

AUSTRALIA / JUDGMENT

R v Kai [2024] NSWChC 5

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Children's Court

New South Wales

Medium Neutral Citation: R v Kai [2024] NSWChC 5

Hearing dates: 4 April 2024

Date of orders: 06 May 2024

Decision date: 06 May 2024

Jurisdiction: Criminal

Before: Judge Skinner, President of the Children's Court of NSW

Decision: An aggregate sentence of 16 months with a non-parole period of eight months to date from 17 September 2023. Eligible for release to parole on 16 May 2024.

Catchwords: CHILDREN – Crime – Assessment of seriousness in stolen car offences – Actions on breach of bonds – Totality – Bugmy factors – Special circumstances

Legislation Cited: Children (Criminal Proceedings) Act 1987 (NSW)

Crimes Act 1900 (NSW)

Crimes (Sentencing Procedure) Act 1999 (NSW)

Children (Detention Centres) Act 1987 (NSW)

Cases Cited: Bugmy v The Queen [2013] HCA 37

DPP (Cth) v De La Rosa (2010) 79 NSWLR 1

Category: Sentence

Parties: Kai (Young Person)

Rex (The Crown)

Representation: Ms Hughes (Office of the Director of Public Prosecutions ('DPP'))

Mr Mort (Prosecutor)

Mr Atkinson (Young Person)

File Number(s): 2022/00185139

Publication restriction: Pseudonyms have been used to protect the identity of the young person and Youth Justice staff.

****NOTE:** This judgment was prepared for publishing. It was communicated differently to the young person to accommodate his level of understanding and cognitive capacity.

JUDGMENT

1. Kai was born in 2008 and is now 15 years old. This is a decision on sentence, and I will address Kai directly to explain the decision and the reasons for the decision. He has a right to be heard and a right to participate in the processes that lead to the decisions that affect him (s 6 Children (Criminal Proceedings) Act 1987 (NSW) ('CCPA').
2. Kai, you have pleaded guilty to a number of offences from Moree. I am sentencing you in the Surry Hills Children's Court because some of your offences were committed with other young people who stole a car from Moree then offended around Newcastle, Taree, and Kempsey. The prosecutors and your lawyers agreed that all the charges should be heard by one Judge, and they were listed before me for hearing. The DPP was asked to prosecute those charges because they were complicated – there were five offenders, and the crimes were committed across a large area of NSW. One of the boys was twelve and his offences have been withdrawn by the DPP. You and the other boys have now pleaded guilty to some of those offences, so the Court does not need to hear from witnesses to decide if you committed those crimes, it just needs to sentence you for the crimes you have committed.
3. I will sentence you for crimes you committed during 2023 and early 2024, some prosecuted by the DPP and some prosecuted by the Police. You have other charges listed at two other Children's Court's later this year, which involve further allegations of breaking into houses and using stolen cars. You have not pleaded guilty to those offences, so I am not sentencing you for those today and I am not thinking about them when I give you this sentence.
4. I have to give you a sentence for each charge. I will first talk about all the charges, in the order of the date when they happened. Then I will talk about the seriousness of the charges, and your circumstances at the time you committed the offences and now. I can only sentence you for the offences that are before the Court. Where the facts of those offences tell me about other offending, I cannot take it into account if it hasn't been charged or if it makes one of those offences more serious than the charge that is before the Court.

Objective seriousness

1. When I sentence someone, I have to go through each of the crimes, look at the maximum penalties for each charge, and consider how serious that type of behaviour is when compared with the most serious and least serious type of behaviour for that offence. The law has different categories of behaviour that make offences more serious and different circumstances that make offences less serious. It is really hard to apply these tests to all the different crimes you have committed.
2. I need to consider the totality of the offences and I need to come up with a sentence that is proportionate to the offending. That means I need to look at the context or circumstances in which your offending occurred and give a sentence that reflects the seriousness of the offending when looking at all of the offending together. If the offending isn't too serious, I can't give you a really big sentence and if it is really serious, I can't give you a really light sentence.
3. Every offence is created by laws made by government. The Crimes Act 1900 (NSW) ('Crimes Act') sets out different types of behaviour that cause harm to people. It applies equally to all of us. The Crimes Act tells us that it is illegal to hit someone. It is illegal to steal a car, drive a stolen car or ride in a stolen car. It is illegal to damage property that doesn't belong to us.
4. The maximum penalties can include the payment of money (a fine) or time in prison. The government tells us that certain behaviour is really serious by giving the Court power to lock someone up for a really long time if they behave in that way. For example, if you hit someone you can be charged with assault which carries up to two years imprisonment. If you hit them and cause injuries, you can be charged with assault occasioning actual bodily harm which carries up to five years imprisonment. You can get locked up for longer if you cause injuries because that assault was more serious than an assault where nobody was injured.
5. Section 21A of the Crimes (Sentencing Procedure) Act 1999 (NSW) tells Judges and Magistrates what they should think about when deciding if offending behaviour is more serious or less serious. If there is a factor that aggravates the offending, it makes the offence more serious. If there is a factor that mitigates the offending, it makes the offending less serious.
6. The Sentencing law also tells me I must take your plea of guilty and the time you've spent in custody into account when sentencing you.

Plea of guilty

1. You entered a plea of guilty to all of the charges that are listed for sentence. Due to the different times you entered pleas of guilty I have to apply different discounts to the sentence for each offence. I will tell you about the relevant discount when I talk about each offence.

Time in custody relevant to the offences

1. Since you were charged with these offences you have spent a lot of time in custody. I have to take that time into account when I sentence you. You were in and out of custody on the Police charges from 27 November 2022. The DPP charges put you in custody from 30 September 2023 until 20 November 2023 when you were granted bail. You were arrested on 23 November 2023 and bailed on 24 November 2023. You were arrested on 11 December 2023 and bailed on 23 December 2023. You were arrested again on 4 January 2024 and you have been in custody since.
2. I wrote your entire custodial history in a table:

Admission Discharge Days in custody

4/5/22 7/5/22 4

29/5/22 20/7/22 53 (assault occurred)

27/11/22 27/11/22 1 (first custody referable to the sentence offences)

17/12/22 20/12/22 4 (on bond)

12/1/23 24/1/23 13 (fresh charges – so the commencement date of the sentence has taken all custody into account from 12/1/23).

23/2/23 23/2/23 1

4/5/23 30/5/23 27 (fresh)

30/9/23 20/11/23 20 (DPP)

From 30/9 – with all later time in custody the commencement date is 29/10/23, but parties stated 5/10/23

23/11/23 24/11/23 2

11/12/23 23/12/23 13 (total 80 days – commencement date 15/10/23)

3/1/24 6/05/24 124

Aggravating features common to each offence

1. You were on remand in Orana when you were charged with assaulting the Youth Justice staff. I have looked closely at your criminal record, and it looks like you were on bail for those assault offences when you committed your next offence of driving a stolen car in Newcastle. You went in and out of custody during 2022 and 2023, and when you were out of custody you were on bail and committing offences.

2. The 2023 offences were committed when you were on a good behaviour bond. That means that you committed crimes in 2022 and went to Court in January 2023 to be sentenced. Your sentence was your promise to be of good behaviour and to accept the supervision of Youth Justice. By committing these offences you have broken that promise and we call that a 'breach of a bond'.

Mitigating features common to each offence

1. In each of the offences, I will take into account that you were not fully aware of the consequences of your behaviour because of your age and your disability. I will explain more about the diagnosis of your disability later.
2. I will go through each of the crimes, and I will give a short summary about how serious your offending is for that type of crime.

Assessing the objective seriousness of s 154 offences

1. I want to talk to you about the seriousness of offending in stolen cars. The government set a maximum penalty of five years imprisonment for three different types of behaviour involving cars – stealing and driving the car, driving a stolen car, and riding in a stolen car. When Judges and Magistrates apply a law or give someone a sentence, we look at what has happened to other offenders when they have committed similar crimes as that helps us make sure the law applies in the same way across NSW. I have not been able to find much law that tells me how to decide the seriousness of car offences so I will talk to you about how I think we should decide the seriousness of behaviour involving stolen cars.
2. When a person steals a car and drives that car, they face the same maximum penalty as if they just drive the stolen car or ride in the stolen car. But common sense tells us that it's more serious when a person steals and drives a car than when they just drive that car or ride in that car (all else being equal). Stealing, driving, or riding in a stolen car offences are all categorised as theft (or thieving), and they are illegal because the government protects people's property rights. A person works, they save their money, and they buy or hire a car to use for work, family, health, and community activities. The Crimes Act makes it illegal to steal cars because it is not fair for a person to take a car that belongs to someone else.
3. Driving a stolen car or riding in a stolen car are crimes that happen after someone steals a car. Driving a stolen car or riding in a stolen car can make the car thief think it is okay to steal cars, which might encourage people to steal cars.
4. I have made a list of circumstances that can impact the seriousness of the offence of driving or riding in a stolen car. The seriousness of being a passenger in a stolen car can be judged on what the passenger knows and what the passenger has done to encourage the driver or stop the driver:

1. you know the car is stolen (and know it is wrong to ride in a stolen car), because you know when and how it was stolen. This is different to where you should have known a car is stolen but you didn't think about it.
 2. you were there when the car was stolen,
 3. the car was stolen in circumstances that involved threats, violence or damage, or other crimes being committed (where known to you),
 4. the car drives for a long time or a long distance,
 5. the car is driven dangerously or in a manner that causes fear to others,
 6. the number of people in the car (and any harm to them),
 7. the number of people put at risk (or harmed) by the driving,
 8. whether the driver had a licence, or was old enough to have a licence (if you knew),
 9. the car is used to commit other crimes,
 10. the car is damaged or causes damage,
 11. the car is valuable,
 12. whether you had the opportunity to get out of a car but remained in it or whether you asked the driver to stop the car or stop doing something dangerous,
 13. whether you behaved in a way that encouraged the driver,
 14. the reason for driving or riding in the car; and
 15. photographing, filming and / or distributing footage from the car, or bragging about being in it to others (including on social media).
1. The principles of sentencing require me to:
 1. punish you,
 2. prevent you and others from committing similar crimes by deterring you,
 3. protect the community from you,
 4. rehabilitate you so you are less likely to commit more crime,
 5. hold you accountable for your behaviour,
 6. denounce your behaviour (making sure people know it's wrong); and
 7. recognise the harm your behaviour has caused to victims and the community.

1. These principles are very important as the Court needs to deal with you in a way that you, the victims, your family, and the community think is fair. Usually when someone commits a crime, another person is harmed or society is harmed. The Court process is how society recognises the harm and ensures that we (the community) deal with the harm. Delivering justice means the incident is finished and there is no more conflict between people who were affected by the crime.
2. I also have to look at the sentencing law as it applies to children. The law for children and young people is a bit different because most human brains are not properly developed until people are in their twenties. Every human develops differently, and our behaviour requires different responses depending on our development. Toddlers often snatch toys and hit people, but we don't lock them up because we know they don't know it's wrong and they can't control themselves. As a teenager, you're in a life stage that is older than a toddler, but younger than an adult.
3. The law recognises that people aged 10 – 18 might not fully understand the impact of their behaviour, unlike adults who should know what they're doing when they behave in the same way. Children's law tells me to consider all those principles of sentencing (like punishment, deterrence, recognition of harm and community protection) but prioritise your rehabilitation. You are a young person who needs to learn how to live safely in the community so you can become a strong, capable, safe adult. When you are in custody, the community is safe because you are not committing crimes. In custody, there are lots of programs to teach you about life, but being inside doesn't teach you how to live safely in the community.
4. Children's law reminds me that it is desirable for you to maintain education and employment, to live in your own home and to be reintegrated into the community so you can sustain family and community ties. While you're a young person there are a lot of youth services in the community that will give you the support you need to learn how to live safely in the community. It is harder to access those services when you are an adult, so in the Children's Court, we understand that giving you opportunities to rehabilitate in the community will lead to better community protection in the long term.
5. When determining your sentence, I cannot make an order committing you to the control of the Minister administering the Children (Detention Centres) Act 1987 (NSW) (we call it a 'control order') unless I am satisfied it would be wholly inappropriate to deal with you under the other penalty options including fines, bonds, probation, community service orders and outcome plans.
6. I note that the maximum penalty for all offences in the Children's Court is two years imprisonment unless I tell you that a lower jurisdictional limit applies.

7. My first job is to decide what to do with the bonds you breached. I am satisfied that you failed to comply with the conditions of the bond, and the law lets me deal with you in any manner that was available when you were first sentenced (section 41 CCPA). I note there is no specific power in the CCPA to take no action in respect of your breach of bond, or to vary or revoke any conditions of the order.

The bond offences

H90858078

1. s 60A – Assault law enforcement officer on 24/6/22 at Dubbo (in Orana). Maximum 5 years imprisonment.
2. s 60A – Assault law enforcement officer on 24/6/22 at Dubbo (in Orana). Maximum 5 years imprisonment.

Brief facts: You were in a classroom in Orana Detention Centre on 24 June 2022 when one of the Youth Justice staff told you to leave. You tried to run and the YJ workers stopped you. When David handcuffed you, you bit his arm. Luke grabbed you from behind by the underwear and you spat in his face. When he got you in your cabin you spat on his shoulder. These offences have higher maximum penalties than ordinary assault offences because the victims were Youth Justice workers, doing their job. The Court has to recognise the harm and try to protect Youth Justice workers from future harm because they do an important job. It happened very quickly, the injury was not substantial, and you did not plan to assault them. It is serious to spit on people because spitting can transfer diseases, but the biting offence and the spitting offence are towards the lower end of the range for assaulting law enforcement officers.

You were sentenced to a s 33(1)(b) bond on 23 January 2023 which was to expire on 22 January 2024. You were supervised by Youth Justice.

H78394183

1. s 154A(1)(b) Knowingly be carried in stolen conveyance between 22/11/22 and 25/11/22 at Waratah West (Newcastle). Maximum five years imprisonment.
2. s 154A(1)(b) Knowingly drive stolen conveyance between 22/11/22 and 25/11/22 at Waratah West (Newcastle). Maximum five years imprisonment.

Brief facts: On around 22 November 2022 some people broke into a house in Waratah West, in Newcastle, and stole a maroon Toyota Rav 4. Three days later Moree Police saw that car driving dangerously with another car that was stolen from a house in Moree. The cars were driving around Moree for a few hours. At 5:15am, the Rav 4 was driving fast on Anne Street and veered towards a Police car, which swerved to avoid a crash. The car did burn outs then ended up crashed into a tree on the river bank. On 25 November, Police accessed a phone and found video and photos with you posing in the Rav 4 at 4:07am on 25 November 2022, and videoed with half your body out the back window while the car drove at high speed. When Police spoke to you on

27 November, you admitted being in the car from Newcastle to Moree and said you drove it at some point.

This offence is more serious due to the length of the journey, the manner of the driving, the damage to the car, and the photographs and videos of you boasting about being in a stolen car while it was driven at high speed.

You were sentenced to a s 33(1)(b) bond on 23 January 2023 which was to expire on 22 January 2024. You were supervised by Youth Justice.

H92156734

1. s 154A(1)(b) Knowingly drive stolen conveyance on 27 November 2022 at Moree. Maximum five years imprisonment.
2. s 154A(1)(b) Knowingly be carried in stolen conveyance on 27 November 2022 at Moree. Maximum five years imprisonment.

Brief facts: On 26 November 2022, a White Toyota Kluger was stolen from Moree airport. At 1:00am on 27 November the Police saw the Kluger and chased it. At times the Kluger was driving at 130 km/h in an 80km/h zone on the highway and at high speeds through the town. The Police stopped the chase when the Kluger went through an intersection without stopping and nearly crashed into other cars. The Police used road spikes, the car stopped and the people in the car ran away. Police found you nearby, arrested you and in an interview you told them you had been in the car that night and had driven it during the night.

This offence is more serious due to the manner of driving.

You were sentenced to a s 33(1)(b) bond on 23 January 2023 which was to expire on 22 January 2024. You were supervised by Youth Justice.

Matters for sentence

H77502929 – Fresh sentence

1. s 154A(1)(b) Knowingly be carried in stolen conveyance on 11 January 2023 at Moree. Maximum five years imprisonment.

Brief facts: At 3:30am on 11 January 2023, two people broke into a house in Cummins Avenue, Moree, and threatened the owner with a screwdriver so he gave them keys to his Jeep Cherokee Taxi. At 3:38am, in car video captured you getting into the taxi through the back door. You stayed in it for the next hour and a half. At 5:00am, the taxi was damaged by fire. Your fingerprints were found on the side door back window. You were interviewed and denied being in the car.

You are not being sentenced for the theft of the taxi but it puts your behaviour into context. This is a moderately serious carried in conveyance offence because of the length of time you were in the car and the damage to the taxi.

You were apprehended for this offence after you spent time in custody and were placed on bonds for other offences. You pleaded guilty on the day of hearing and get a 5% reduction in your sentence.

H75701109

1. s 154A(1)(b) Knowingly be carried in conveyance on 3 February 2023 in a silver Toyota Kluger. Maximum five years imprisonment.

Brief facts: A silver Toyota Kluger was stolen from a home in Moree on 3 February 2023. At 5:10am, the Police saw the car driving too fast and trying to lose traction. When the car saw Police, the driver was beeping the horn and flashing the lights. On 10 February, Police looked through your friend's phone and found videos of you in the back passenger seat. You were interviewed and denied being involved.

This is more serious because the driver was trying to attract the Police to the car, with an inference that the driver wanted a pursuit. The presence of the passengers and taking videos provided encouragement to the driver.

You pleaded guilty on the day of hearing and get a 5% reduction in your sentence.

H94061954

1. s 154A(1)(a) Take and drive a red Mercedes A35 AMG between 3/5/23 and 4/5/23 at Moree. Maximum five years imprisonment.
2. Drive unlicensed between 3/5/23 and 4/5/23 at Moree. Maximum \$2200 fine.

Brief facts: At 12:15 on 4 May 2023, two males entered a home in Moree and took keys to a red Mercedes (value \$65,000). During that night, Police saw the car travelling at high speed. At 12:45am, you posted a Snapchat video of yourself driving the Mercedes with a still image of you standing on the bonnet of the Mercedes. You were wearing the same clothes when you were arrested the following night.

I am only dealing with you for stealing a car and driving it and not for entering a home. Making and posting a video makes it more serious.

You pleaded guilty on the day of hearing but to different facts and charges and get a 15% reduction in your sentence.

H78903619

1. s 154A(1)(b) Knowingly be carried in stolen conveyance on 30 September 2023 at Moree (white Volvo). Maximum five years imprisonment.
2. s 154A(1)(b) Knowingly be carried in stolen conveyance on 30 September 2023 at Moree (gold Subaru). Maximum five years imprisonment.

3. s 195(1A)(a) Damage property at Tirzah St, Moree on 30 September 2023. Maximum five years imprisonment.

Brief facts: At 3:07am on 30 September 2023 Police were notified of a stolen white Volvo in Moree. Three minutes later Police saw the car driving on the wrong side of the road. They parked and the car drove beside the Police car and occupants hit the Police car with golf clubs. Your fingerprints were found inside the car.

This offence is more serious because of the behaviour of people in the car towards the Police and the Police car. You were in the car.

At about 4:40am, you were with a group of young people that damaged a house in Moree. The parents and children barricaded themselves in the main bedroom. One young person smashed their bedroom window. Something was thrown into a window. Other windows were smashed, and the families' gold Subaru was stolen. At about 5:30am, Police saw you running from the gold Subaru into a house and found you hiding under the bed.

The offence of damaging property is extremely serious. It was committed in company and involved the use of a weapon.

You pleaded guilty after negotiations and get a 25% reduction in your sentence.

H170263402

1. s 154A(1)(b) Knowingly be carried in stolen conveyance on 30 September 2023 at Moree (black Mercedes GLC). Maximum five years imprisonment.

Brief facts: At about 3:50am the same night, four young people entered a motel room at the Moree Artesian spa Motel and took keys to a black Mercedes from the handbag of the woman who was with her husband in the motel room. CCTV footage from the BP petrol station captured you, and two other young people, getting out of the black Mercedes at 4:01am.

You were seen in this car shortly after the keys were stolen from the motel room. This offence is more serious due to the circumstances in which the car was stolen, which must have been known to you given the short period of time between the theft of the car and you appearing on the CCTV footage.

You pleaded guilty after negotiations and get a 25% reduction in your sentence.

H96091662

1. Intentionally or recklessly destroy or damage a NSW Police Vehicle pod door on 4 January 2024 at Moree. Maximum five years imprisonment.

Brief facts: You were in Moree cells and the Court refused your application for bail. During transfer from Moree to Acmena you burnt a black hole in the door of the pod. The pod was unusable, and a replacement door was ordered.

Although serious, this was motivated by an impulsive desire to escape, and the damage was not substantial.

You pleaded guilty after negotiations and get a 25% reduction in your sentence.

Your background

1. The Police have given me your criminal record which includes the record of charges that were dealt with outside the Court. You were first cautioned for criminal behaviour after shoplifting in 2019, when you were ten years old. You were cautioned for an assault and for preventing the free passage of a vehicle when you were 12 years old. You have been referred to Youth Justice conferences for having a knife, trespassing, stealing, damaging property and being carried in a stolen car.
2. Your first criminal charges in Court were from June 2021, one day before you turned thirteen. Since then, the only charges that resulted in you being found guilty and sentenced are listed today due to breaches of bonds. Before those charges were sentenced, you went to Court in twelve separate sets of proceedings for charges of assault, damage property (on five occasions), using offensive language, entering inclosed lands (trespass), robbery in company, assault with intent to rob (two counts), possess military style weapon, stealing (on three occasions) and carried in conveyance (on three occasions). Each of those charges are noted to be withdrawn or dismissed after a finding of not guilty by the Court, some due to the application of the principle of doli incapax. I am noting that you have been through those justice processes but I am not using those allegations against you in these proceedings.
3. Youth Justice in Moree has written a background report to help me understand more about you. Youth Justice workers spoke to you, your mum, your aunty, and the centre psychologist. I accept the information that is provided in the report.
4. Youth Justice tells me that when the Court told you to accept Youth Justice supervision, you didn't always do what Youth Justice asked. They said your engagement with Youth Justice was 'sporadic – particularly due to spending periods in custody and ... transience'. They stated that you had five admissions into custody in 2023, and received several misbehaviour reports during each admission. Since you went into custody in January, you had received 16 misbehaviour reports at the time the report was written, predominately for 'bad language, harassment, unauthorised telephone calls, subversive behaviour and disobedience'. At that time you were classified as a High A1B detainee and placed in segregation on the high-risk unit (page 2).
5. Youth Justice have shared some of your family background which is very sad. You lost your dad when you were 18 months old and you were then raised by your mum, with the support of your grandparents. Your grandparents passed away when you were about eleven or twelve. You've also lost your uncle. I understand there was an inquest into the death of your cousin who drowned after running away from police and there will soon be an inquest into

the death of your uncle while he was in custody. Bail conditions related to this offending prevented you from being able to attend your uncle's funeral.

6. I understand you don't want me to talk about another bad thing that happened when you were young, but I need to consider it when trying to understand your behaviour. I am sorry you have experienced that and know it has changed you.
7. DCJ, who you might know as DOCS or FACS, received information about you while you were living with your mum because people were worried you might not be safe. Their records show reports about you living in dangerous situations and being exposed to drugs and alcohol from the age of six. At this time, you do not have an open case with DCJ.
8. You live with your mum, and you told Youth Justice that she tries to set rules but you don't listen to her. She agrees and said she can't control your behaviour. Often your mum doesn't know where you are. She is happy to have you home when you get out of custody. Otherwise, you've lived with your aunty, but you can't stay there when you get out. You've also lived with another aunty and she's happy for you to stay at her place when you get out, but only if you follow her rules. Last time you lived with her, she called Youth Justice about difficulties with the way you were behaving.
9. Youth Justice tell me that school hasn't been easy for you. You can't read or write. You started getting into trouble when you were in Year One and you've been to five different schools, spending time in the behaviour class at one school. When you were in that class, a Doctor assessed you and diagnosed you with complex trauma, oppositional defiance disorder, and attention deficit hyperactivity disorder. When you were eleven a psychologist did some tests to find out how your mind works (we call this a cognitive assessment) and said you have a mild intellectual disability which is the same as about 0.3% of people your age. Youth Justice recently sent me another report that says you have a moderate intellectual disability. Your lawyer has asked me to consider the possibility that your mum was drinking when she was pregnant as this can change the brain development of a baby. You stopped going to school in Year 7 and you were going really well at school in custody until you were placed in the high-risk unit. You are taking medication for ADHD while you're in custody, but you don't take it when you're at home.
10. You told Youth Justice that you spend time with family and friends and lots of those people commit crimes and use drugs. You said you can't say no to your friends when they ask you to commit crimes with them. The Police and Youth Justice think you have leadership skills, and you sometimes influence other people to commit crimes. You couldn't name anyone who was a positive influence in your life that didn't commit crimes.
11. You told Youth Justice you started smoking cannabis when you were six and then started smoking cannabis every day. You're not smoking in custody, you've been training, and you've noticed that you're feeling good. You plan to stop smoking when you get out.

12. When you are released, Youth Justice recommends you find something positive to do with your time so you're not bored and taking drugs or committing crimes. They can refer you to a casework support program so a caseworker can help you re-engage with education and pick up some positive activities, like riding bikes, fishing and playing footy.
13. You were open and honest with Youth Justice when they asked you about what you were thinking when you committed these crimes. Relevantly, you told them you didn't think before hopping in a stolen car, you said the damage to the Police vehicle was part of your plan to escape from the truck, and you said that when you get out, you'll be smarter when offending by wearing gloves and not taking videos. The caseworker explained that if you didn't commit crimes, you wouldn't be caught and you said that you hadn't thought about that option. You were able to remember all the cars that were used in these offences. You said Police chases are exciting and commented that you're a good driver because you look for other cars to avoid collisions, even when driving at high speeds. At times the caseworker was worried that you show off about your behaviour and you boast about being able to get away with certain behaviours. When asked about some offences you laughed but you also said that since being in custody, you'd had time to think and you feel sorry for traumatising the victims but at the time you didn't think about them.
14. The experiences you have had in your life have affected your ability to make good choices. Your use of drugs and alcohol has been normalised by your family and friends. You have been diagnosed with a cognitive impairment which means you don't always understand what is happening or why it is happening, and you don't always think before you act. Your background, your substance use, and your mental capacity mean you do not appreciate the seriousness of your behaviour or why that behaviour is wrong, and you are not always able to control your behaviour. There is a case of DPP (Cth) v De La Rosa (2010) 79 NSWLR 1 which helps me to work out how to recognise your mental health condition when I apply the principles of sentencing, and there is law based on a case of Bugmy v The Queen [2013] HCA 37 ('Bugmy') which tells me that I should find you less morally culpable for your behaviour due to this background. When I apply the principles of sentencing, I must give less weight to general deterrence, specific deterrence and denunciation, while acknowledging they are still important considerations when applying a sentence.

Parity

1. On 18 March 2024, I sentenced one of the co-offenders for a number of offences he committed in Moree, Newcastle, Taree and Kempsey. He was charged with offences from some of the same incidents. He was sentenced for 15 different sets of offences, including nine occasions of travelling in stolen cars. He received a total sentence of three years in custody, and I indicated that the right sentence for each car charge was between one and six months in custody. The Bugmy principles applied to him. He was 17 years old at the time of the offences, and 18 at the time of sentence.

Totality

1. I have to give you different sentences for each offence while considering the total sentence that is appropriate for all of your offending. I am going to give you one aggregate sentence which will be made up of parts of individual sentences. This means you get one sentence to cover all of these crimes rather than lots of sentences that start and end on different dates. It is important for me to tell you the different sentences you would get for each crime, so you know if I have applied the law properly, and so the victims and community know that every single crime has been considered in the sentence.
2. I need to consider the similarity, the differences, and the connection between all of your offending over the period of time you were offending. I also have to assess whether your behaviour in one offence was the same behaviour that was charged as an extra offence. An example is that for some charges, your behaviour was that you were driving, but there were two offences from you driving – one that you drove unlicensed, and the other that you drove a stolen car.

Special circumstances

1. Your age, your cognitive impairment, your substance dependence, and your background cause me to find that there are special circumstances warranting a lengthier period of time in the community accessing supervision and support. You are still a young person, and you need significant assistance developing the skills to live a positive and rewarding life. A lengthier period of parole will provide necessary oversight to ensure the community is protected from you committing further serious offences.

Action on breach of bonds

1. You did not comply with the bonds, and you did not engage with Youth Justice supervision. When the Court sentenced you, it thought the bond would address the purposes of sentencing. Youth Justice supervision is directed towards addressing the reasons you commit offences with the purpose of reducing your offending so you can be of good behaviour and not breach the bond. The fact that you were on a bond aggravates the offending for the new charges.
2. The Children's Court law states that the penalty imposed on a child should be no greater than that imposed on an adult who commits an offence of a similar kind (s 6(e) of the CCPA). When an adult breaches a bond, the Court can take no action, vary, or revoke the bond. The Children's Court should have the same power, but there is no express law that gives us the power not to take action after finding there has been a breach of a Children's Court bond or probation order.

3. The bond or probation order is the appropriate sentence, and the criminal record and criminal statistics provide a record of the appropriate sentence. Under the law, I must give you a new sentence and I have to consider your compliance with the previous order and take that into account in the new sentence. That means the new sentence will not reflect the appropriate sentence, as the previous sentence will be hidden from the criminal record and the statistics.
4. The bond offences were committed in 2022 when you were 14. You were released from custody to the bond, and you did not offend for four months. You have spent a lot of time in custody since those offences were committed. The bonds were imposed for your first proven offences, and they were appropriate sentences in the circumstances.
5. I have considered whether to place you on further bonds, conscious of the extraordinary effort Youth Justice staff will put into supporting you, educating you about your behaviour, and immersing you in culture to strengthen your identity. I am concerned that when Youth Justice supervision ends there will be few pro-social adults in your life, so Youth Justice supervision will increase your prospects of rehabilitation and improve community protection. Despite that, the sentence should be proportionate to the crime and you should not be given a sentence that is disproportionate to the crime as a preventative measure.
6. A s 33(1)(a) dismissal does not appropriately reflect the objective seriousness of those offences on your record, or in the statistics, but it is the only appropriate sentence in the circumstances, given the time since offending, the periods you have spent in custody and the fact that you are receiving a more serious sentence for the fresh offences because they were committed while you were on a bond. You have already served the sentence for those offences, it just won't be reflected on your record. Each of the bond offences will be dismissed under s 33(1)(a).

Custodial sentences and community-based sentences

1. The offence of drive unlicensed (H94061954) will be dismissed pursuant to s 33(1)(a) recognising the sentence for the related offence, the relevant maximum penalty and the time spent in custody.
2. I am of the view that it would be wholly inappropriate to impose any sentence other than a control order for all remaining offences. The time you have spent in custody for all offences will be backdated with the total sentence recognising that you have not spent the same amount of time in custody for each separate offence.
3. The Court has given you many opportunities to return to the community with support to make better decisions, and you have breached bail orders and bonds through frequent offending. Although rehabilitation is the primary consideration when sentencing a young person with your vulnerabilities, community protection is a relevant and important consideration. It is also important that you know that criminal behaviour has consequences. It is with great sadness that I acknowledge that we live in a society that manages the impact

of poverty, disability, and trauma through incarceration.

4. I have given you less time in custody to help Youth Justice set you up to live safely in the community. During your time on parole, I trust Youth Justice will prioritise sourcing and strengthening the relationships that will sustain good behaviour from you during your life.
5. When looking at the entirety of the offending when balancing all the relevant factors I determine the following sentence:

An aggregate sentence of 16 months with a non-parole period of eight months to date from 17 September 2023. You will be eligible for release to parole on 16 May 2024 and on parole until 16 January 2025.

Indicative sentences of:

H77502929:

- 1) The Jeep Cherokee taxi Control order – 3 months

H75701109:

- 1) Silver Toyota Kluger Control order – 2 months

H94061954: (15%) May 2023 (noting you spent 26 days in custody)

- (1) The red Mercedes Control order – 4 months

H78903619: (25%) September 2023 (noting time in custody)

- (1) The white Volvo Control order – 6 months

- (2) The gold Subaru Control order – 6 months

- (3) Damage property Control order – 8 months

H170263402: (25%) September 2023 (noting time in custody)

- (1) The black Mercedes Control order – 6 months

H96091662: (25%) January 2024 (noting time in custody)

- (1) Damaging the Police vehicle Control order – 2 months

1. No conviction is recorded as you are under the age of 16.

Amendments

20 May 2024 - Note added before substantive judgment.

22 May 2024 - Amendment of minor typographical error.

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Decision last updated: 22 May 2024

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