

IN THE MATTER of an appeal

BETWEEN:

Steven BOTT
Appellant

And:

EA
Respondent

AND IN THE MATTER of a review of bail

BETWEEN:

Steven BOTT
Applicant

And:

EA
Respondent

TITLE OF COURT:

SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION:

SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO:

21430241

DELIVERED:

30 July 2014

HEARING DATES:

28, 29 and 30 July 2014

JUDGMENT OF:

RILEY CJ

APPEAL FROM:

S Oliver SM

REPRESENTATION:

Counsel:

Appellant:

C Dixon

Respondent:

A Abayasekara

Solicitors:

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

Judgment category classification:	A
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Bott v EA [2014] NTSC 32
No. 21430241

IN THE MATTER of an appeal

BETWEEN: Steven BOTT
Appellant

And: EA
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AND IN THE MATTER of a review of bail

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CORAM: RILEY CJ

EX TEMPORE
REASONS FOR JUDGMENT

(Delivered 30 July 2014)

- [1] The respondent is a 15-year-old male who has pleaded guilty in the Youth Justice Court to a range of offences committed between 5 June 2014 and 26 June 2014. He was dealt with in that Court on 22 July 2014 when the presiding magistrate made an order pursuant to s 83(1)(d)(i) of the *Youth Justice Act 2005* (NT) that the proceedings be adjourned and that the youth be granted bail until 3 March 2015 on the following conditions:

- (a) he reside as directed by the Department of Children and Families and attend school and counselling as arranged by them; and
- (b) he is not to associate with two named co-offenders.

[2] The appellant, who was the informant in the proceedings below, wished to challenge the decision and, to that end, lodged an appeal and also commenced a review pursuant to the terms of the *Bail Act*. The parties were unable to agree as to the appropriate course. The appellant contended that the matter should appropriately be dealt with by way of review under the *Bail Act*. The respondent argued that it should be an appeal under the relevant provisions of the *Youth Justice Act*. The matters were heard together.

The relevant legislation

[3] Part 6 of the *Youth Justice Act* provides for the disposition of matters by the Youth Justice Court. In Division 1 of that Part of the Act the general principles to be applied to youth offenders are described and then, in Division 2, the sentencing options available to the Court are set out in some detail. Section 83(1) of the Act provides for the orders the Court may make 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 other than a community based order or community custody order under the *Sentencing Act*.

[4] Part 7 of the *Youth Justice Act* provides for the reconsideration and review of sentences and for appeals. The Youth Justice Court may, in specified circumstances, reconsider, review or reopen sentencing orders. An appeal to the Supreme Court is permitted pursuant to the provisions of s 144 and s 145 of the Act. Those sections are in the following terms:

144 Appeal to Supreme Court

(1) An appeal lies to the Supreme Court from a finding of guilt, conviction, order or adjudication made by the Youth Justice Court under:

(a) this Act; or

(b) any other Act in force in the Territory.

(2) An appeal under this section must be:

(a) made in accordance with the *Supreme Court Rules*; and

(b) heard by a single Judge.

(3) The provisions of the *Justices Act* relating to appeals from the Court of Summary Jurisdiction apply, with the necessary changes, to an appeal under subsection (1).

(4) Sections 61, 63 and 123 apply in relation to an appeal under this section as though a reference in those sections to the Court were a reference to the Supreme Court.

145 Appeal operates as stay

An appeal under section 144 operates as a stay of execution or of proceedings under the finding of guilt, conviction, order or adjudication appealed against.

Appeal

- [5] The respondent submitted that it is appropriate to deal with this matter as an appeal and to apply the relevant provisions of the *Youth Justice Act*. It is apparent from the remarks of the sentencing magistrate that her Honour was exercising one of the sentencing options available under s 83(1) of the Act. This is not a case of simply granting bail but, rather, a deliberate decision to apply one option from the range of sentencing options available to the Court.
- [6] It was noted that, in the event of the matter proceeding by way of appeal, the challenge of the appellant would not be to the granting of bail per se but to the exercise of the sentencing discretion. If the matter proceeds as an appeal it would be the contention of the appellant that the sentence imposed by the sentencing magistrate was manifestly inadequate. This would involve a consideration of matters of wider impact than whether or not bail should be granted to the youth in this case. Put another way, to address the granting of

bail to the youth is not to address the issue of the adequacy of the sentence imposed.

- [7] The issue is whether a right of appeal exists in the circumstances. The right of appeal created by the *Youth Justice Act* provides that the provisions of the *Justices Act 1928* (NT) relating to appeals from the Court of Summary Jurisdiction apply, with the necessary changes, to an appeal from the Youth Justice Court.¹ Section 163 of the *Justices Act* provides for a right of appeal from the Court of Summary Jurisdiction to the Supreme Court. It is in terms similar to Section 144(3) of the *Youth Justice Act*. In relation to s 163 of the *Justices Act*, the courts have consistently held that the section provides a right of appeal restricted to an appeal against a final order and does not allow an appeal against an interlocutory decision.
- [8] In *Step v Atkins*² the Northern Territory Court of Appeal considered the issue and referred to the earlier cases of *Macey v Cooper* (1999) 150 FLR 476 and *Tchernia v Garner* (1999) 154 FLR 243 along with the wide range of cases dealt with in the South Australian courts where the provision originated.³ The Court of Appeal confirmed that the section provides only for an appeal against an order or adjudication which is a final order or adjudication. There can be no appeal against a mere interlocutory decision. There is no basis for treating s 144(3) of the *Youth Justice Act* differently from s 163 of the *Justices Act*.

¹ *Youth Justice Act*, s 144(3).

² [2008] NTCA 05.

³ eg *Stuart v Allchurch* (1923) SASR 333; *Dubois v Lovegrove* (1987) 45 SASR 309.

[9] In my opinion, it is apparent that the making of an order pursuant to s 83(1)(d) of the *Youth Justice Act*, as occurred in this case, is an interlocutory decision. The order was to adjourn the proceeding to a later date for the purpose of gathering information before a final order is made. The determination of the sentence to be imposed by the Youth Justice Court (if any) was deferred to the later date.

[10] In my opinion, there is no right of appeal in relation to this decision.

Bail Review

[11] The appellant submitted that the matter should be dealt with by way of bail review. It was noted that the disposition by the Youth Justice Court was to grant the youth bail under the terms of the *Bail Act 1982* (NT). Section 83(1)(d) of the *Youth Justice Act* makes specific reference to the Court having the power to grant bail “in accordance with the *Bail Act*”. It was submitted that, in those circumstances, the grant of bail was subject to the bail review provisions found in Division 2 of Part 6 of the *Bail Act*. Section 35 of that Act provides:

35 Review by Supreme Court

(1) Subject to this Act, the Supreme Court may review a decision of a magistrate or justice or of the Supreme Court (however constituted) in relation to bail.

(2) The power to review a decision pursuant to this section may be exercised whether or not power to do so under section 34 has been, or has been sought to be, exercised.

[12] In the absence of a right of appeal, I agree that the matter should proceed by way of bail review.

The offending

[13] The youth, who was then aged 15 years, came before the Youth Justice Court on 22 July 2014 and pleaded guilty to 12 offences that had occurred between 5 June 2014 and 26 June 2014.

[14] He pleaded guilty to having, on 5 June 2014, trespassed on residential premises in Stuart Park, causing damage to a bicycle lock and stealing a bicycle valued at \$1000. The offending occurred in the company of two others and involved entering a secure car park through an unlocked gate and then using a set of bolt cutters to remove bicycles from their padlocked positions. The youth stole one bicycle and his co-offenders stole three more bicycles.

[15] The next offending occurred on 22 June 2014. The youth pleaded guilty to having unlawfully entered a commercial building in Smith Street Darwin city with intent to commit a crime, stealing two sets of car keys and then unlawfully using a Mitsubishi motor vehicle valued at \$50,000. The youth was in the company of three co-offenders and entered the building through a rear door which had been left unsecured. They unplugged the CCTV devices and stole the car keys which belonged to two vehicles parked at the rear of the building. The youth took one vehicle, a Mitsubishi Pajero, and co-offenders took another. The Mitsubishi Pajero was later recovered.

- [16] The youth pleaded guilty to further offending which occurred on 26 June 2014. He pleaded guilty to having trespassed on premises at Gray and having unlawfully entered a dwelling house at night time from which he stole cash and car keys valued at \$600. He pleaded guilty to having unlawfully used a Toyota LandCruiser valued at \$13,000. On this occasion, he was again in the company of co-offenders and they entered the premises through an unlocked front door. They searched for items to steal. After leaving the premises, they unlawfully used the Toyota LandCruiser. The youth pleaded guilty to having driven that vehicle whilst not the holder of a licence to do so.
- [17] In addition, the youth pleaded guilty to having received a mobile phone valued at \$200 which had been obtained by means of a crime.
- [18] At the time of the hearing, the youth had been placed in the care of the Department of Children and Families. He had an extensive criminal history extending from offending which occurred at the end of 2009 through to matters dealt with before the Darwin Youth Justice Court on 26 August 2013. His offences included convictions for damaging property, driving unlicensed (3), trespass (2), unlawful entry (6), breach of bail (4), failure to comply with court orders (5), unlawful use of motor vehicles (4), stealing (10), and unlawful possession of property. He had been dealt with by way of good behaviour bonds, no further trouble orders, convictions without penalty, supervised release and varying terms of detention. He had been released from detention on 10 May 2014 after serving approximately 10

months. His release came just over three weeks before the present offending began.

[19] The youth has been released on bail to reside at nominated addresses on prior occasions. On those occasions he has agreed to a curfew. On at least three occasions he has breached the terms of his bail. He explained that he did so because he was “bored” or “didn’t want to stay there”.

[20] The Youth Justice Court was informed that prior to the offending the youth had lived with his mother but, by the time of sentencing, he was in the care of the Department of Children and Families. He expressed a wish to return to school and to play football. He had, at that time, been back in detention for some four weeks. The Court was invited by his counsel to consider a suspended sentence. The prosecution submitted that a period of detention was the only appropriate disposition.

[21] In sentencing, the magistrate observed that the youth appeared to be “depressed” and in need of “some sort of therapeutic intervention”. Her Honour went on to say to the youth:

So basically what I do at this stage, I say that you can have bail and that you then come back to see the court for reviews before there is a final decision made. And if you can show over the course of all those reviews that you have stayed out of trouble and that you are now, you know, really have good prospects for the (future), then there won’t be an order made that you go back to Don Dale, back to detention.

[22] Her Honour then adjourned the proceedings with a date for final order of 3 March 2015 and granted bail.

[23] The information provided to this Court is that the accommodation which can be provided by the Department of Children and Families is supervised accommodation but is not secure and the youth is able to depart that accommodation at will.

Consideration

[24] In my opinion, the conditions of bail were inadequate. Whilst it is important to keep firmly in mind that the youth is only 15 years of age and that detention is an option of last resort, it is also important to bear in mind the other general principles that must be taken into account in administering the *Youth Justice Act* as set out in s 4 of the Act. In my opinion, the granting of bail in the circumstances does not hold the youth accountable for his offending behaviour or encourage him to accept responsibility for his behaviour. The offending to which he pleaded guilty was relatively serious and committed by a youth who had a regrettable history of similar offending. He had recently emerged from a period in detention and had quickly reoffended in the manner I have described. He has a history of disobedience to bail conditions. The granting of bail on the terms provided did not serve to constrain him or address the very real concern regarding the risk of further breaches and, importantly, further offending.

[25] In all the circumstances, I set aside the decision to grant bail and refer the matter back to the Youth Justice Court for reconsideration including a review of the sentencing order made by her Honour in light of the material change of circumstances arising from this decision.