repel offenders breaking into their home. It is also because of the risk of vehicles in the hands of untrained children drivers crashing and doing injury. Such dangers do not always crystallise into actual harm or injury but it is the very real risk of such harm or injury occurring which means such offending "endangers the safety of the community"."

[24] The prior history identified above of entering or attempting to enter premises and the unlawful use of motor vehicles and the other serious offending identified above leads me to the conclusion that the risk to the safety of the community is real and in my view unacceptable[12] substantially for the same reasons as given by Henry J.

[25] This observation is, I conclude, reinforced by a review of the 10 charges before the Court, the subject of this application.[13]

[26] For the respondent it was submitted that the curfew condition which currently applies between 6pm and 6am could be amended to impose a 24-hour curfew which would adequately mitigate the risk identified by Henry J.[14]

[27] In response on behalf of the respondent I was directed to the respondent's Bail Compliance Record[15] which demonstrates noncompliance and an inability for the respondent's mother to enforce the curfew.

[28] In the context of the respondent's history of offending and re-offending and of his noncompliance with prior curfew orders I have no confidence that even a 24-hour curfew would be effective and mitigate the risk of reoffending.

[29] It was submitted that a delay in the proceedings may result in the respondent serving too much time. I am not persuaded that the respondent is at risk of serving too much time on remand because of delay.

[30] The evidence before me does not suggest to me that the prosecution case is weak.

[31] The charges, in context, are serious and notwithstanding the express provisions of the *YJA* designed to direct the sentencing court from a sentence of actual detention in this case a sentence of detention will be open to the Court following a conviction.

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11 [2021] QSE 211 at [3].
12 See MFI 1 at para 32 (page 8).
13 See MFI 1 at para 15 (page 3).
14 See s 48AAA(2)(b).
15 See Exh. 8 to the Affidavit of Erin Collis (pages 96-100).

[32] No practicable measure has been identified that adequately mitigates the risks of further offending and that in my view endangers the safety of the community.

[33] In *Re JTL*[16] Henry J said:

> "[11] It is difficult not to feel considerable sympathy for the juvenile involved, given that she has been let down by adults who should be properly supervising her conduct. Ultimately though, the consideration of community safety in circumstances of such obviously hardnosed recidivism trumps the other considerations which normally mitigate strongly against remanding a juvenile in custody whilst awaiting disposition of their matter."

[34] His Honour's observations apply here.

[35] In the circumstances the review application should be granted.

[36] It is ordered that

1. That the order issued in Townsville Childrens Court on 8 February 2022 granting bail to the child be revoked.

2. A warrant issue for the apprehension of the child pursuant to 19D Bail Act 1980 (Qld) to appear before the Childrens Court at Townsville.

3. That the child be remanded in custody.

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[16] [2001] QSC 2011 at [11].