[2018] QCA 170

COURT OF APPEAL

FRASER JA
PHILIPPIDES JA
HENRY J

CA No 267 of 2017
DC No 83 of 2017

THE QUEEN

v

TAH **Applicant**

BRISBANE

MONDAY, 30 JULY 2018

JUDGMENT

HENRY J: The applicant pleaded guilty in the Children's Court to the offence of grievous bodily harm. He was sentenced to 15 months detention with immediate conditional release and a conviction recorded.

His notice of application for leave to appeal his sentence complains as its sole ground that:

> "A conviction ought not have been recorded."

The applicant has not advanced his application in any apparent way. He has failed to respond to repeated correspondence from the Registry, including repeated requests that he file a written outline of submissions. A previous listing for the hearing of the application in April 2018 was vacated, apparently, with a view to the Registry corresponding further with the

applicant. This was to no avail. He still has not responded to the registry or filed an outline. He did not appear at today's listed hearing of the matter.

It is readily apparent from the record that the application lacks merit. The discretion to record a conviction was enlivened by s 183(3) *Youth Justice Act* 1992 (Qld). The learned sentencing judge was clearly well apprised of the considerations to which he was obliged to have regard pursuant to s 184 of that Act. He alluded quite appropriately to the applicant's age and criminal history, including the repeated extending of past leniency on sentence. His Honour acknowledged the adverse prospects which the recording of a conviction could have for the applicant's future chances of finding employment, but also identified the serious nature of the offence as a particularly significant consideration.

His Honour's remarks contain no apparent error. This logically only leaves for consideration the argument that the result in contention, the recording of a conviction, is itself such an unreasonable outcome as to bespeak error - see *House v The King* (1956) 35 CLR 499. The difficulty with such an argument is that in the circumstances of this case the exercising of the discretion to record a conviction was demonstrably within the sound exercise of that discretion.

The applicant was 16 at the time of the offence and 17 at the time of sentence. His criminal history commenced when he was 14. By the time of sentence he had been sentenced at 10 separate appearances for 40 offences. In each instance, he was given the benefit of no conviction being recorded.

While many of the applicant's offences were property related, they included seven contraventions of domestic violence orders and four offences of assault or obstruct police. An exhibited pre-sentence report and a letter from the applicant's mother both identified the applicant's substance abuse and aggressive behaviours as issues of concern in the era leading up to the offence. The present offence represents an escalation in seriousness of any of the applicant's previous crimes against the person. He was likely affected by methylamphetamine when he committed it.

The trigger for the violent episode in question was the complainant raising his middle finger in a rude gesture at the applicant who was staring at him from the passenger seat of a passing car. The applicant followed after the complainant, who was walking home, and confronted him, blocking his path. The applicant swore at him. When the complainant tried to walk around the applicant, the complainant was punched to the side of the face by the applicant. The complainant fell to the road, blood pouring from his face. The applicant walked off, calling the complainant a weak dog.

The applicant's act of gratuitous violence resulted in two fractures to the complainant's jaw and an intra-oral laceration resulting in the loss of a tooth. The applicant underwent significant surgical intervention and a difficult recovery period.

When interviewed by the police, the applicant was unapologetic saying, "I'm probably going to do it again when he's better" and describing the complainant as a "weak cunt", a "little girl", and having a "glass jaw". This tempered the force of his later assertions of insight and regret to the author of the pre-sentence report.

As was emphasised in *R v Cunningham* [2014] QCA 88 [50], cases in which this Court have considered the exercise of the discretion whether to record a conviction under the *Youth Justice Act* turn upon their particular circumstances. In the circumstances of this case, the serious nature of the offence and the applicant's repeated past offending meant it was well open to the learned sentencing Judge to record a conviction, despite its potentially adverse impact upon the applicant's future. The application for leave is without merit.

I would order: application dismissed.

FRASER JA: I agree.

PHILIPPIDES JA: I also agree.

FRASER JA: The order of the Court is that the application is dismissed. Thank you. Adjourn the Court.