Police v Campbell [2013] NTSC 79

PARTIES:	POLICE
	v
	CAMPBELL, Oliver
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	21332464; 21349613
DELIVERED:	27 November 2013
HEARING DATES:	25 November 2013
JUDGMENT OF:	OLSSON AJ
APPEALED FROM:	MR BORCHERS SM

CATCHWORDS:

CRIMINAL LAW – Bail – Application for review of bail decision

APPEAL – Application for review of bail decision – Review by way of rehearing.

Bail Act 1982 (NT) s 24, s 24(c), s 24(d), s 24(e), s 36(3)
Youth Justice Act 2005 (NT) s 4(c)

REPRESENTATION:

Counsel:

Appellant:	T Jackson
Respondent:	M Satija

Solicitors:

Appellant:	Office of the Director of Public Prosecutions
Respondent:	Central Australian Aboriginal Legal Aid Service

Judgment category classification:	B
Judgment ID Number:	Ols1301
Number of Pages:	10

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Police v Campbell [2013] 79
(21332464); (21349613)

BETWEEN:

POLICE
Appellant

AND:

OLIVER CAMPBELL
Respondent

CORAM: OLSSON AJ

REASONS FOR JUDGMENT

(Delivered 27 November 2013)

[1] I have before me two applications for review of a bail decision. Section 36 (3) of the Bail Act stipulates that such reviews are to be by way of rehearing.

[2] On file 21332464 Oliver Campbell, who is 15 years of age, appeared before the Youth Justice Court to answer five separate charges, namely:

(a) unlawful entry of a dwelling, with intent to commit the crime of stealing therein;
(b) stealing various items of property;
(c) attempting by a deception to obtain a benefit;
(d) stealing a motor vehicle; and
(e) unlawfully using a motor vehicle.

[3] Those charges spanned dates ranging from 23 to 27 July 2013.

[4] As a matter of convenience I will hereafter refer to Oliver Campbell as "the youth".

[5] On file 21349613 the youth appeared before the Youth Justice Court to answer two further charges, namely:

(a) trespassing on premises; and
(b) aggravated attempted unlawful entry of a building with intent to commit a simple offence.

[6] On 11 September 2013, the youth was granted conditional bail in the Youth Justice Court, to reappear in that court on 21 October 2013.

[7] On 2 October 2013 he was charged with one count of breach of the relevant bail conditions.

[8] On 1 November 2013 he was charged with a further two counts of breach of bail conditions.

[9] The youth came before the Youth Justice Court on 18 November 2013, at which time he pleaded guilty to the various breaches of bail conditions.

[10] The Youth Justice Court was advised that defence counsel was awaiting written confirmation from the BushMob organisation that the youth had been accepted for a 16 week residential rehabilitation course. Explanations were proffered as to why he had failed to comply with bail conditions.

[11] An enlargement of bail was sought, but this was opposed by the prosecution.

[12] The prosecutor outlined the Crown case on the various substantive charges and contended that, given the past history of the youth, the risk of reoffending or a risk of further breaches of bail was exceedingly high. He informed the court that a disputed facts hearing relating to an alleged co-offender was listed for 13 January 2014.

[13] It is to be noted that, at the hearing on 18 November 2013, the learned magistrate constituting the Youth Justice Court had this to say to counsel for the youth:

> "… Your client has such a lengthy history of non-compliance with court orders and as a thief in this town, that unless he is fully occupied, then I have severe doubts of his capacity to comply. Even today he's admitted – he's admitted that he has trespassed on a property, he just doesn't agree what he was doing there. He and his colleagues, other than Mr Dare who's pleaded guilty, he is one of the three of them and will be called to give evidence I would imagine as to what happened with the other two, admits that they left school and they weren't getting a drink of water.
>
> So you have got one of them already has pleaded guilty to this and the other two are saying 'Yes, we trespassed, even though we were supposed to be at school, we left school and we trespassed'. Well that gives this court absolutely no confidence at all that your client would continue to comply with anything.
>
> So you need to get a lengthy submission together from BushMob as to what they would do because the situation is no different to the situation at home, where I was convinced to release him from his attendance at the door because he was tired at night. Little did I know at that stage that other members of his family were out committing criminal offences, just as he was, and that one of the reasons why he didn't want the police to go there was because the protection of other members of his family. I now know that he's not the only member of his family who is out and about committing serious offences….."

[14] The learned magistrate adjourned the matters until 21 November to enable a report to be obtained from BushMob.

[15] It is clear that the youth was known to him and, in dealing with the breaches of bail, the learned magistrate had this to say:

> "In relation to the breach of bails, you have pleaded guilty that on three separate occasions you could not comply with bail. Unfortunately for you, Master Campbell, I have heard a myriad of excuses over a long period of time why it is that you cannot comply; there have been girlfriends, there has been the fact that you did not like school, the fact that the bus did not get there on time, the fact that you had to go to McDonald's to get a feed before you went to school, the fact that you could not work out time, now the railway – you have been caught at the railway crossing. There are innumerable, innumerable excuses that you have put up in front of this court why you could not comply and you keep coming back and you keep putting the excuses up.
>
> It is now said that you are going to take some responsibility, but of course, given that you are waving your head around and you are ho-ing and hum-ing and do not like what I say, I have no confidence at all that you ever listen to what I have to say and you will be back here pretty quickly. Because you always have an excuse. I have now heard, which is the first time I have heard for some time, that you actually do use cannabis and that is part of the reason why you break into houses.
>
> I have said to many of your colleagues and you, you can smile look at the ceiling if you like, but unless you are honest with yourself you will continue to come back to court. Unless you make a decision one day you, your mates, your cousins, your brothers, all use cannabis, all steal to get items to sell to use cannabis, then you will come back. Until such time as you make a decision that you want to grow up, be responsible, then there is very little chance."

[16] He convicted the youth of the breaches and imposed custodial sentences that were satisfied by the time that had already been spent in custody at that

point. As to any future bail he directed preparation of a supervision assessment.

[17] A bail assessment report was duly prepared by Community Corrections. The conclusion arrived at in the report was that the youth had shown a total disregard to the conditions he was required to comply with and that it was considered doubtful that he would successfully complete a period of bail. He was considered unsuitable for supervision by Community Corrections.

[18] When the proceedings again came before the Youth Justice Court on 21 November 2013, counsel informed the learned magistrate that the youth would be accepted for a BushMob 16 week residential program, to commence three weeks after that date.

[19] Bail was sought in respect of that three-week period, on the basis that the youth reside with his uncle at Titjikala, where he would not be in contact with his former urban co-offenders.

[20] The prosecutor reiterated his opposition to bail, stating that, on the trespass file, fresh evidence had come to light and it was expected that the charge would be upgraded to attempted unlawful entry. He stressed that such offending had occurred whilst the defendant was on bail for another unlawful entry and had also occurred during school hours.

[21] He further pointed to the history of non-compliance and the adverse report by Community Corrections.

[22] Ultimately, the learned magistrate expressed himself in these terms:

> "You applied for bail. You have already indicated to the court that you are going to plead guilty to a charge of trespass on 1 Chewings Street. You dispute the facts, but regardless of the facts, this will breach sentences which are currently suspended, and it is highly likely that you will go into detention.
>
> Given the circumstances and given the evidence that will be presented to court, that you applied for bail, you are a young person and the presumption is against keeping young people in custody, but in your case you have demonstrated over a long period of time that you refuse to comply with the law. I have had you assessed by the Department of Corrections and clearly you have burnt your bridges there; they no longer wish to supervise you, which makes it very difficult for you. They do not want to supervise you because you just do not comply.
>
> Clearly school is as a discretion for you; you are not committed to school at all. You make innumerable excuses as to why school may or may not be high on your priorities. Clearly you use drugs. You have got friends who use drugs. It is a motivating factor for a lot of your behaviour. And you are a risk to this community.
>
> To keep you in detention until these matters come for hearing would require you to be in detention for a long time. BushMob have indicated that they will have you on the program. Unfortunately that program is not available for three weeks. I clearly indicate that I would like you to go to BushMob; you may well learn something and achieve something by entering into their program.
>
> So the issue is what to do with you in the next three weeks. In my view it is oppressive to send you to Titjikala. You are an urban boy, you have got no chance of living in the bush. You would last a very short time if you were sent out bush. Too many times I see submissions made in this court which are basically racial-based submissions 'I am an aboriginal therefore I can live out bush because that's where aboriginal people live'. That is not the case. I have heard it many times and they have failed many times because urban kids do not live out bush. They do not know how to. So I'm not considering sending you to Titjikala.

> I have given you opportunities in the past. You haven't shown any maturity. It is clear that you still don't show any maturity. But I'm going to give you an opportunity to be on bail for three weeks and we will come back to court on 13 December and on that day, hopefully, Mr Tapueluelu will have all the information regarding BushMob and the bail I'm going to give you today will be revoked and you will go to BushMob."

[23] The learned magistrate granted bail until 13 December subject to a number of conditions, which, amongst other things, required the youth to reside with his mother in Alice Springs – on the basis that he would be required to embark on the BushMob program on that date.

[24] As I have indicated, the present reviews are by way of rehearing and, in addition to material indicating the factual history as I have recited it, the Crown has placed a copy of the youth's antecedent record before me.

[25] This is a truly remarkable document that indicates that he has had a list of convictions between September 2012 and the present time which extends over some 6 pages.

[26] Many offences are aggravated property related offences or stealing, but there are also numerous convictions for breaches of bail conditions and failures to comply with Youth Justice Court orders.

[27] His recent convictions for breaching bail render him liable to have prior custodial sentences that were suspended on 27 June 2013 and 14 December 2012 respectively restored.

[28] Counsel for the youth does not seek to run away from his client's appalling record, but he relies on the provisions of s 4 (c) of the Youth Justice Act, which stipulates that a youth should only be kept in custody for an offence (whether on arrest, in remand, or under sentence) as a last resort and for the shortest appropriate period time of time. He argues, in effect, that this is a paramount provision that largely negates the general provisions of the Bail Act.

[29] Whilst I agree that such section necessarily constitutes the commencement point for consideration, the expression 'the shortest appropriate period of time" clearly necessitates the court, in conditions of last resort, having proper regard to the provisions of s 24 of the Bail Act, insofar as they are fairly compatible with s 4 (c) of the Youth Justice Act.

[30] In particular, but not exclusively, the aspects identified in subclauses (c), (d) and (e) of s 24 of the Bail Act will be key matters for consideration in determining what is "appropriate" for the purposes of s 4 (c) of the Youth Justice Act.

[31] In the present case the Crown argues that, bearing in mind the comments of the learned magistrate concerning the history of the youth, as I have recited them, it is difficult to reconcile these with the ultimate decision to grant bail.

[32] The Crown contends that it has demonstrated the existence of strong prima facie cases as to the charges against the youth. It argues that, when it is borne in mind that the youth is likely to be required to actually serve his suspended sentences, has a long history of failure to comply with bail conditions and is a high risk recidivist, there is compelling reason to conclude that it was and is appropriate, as a matter of last resort, that the youth be remanded in custody and not granted further bail.

[33] Pursuant to s 36 (3) of the Bail Act it is for me to exercise a fresh discretion as to the question of bail in these matters, due respect being given to the decisions of the learned magistrate that are now under review.

[34] After a careful consideration of the material before me, I entertain no doubt that, taken at face value, the Crown is able to point not only to the existence of strong prima facie cases against the youth, but also to the fact that his history is such that the court must regard him as a high risk in relation to probable non-compliance with bail conditions and also possible further offending whilst on bail.

[35] I consider that the Youth Offence Reports that describe this youth as a prolific property offender who continuously displays his inability to obey or comply with court ordered bail or supervision orders and that point out that he continues to commit offences even though on bail [as well as being in breach of conditions of suspension of prior custodial sentences] accurately summarise the situation.

[36] In all the circumstances I conclude that the Crown has demonstrated that the time has arrived at which it is simply not appropriate to grant further bail in respect of the period up to 13 December next. The risks in so doing are unacceptable and inappropriate. A situation of last resort has been arrived at.

[37] The decision to grant bail in each instance is set aside and the youth will be remanded on detention to appear before the Youth Justice Court on 13 December next at 9:30am.

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