The Queen v Yunupingu [2007] NTSC 41

PARTIES:	THE QUEEN v DOMINIC YUNUPINGU
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	20613846
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JUDGMENT OF:	SOUTHWOOD J

CATCHWORDS:

SENTENCING POWERS – Criminal jurisdiction of the Supreme Court – sentencing powers of the Supreme Court - whether the Supreme Court may exercise a combination of powers under the Sentencing Act 1995 (NT) and Youth Justice Act 2005 (NT) when sentencing a youth

Youth Justice Act 2005 (NT)
Sentencing Act 1995 (NT)

Harris v Caladine (1991) 172 CLR 84; *Hookham v The Queen* (1994) 181 CLR 450; *Mills v Meeking* (1990) 169 CLR 214, applied

Braun v R; Ebatarintja v R (1997) 6 NTLR 94, not followed

Re McC [1985] AC 528, cited

REPRESENTATION:

Counsel:

Crown:	E Armitage
Respondent:	J Tippett QC

Solicitors:

Crown:	Office of the Director of Public Prosecutions
Respondent:	Northern Territory Legal Aid Commission

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Yunupingu [2007] NTSC 41
No 20613846

BETWEEN:

The Queen

AND:

Dominic Yunupingu
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 23 August 2007)

Introduction

[1] On 14 August 2007 following a plea of guilty, Dominic Yunupingu, the respondent, was convicted by the Supreme Court of the crime of dangerous act causing death while intoxicated contrary to s 154(1), (3) and (4) of the Criminal Code. He was sentenced to six years imprisonment. The sentence of imprisonment was back dated to 19 May 2006 to reflect the time that the respondent had already spent in custody for his crime. The court ordered that the sentence of six years imprisonment be suspended after the respondent had served two years in prison and an operational period of four years from the date of the respondent's release from prison was specified by the court.

[2] The Crown submits that the above sentence of imprisonment was not in accordance with the law. Ms Armitage, who appeared on behalf of the Crown, argued that the sentence which was imposed on the respondent by the Supreme Court failed to comply with s 40(1) of the Sentencing Act. Subsection 40(1) of the Sentencing Act states, "a court which sentences an offender to a term of imprisonment of not more than 5 years may make an order suspending the sentence where it is satisfied that it is desirable to do so in the circumstances." Under s 40(1) of the Sentencing Act the Supreme Court only has power to suspend a sentence of imprisonment of five years or less. The Supreme Court does not have power to suspend a sentence of imprisonment of six years.

[3] Ms Armitage asks the Supreme Court to re-open the proceeding being criminal proceeding No 20613846, and sentence the respondent according to law. The application before the court is made under s 112(1)(a), (2)(a)(b) & (c) & (3)(b) of the Sentencing Act which provide as follows:

> 112. Court may reopen proceeding to correct sentencing errors
>
> (1) Where a court has in, or in connection with, criminal proceedings (including a proceeding on appeal) –
>
> (a) imposed a sentence that is not in accordance with the law;
>
> (b) …
>
> the court (whether or not differently constituted) may reopen the proceedings unless it considers the matter should more appropriately be dealt with by a proceeding on appeal.

(2) Where a court reopens proceedings, it –

(a) shall give the parties an opportunity to be heard;

(b) may impose a sentence that is in accordance with the law; and

(c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).

(3) A court may reopen proceedings –

(a) …

(b) on the application of a party to the proceedings made not later than –

(i) 28 days after the day the sentence was imposed; or

(ii) such further time as the court allows.

Background facts

[4] The respondent is a youth within the meaning of s 6 of the Youth Justice Act. His date of birth is 10 October 1989. He is now 17 years of age. He was 16 years of age when he committed the crime of dangerous act causing death while intoxicated.

[5] At 9.30pm on Monday 27 March 2006, Derek Munungurr, the deceased, left the Walkabout Hotel and started walking home. He walked towards the Arnhem Shopping Centre on Arnhem Road, Nhulunbuy. As the deceased approached the Catholic Church on Matthew Flinders Way, he was chased by the respondent and Eric Gurruwiwi, the co-offender, across the road and into a new subdivision situated directly across from the Catholic Church.

[6] The respondent and the co-offender caught up with the deceased and they started to fight with him in one of the vacant lots of the new subdivision. They hit him with a piece of wood with a nail in the end of it and a metal concrete screed which the respondent and the co-offender found in the vacant lot. The deceased was struck to the head, arms, stomach and legs a number of times by both offenders. The acts of the respondent and the co-offender caused the death of the deceased. At the time of the offending it was dark and the respondent and the co-offender were intoxicated.

[7] The respondent and the co-offender then left the area. They went to a house at Ski Beach and spoke to Russell Gurruwiwi and Billy Yunupingu. They told them they had been fighting and had smashed a man.

[8] The deceased was located by workers at the new subdivision on Tuesday 28 March 2006. As a result of the assault on the deceased by the respondent and the co-offender the deceased received the following injuries: four fractured ribs on his right side, a ruptured liver, both of his lungs were heavily bruised and he received a fractured skull which ran from just above the eye sockets to the centre of the skull, with a piece of the skull being dislodged due to the amount of force used. The deceased also received severe bruising to his arms and stomach area. The cause of death was multiple blunt force traumas.

[9] On 14 August 2007 the Supreme Court sentenced the respondent and the co-offender. On 16 August 2007 the matter was again mentioned in the

Supreme Court as Mr Tippett QC, who appeared on behalf of the respondent, told my associate that he was concerned that the Supreme Court did not have power to suspend the sentence of six years imprisonment that the court imposed on the respondent. The matter was then adjourned to 20 August 2007 to enable Mr Tippett QC to obtain final instructions and to complete his consideration of the matter.

[10] On 20 August 2007 Mr Tippett QC told the Supreme Court that he had advised the respondent not to make an application under s 112 of the Sentencing Act. He said that he had fully considered the matter. It was his opinion that, as a result of the amendment of s 4 of the Sentencing Act, the Supreme Court had power under the provisions of the Sentencing Act and s 82(1)(a) and s 98 of the Youth Justice Act to both impose and partly suspend the sentence of imprisonment that was imposed on the respondent.

[11] Ms Armitage told the Supreme Court that the Crown disagreed with Mr Tippett QC's opinion. She was instructed to make an application to the Supreme Court to re-open the proceeding and to ask the court to re-sentence the respondent according to law.

The argument of the Crown

[12] The Crown argued as follows. The Supreme Court had determined to sentence the respondent under s 82(1)(b) of the Youth Justice Act to a period of imprisonment not exceeding the period of imprisonment for which the offence of dangerous act causing death while intoxicated would be

punishable if committed by an adult. Accordingly, the Supreme Court had imposed a sentence of more than two years imprisonment on the respondent. This meant that s 40(1) of the Sentencing Act applied to the sentencing process adopted by the Supreme Court. Ms Armitage referred the court to s 82(1)(b) and (2) of the Youth Justice Act.

[13] When sentencing a youth the Supreme Court could either exercise its powers of disposition under the Sentencing Act or the powers of disposition granted to the Youth Justice Court under the Youth Justice Act. If the Supreme Court chose to exercise the powers of disposition granted under the Sentencing Act then the exercise of those powers by the Supreme Court remained subject to the limits of those powers under the Sentencing Act. If the Supreme Court chose to exercise the powers of disposition granted to the Youth Justice Court under the Youth Justice Act then the exercise of those powers by the Supreme Court remained subject to the limits of those powers under the Youth Justice Act. The Supreme Court could not use a combination of the powers available under both Acts.

[14] Central to the Crown's argument was the definition of "Court" under s 5 of the Youth Justice Act. Section 5 of the Youth Justice Act provides as follows:

> "Court" means the Juvenile Court, established by the repealed Act and continued in existence as the Youth Justice Court by section 45 and, if the context requires, includes the Supreme Court exercising its jurisdiction under or pursuant to this Act;

[15] Ms Armitage submitted that it was apparent from the definition of Court in s 5 of the Youth Justice Act that the powers of disposition granted by the Youth Justice Act to the Youth Justice Court were part of a discrete sentencing regime which was applicable to youth offenders. If the Supreme Court chose to exercise the jurisdiction granted to the Youth Justice Court then the statutory provisions applicable to the Youth Justice Court were applicable to the Supreme Court when the Supreme Court chose to exercise the jurisdiction granted to the other court.

[16] The powers of the Supreme Court in Sentencing a youth offender were governed by s 82 of the Youth Justice Act which provides as follows:

> 82. Powers of Supreme Court in sentencing
>
> (1) If a youth is found guilty before the Supreme Court of an offence, the Supreme Court may do any of the following:
>
> (a) exercise, in addition to its powers, the powers of the Youth Justice Court;
>
> (b) order that the youth be detained in a detention centre or imprisoned for a period not exceeding the period of imprisonment for which such an offence would be punishable if committed by an adult;
>
> (c) remit the case to the Youth Justice Court.
>
> (2) If the Supreme Court makes an order under subsection (1)(b), it may also make any order in relation to that detention or imprisonment that it could make in relation to a sentence of imprisonment under the *Sentencing Act*.

(3) If the Supreme Court finds a youth guilty of murder, the Supreme Court may, despite section 157(2) of the Criminal Code, sentence the youth to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.

[17] The effect of s 82(1) of the Youth Justice Act was that the Supreme Court could essentially do one of three things. First, the Supreme Court could exercise the powers of the Youth Justice Court and sentence the youth offender accordingly. Secondly, the Supreme Court could sentence the youth offender as if the youth offender was an adult. In which case the Supreme Court could order that the youth be detained in a detention centre or imprisoned for a period not exceeding the period of imprisonment for which such an offence would be punishable if committed by an adult offender; and the Supreme Court may also make any order in relation to that detention or imprisonment that it could make in relation to a sentence of imprisonment under the Sentencing Act. Thirdly, the Supreme Court could remit the proceeding to the Youth Justice Court.

[18] The powers of disposition of the Youth Justice Court were contained in s 83 of the Youth Justice Act which provides as follows:

83. Orders Court may make

(1) If the Court finds a charge proven against a youth it may, whether or not it proceeds to conviction, do one or more of the following:

(a) dismiss the charge for the offence;

(b) discharge the youth without penalty;

(c) adjourn the matter for a period not exceeding 6 months and, if during that period the youth does not commit a further offence, discharge the youth without penalty;

(d) adjourn the matter to a specified date not more than 12 months from the date of the finding of guilt, and grant bail to the youth in accordance with the *Bail Act* –

(i) for the purpose of assessing the youth's capacity and prospects for rehabilitation; or

(ii) for the purpose of allowing the youth to demonstrate that rehabilitation has taken place; or

(iii) for any other purpose the Court considers appropriate in the circumstances;

(e) order the youth to participate in a program approved by the Minister, as specified in the order, and adjourn the matter for that purpose (*see* Division 3);

(f) order that the youth be released on his or her giving such security as the Court considers appropriate that he or she will –

(i) appear before the Court if called on to do so during the period, not exceeding 2 years, specified in the order; and

(ii) be of good behaviour for the period of the order; and

(iii) observe any conditions imposed by the Court (*see* Division 4);

(g) fine the youth not more than the maximum penalty that may be imposed under the relevant law in relation to the offence (*see* Division 5);

(h) make a community work order that the youth participate in an approved project for the number of hours, not exceeding 480 hours, specified in the order (*see* Division 6);

(i) order that the youth serve a term of detention or imprisonment that is suspended wholly or partly (*see* Division 7);

(j) order that the youth serve a term of detention or imprisonment that is suspended on the youth entering into an alternative detention order (*see* Division 8);

(k) order that the youth serve a term of detention or imprisonment that is to be served periodically under a periodic detention order (*see* Division 9);

(l) order that the youth serve a term of detention or imprisonment;

(m) make any other order in respect of the youth that another court could make if the youth were an adult convicted of that offence.

(2) If the Court orders that the youth serve a term of detention or imprisonment, the term must not exceed the lesser of –

(a) the maximum period that may be imposed under the relevant law in relation to the offence; or

(b) for a youth who is –

(i) 15 years of age or more – 2 years; or

(ii) less than 15 years of age – 12 months.

(3) The Court must not order the imprisonment of a youth who is less than 15 years of age.

(4) If the Supreme Court remits a case to the Youth Justice Court under section 82(1)(c), the Youth Justice Court must deal with the youth as if the youth had been found guilty of the offence in that Court.

(5) This section does not limit the power of the Supreme Court to impose on a youth a sentence it could otherwise impose on him or her.

[19] The effect of s 83(2) of the Youth Justice Act is that the Youth Justice Court and by definition the Supreme Court exercising the powers of disposition granted by s 83(1)(i), (j), (k) and (l) of the Youth Justice Act may only impose a maximum sentence of two years detention or imprisonment. While the Supreme Court may otherwise than under s 83(1) of the Youth Justice Act impose a sentence of imprisonment of more than two years: s 83(5) it could not do so under the powers of disposition granted by s 83(1)(i), (j), (k) and (l) of the Youth Justice Act.

[20] While the Youth Justice Court and the Supreme Court have the power to impose a wholly or partly suspended sentence of detention or imprisonment under s 83(1)(i) of the Youth Justice Act, the effect of s 83(2) is that the maximum sentence of imprisonment that may be wholly or partly suspended under s 83(1)(i) of the Youth Justice Act by either the Youth Justice Court or the Supreme Court exercising the jurisdiction of the Youth Justice Court is a sentence of two years imprisonment. This construction of s 83(1)(i) and (2) of the Youth Justice Act is supported by the express words of s 83(5) of the Act. Rather than qualifying s 83(2) of the Youth Justice Act, s 83(5) of the Act merely preserves the sentencing powers that the Supreme Court has otherwise than under s 83(1)(i), (j), (k) and (l) of the Youth Justice Act.

[21] The power of the Youth Justice Court to wholly or partly suspend a sentence of detention or imprisonment is contained in s 83(1)(i) of the Youth Justice Act. Section 98 of the Sentencing Act is a largely mechanical provision which applies in circumstances where the Youth Justice Court or the

Supreme Court has chosen to use the powers of disposition granted by s 83(1)(i) of the Youth Justice Act: s 98(1) Youth Justice Act. Section 98 enables the Youth Justice Court to impose conditions on a youth offender when a sentence of detention or imprisonment of two years or less is wholly or partly suspended and it requires the Youth Justice Court and by definition the Supreme Court exercising the powers of disposition of the Youth Justice Court to specify an operational period during which the youth offender is not to commit another offence punishable by a term of imprisonment. Consistently with the construction of the legislation contended for by the Crown, the operational period which may be specified by the Court under s 98(3) cannot be greater than two years.

The argument of the respondent

[22] Ms Armitage did not inform Mr Tippett QC of the Crown's position before making her submissions to the Supreme Court on 20 August 2007. The lack of notice resulted in Mr Tippett QC's submissions being truncated and in short form. I understood the respondent's argument, if fully developed, to be as follows.

[23] Jurisdiction is the authority that a court has to take cognizance of and to decide proceedings brought before the court*: Hookham v The Queen* (1994) 181 CLR 450 per Toohey J at 461 to 462; *Harris v Caladine* (1991) 172 CLR 84 per Toohey J at 136; *Braun v R; Ebatarintja v R* (1997) 6 NTLR 94 per Kearney and Thomas JJ at 101 to 102. The concept involves authority or

capacity. In order to exercise its jurisdiction a court has certain powers. Powers are "the 'teeth' which enable a court to effectively exercise its jurisdiction": *Braun v R; Ebatarintja v R* (supra) at 102. A court's powers may be governed by a single Act of Parliament or a number of Acts of Parliament.

[24] The Supreme Court's criminal jurisdiction over youths, who are persons under 18 years of age, arises under the court's general criminal jurisdiction. The Supreme Court has a general criminal jurisdiction: s 14(1)(b)(c) Supreme Court Act; *Braun v R; Ebatarintja v R* (supra) per Kearney and Thomas JJ at 100. The Supreme Court has jurisdiction to try offences charged by the presentation of an indictment and to punish offenders who are found guilty of a charge on an indictment either following a trial or after the entry of a plea of guilty and the admission of the facts which constitute the crime charged on the indictment. The criminal jurisdiction of the Supreme Court extends to both adults and youths. The Supreme Court's criminal jurisdiction over youths arises independently of the Youth Justice Act. The Supreme Court's criminal jurisdiction is not enhanced or restricted by the definition of "Court" in s 5 of the Youth Justice Act.

[25] The Supreme Court's sentencing powers are primarily consolidated in the Sentencing Act. The Supreme Court may exercise the powers granted to it by the Sentencing Act when sentencing both adults and youths. Additional sentencing powers are granted to the Supreme Court by s 82 (1)(a) and (c) of the Youth Justice Act. When sentencing a youth the Supreme Court may

exercise the powers of disposition granted to the Supreme Court under the Sentencing Act or the powers of disposition granted to the Supreme Court under the Youth Justice Act or a combination of the powers of disposition granted to the Supreme Court under both the Sentencing Act and the Youth Justice Act: *Braun v R; Ebatarintja v R* (supra) per Mildren J (in the minority) at 105 to 106.

[26] The decision of the majority of the Court of Criminal Appeal in *Braun v R; Ebatarintja v R* (supra), which was to the effect that the Supreme Court may not exercise a combination of powers under the Juvenile Justice Act and the Sentencing Act, should not be applied in this case. The decision should be distinguished. Central to the decision of the majority of the Court of Criminal Appeal in *Braun v R; Ebatarintja v R* (supra) was the express terms of s 4 of the Sentencing Act as in force at that time. Section 4 of the Sentencing Act was amended after the Court of Criminal Appeal delivered the decision in *Braun v R; Ebatarintja v R* (supra).

[27] When the Court of Criminal Appeal decided *Braun v R; Ebatarintja v R* (supra), s 4 of the Sentencing Act provided as follows:

> 4. Application
>
> *This Act applies to all courts other than* the Juvenile Court established under the Juvenile Justice Act and *the Supreme Court when exercising its jurisdiction under or in pursuance of that Act* [emphasis added].

[28] Section 4 of the Sentencing Act now provides as follows:

> 4. Application
>
> (1) This Act applies to all courts other than the Youth Justice Court continued in existence by the *Youth Justice Act*.
>
> (2) In applying this Act to the Alcohol Court, if there is an inconsistency between the *Alcohol Court Act* and this Act, the *Alcohol Court Act* prevails to the extent of the inconsistency.

[29] Under the current provisions of s 4 of the Sentencing Act the Supreme Court is not precluded from exercising its powers under the Sentencing Act when exercising its powers under the Youth Justice Act. Further, under s 82(1)(a) of the Youth Justice Act the Supreme Court may, in addition to its powers (I take this to mean the powers granted to the Supreme Court under the Sentencing Act and otherwise), exercise the powers of the Youth Justice Court.

[30] Under s 98 of the Youth Justice Act the Youth Justice Court is granted the power to wholly or partly suspend a sentence of detention or imprisonment that it imposes on a youth under s 83(1)(i) of the Youth Justice Act. Section 98 of the Youth Justice Act provides as follows:

> 98. Making order to suspend sentence
>
> (1) This section applies in relation to an order under section 83(1)(i).
>
> (2) The Court may suspend all or part of a sentence of detention or imprisonment on the conditions it considers appropriate.

(3) If the Court suspends all or part of a sentence, it must specify a period, not exceeding 2 years, during which the youth must not commit any further offences.

(4) The period in subsection (3) begins –

(a) if the whole of the sentence is suspended – on the date of the order; and

(b) if part of the sentence is suspended – on the date specified in the order.

[31] Section 83(1)(i) of the Youth Justice Act provides as follows:

(1) If the Court finds a charge proven against a youth it may, whether or not it proceeds to conviction, do one or more of the following:

(i) order that the youth serve a term of detention or imprisonment that is suspended wholly or partly (*see* Division 7);

[32] Unlike the power to suspend a sentence of imprisonment which is granted to the Supreme Court under s 40(1) of the Sentencing Act, the power to suspend a sentence of imprisonment granted by s 83(1)(i) and s 98 of the Youth Justice Act is not limited by the term of the sentence of imprisonment that is imposed on a youth offender. The purpose of s 98(1) of the Youth Justice Act is merely to stipulate that the provisions of s 98 have no application to dispositions under s 83(j), (k) and (l) of the Youth Justice Act. The Youth Justice Act is structured in such away that the dispositions provided by s 83(i), (j), (k) and (l) are discrete dispositions the majority of which are governed by specific divisions of the Youth Justice Act. The dispositions provided by s 83(j), (k) and (l) involve no suspension or no

suspension other than that expressly stipulated in the particular subsection of the Youth Justice Act. Section 98(1) of the Youth Justice Act makes no mention of s 83(2) of the Youth Justice Act. Section 82(2) of the Youth Justice Act is facultative not directory. The Supreme Court may exercise the power it has under the Sentencing Act to impose a sentence of more than two years on a youth offender and the power it has under s 82(1)(a) and s 98 to suspend the whole or part of the sentence of imprisonment that it imposes on a youth.

[33] Such a construction of s 98 of the Youth Justice Act is consistent with the operation of other sections of the Youth Justice Act. It would be incongruous if the Supreme Court could fix a non-parole period under s 85 of the Youth Justice Act of less than fifty percent of the term of the head sentence that was imposed on a youth offender but could not suspend a term of more than two years imprisonment under s 98 of the Youth Justice Act.

Conclusion

[34] I accept Mr Tippett QC's submissions as to the construction of s 82(1)(a) and s 98 of the Youth Justice Act. The argument made on behalf of the respondent is consistent with the approach that I adopted when I sentenced the respondent on 14 August 2007.

[35] There are good reasons why the Supreme Court's power to suspend a sentence of imprisonment imposed on a youth should be unconstrained by the term of the sentence of imprisonment imposed on a youth. The model of

youth justice upon which the Youth Justice Act is based is not a welfare model of youth justice. The emphasis of the Youth Justice Act is not purely on the rehabilitation of youth offenders who have committed serious crimes. Instead the Youth Justice Act balances the principles of due legal process, of accountability for behaviour, proportionality of sentence, minimising formal intervention, and opening possibilities of restorative justice. The provisions of the Act are tipped towards individual responsibility, accountability and protecting the community.

[36] Subsections 81(2) and (3) of the Youth Justice Act provide that:

> (2) The Court must consider any information about the youth or the offence that may assist the Court to decide how to dispose of the matter, and in particular must consider –
>
> (a) the nature and seriousness of the offence; and
>
> (b) any history of offences previously committed by the youth; and
>
> (c) the youth's cultural background; and
>
> (d) the age and maturity of the youth; and
>
> (e) any previous order in relation to an offence that still applies to the youth, and any further order that is liable to be imposed if the youth has not complied with the terms of the previous order; and
>
> (f) the extent to which any person was affected as a victim of the offence.
>
> (3) *The Court must dispose of the matter in a way that is in proportion to the seriousness of the offence* (emphasis added).

[37] A power to suspend a sentence of imprisonment unconstrained by the term of the sentence of imprisonment imposed on a youth offender provides the Supreme Court with greater discretion. The Supreme Court is thereby enabled to more precisely structure a sentence in each individual case that strikes a just balance between protecting the community, punishing the youth offender, and recognising the development and rehabilitative needs of the youth offender. While the Supreme Court must dispose of a matter in a way that is in proportion to the seriousness of the offence the court must also have regard to the public interest in giving a youth an opportunity to develop in a socially responsible way, to be re-integrated into the community and to be rehabilitated. Where possible a youth should be punished in such a way as to enable the youth to develop a sense of social responsibility and in a way which enables the youth's development to be beneficial and socially acceptable to the community.

[38] The construction of the Youth Justice Act contended for by Mr Tippett QC also promotes the objects set out in s 3(d) and (e) of the Youth Justice Act. Those objects are:

> (d) to ensure that a youth who has committed an offence is made aware of his or her obligations (and rights) under the law and of the consequences of contravening the law;
>
> (e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation;

[39] The construction of an Act which promotes the purpose and objects of an Act should be preferred to a construction which would not, especially where the objects are set out in the Act: *Mills v Meeking* (1990) 169 CLR 214 per Dawson J at 235.

[40] The word "jurisdiction" is not always used in its strict sense: *Re McC* [1985] AC 528 per Lord Bridge of Harwich at 536. The "distinction between jurisdiction and power is often blurred": *Harris v Caladine* (1991) (supra) per Toohey J at 136. The word "jurisdiction" is used in a narrow sense in s 5 of the Youth Justice Act. In the context of s 5 of the Youth Justice Act "jurisdiction" means the powers vested in the Supreme Court by the Youth Justice Act: *Braun v R; Ebatarintja v R* (supra) per Kearney and Thomas JJ at p 102.

[41] The powers vested in the Supreme Court by s 82(1)(a) of the Youth Justice Act are the powers of the Youth Justice Court. Those powers may be exercised by the Supreme Court in addition to the Supreme Court's other sentencing powers. Under s 98 of the Youth Justice Act the Youth Justice Court has the power to suspend a sentence of detention or imprisonment imposed on a youth. Under s 98 of the Youth Justice Act, the Supreme Court may likewise suspend a sentence of detention or imprisonment it imposes on a youth.

[42] If the Supreme Court exercises the powers to suspend a sentence of imprisonment granted by s 98 of the Youth Justice Act then the word

"Court" in s 98 of the Youth Justice Act includes the Supreme Court and the Supreme Court must comply with the provisions of s 98 of the Youth Justice Act.

[43] Subsection 83(2) must be read in the context of the Youth Justice Act as a whole. As the Supreme Court may exercise the sentencing powers that it has under the Sentencing Act when sentencing a youth, parliament did not intend the provisions of s 83(2) to apply to the Supreme Court.

Order

[44] In my opinion the Supreme Court did have power to wholly or partly suspend the sentence of six years imprisonment that was imposed on the respondent. Accordingly, the application by the Crown under s 112 of the Sentencing Act is dismissed.