



Children's Court New South Wales

Case Name: **R v Ben**

Medium Neutral Citation:

Hearing Date(s): 19 April 2024, 21 June 2024, 22 August 2024, 23 August 2024, 24 October 2024, 19 December 2024, 20 March 2025

Date of Orders: 20 March 2025

Date of Decision: 20 March 2025

Jurisdiction: Criminal

Before: Children's Magistrate Hayes
Decision: Dismissed

Catchwords: CHILDREN — CRIME — *Young Offenders Act*

Legislation Cited: *Children (Criminal Proceedings) Act 1987 (NSW)*
Young Offenders Act 1997

Cases Cited: Commissioner of the Australian Federal Police v Zhao (2015) 316 ALR 378,
Vartzokas v Zanker (1989) 51 SASR 277

Texts Cited:

Category: Principal judgment

Parties:

Representation: Ms Jones (Prosecutor)
Mr Penfold (Solicitor for Young Person)

File Number(s): 2024/1091, 2024/52225

Publication Restriction: Consistent with s 15A Children (Criminal Proceedings) Act 1987 the names and any information likely to lead to the identification of any children involved in this case have been anonymised in the published version of this judgment.

JUDGMENT

Open Justice

- 1 Principles of open justice are fundamental to the rule of law.
- 2 The High Court has said that courts held openly and not in secret is an essential aspect of their character: refer *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378 at [44] (French CJ, Hayne, Kiefel, Bell and Keane JJ).
- 3 The reason for the open court principle is that court proceedings should be subjected to public and professional scrutiny.
- 4 The Children's Court is different. The general public are excluded from criminal proceedings: see s10 of the *Children (Criminal Proceedings) Act 1987* (the Act).
- 5 Published decisions assist to maintain public confidence in the integrity of the justice system.
- 6 Published decisions provide young people, parents, practitioners, the public and policy makers a practical understanding of how the Court operates.
- 7 The law forbids the identification of children, so names are changed and some details excluded.

Ben's offences

- 8 Ben is charged with two counts of possess house breaking implements, and a carried in a conveyance.
- 9 Ben appeared before me almost 12 months ago and pleaded guilty. At the time of offending Ben had just turned 15.
- 10 Ben has now just turned 16.

- 11 Rather than finalising Ben's matters Mr Penfold suggested that the Court take a different approach.
- 12 Mr Penfold knew that Ben wanted to be a gangster and that the Court should intervene to try and change Ben's thinking.
- 13 Mr Penfold's rationale was early intervention – prevention.
- 14 When I asked Ben what he wanted to be he said he wants to be a 'gangster'.

Courts discretion

- 15 In sentencing, courts have discretion to individualise justice - balancing the circumstances of the offence and the offender with the need for community protection and rehabilitation.
- 16 Rehabilitation as a concept is broader than merely avoiding re-offending.
- 17 Rehabilitation has as its purpose the remodelling of a person's thinking and behaviour so that they will, notwithstanding their past offending, re-establish themselves in the community with a conscious determination to renounce their wrongdoing and establish or re-establish themselves as an honourable law-abiding citizen...that the object of the Court is to fashion sentences designed to reclaim individuals whenever such measures are consistent with the primary objective to protect the community: *Vartzokas v Zanker* (1989) 51 SASR 277 at [279] per King J.
- 18 There is a strong public interest in rehabilitation, both for the benefit of the community and the individual.
- 19 Real rehabilitation provides prolonged community protection.

Youth Justice Reports

Youth Justice Bail intake form

20 I am readings parts of the bail intake form and am adding a few words after.

At the time of offending Ben was in emergency accommodation with his mother.

Ben had been with his biological father for 14 days before his father left in a stolen car.

Ben discloses he drinks alcohol, smokes cannabis and ice.

21 Ben was placed on Youth Justice (YJ) bail supervision.

Bens first Youth Justice Background Report

22 I am readings parts of the first Background Report ordered for 4 April 2024.

Ben experienced a transient lifestyle since he was a baby.

Ben was a witness to family violence.

Ben was removed from his mother's care at age 3 after his mother was charged with assaulting Ben.

Ben had a number of different placements.

There is an ongoing investigation of an alleged sexual assault on Ben.

Ben has no structure and had disengaged from school.

Ben appears to be easily influenced and observed to boast about alleged criminal behaviour.

YJ completed a referral to Backtrack but there were no placement opportunity for day or residential programs.

At the time of offending Ben was under the influence of cannabis and methylamphetamine.

Ben says he planned to take a car and rob a service station as a bit of fun.

Ben said he is not scared when it came to committing crime.

Ben demonstrated an inflated self-esteem and a lack of remorse for his actions.

Ben was diagnosed with ADHD and ODD by a doctor.

Ben was prescribed medication but did not have a Medicare card, so a further appointment was made.

Ben openly demonstrates pro-criminal attitudes.

Ben indicated he had multiple plans to commit crime but when challenged advised he did not want to be a criminal all his life.

YJ completed an assessment of Ben to obtain information relating to specific criminogenic behavioural traits and characteristics relevant to the offences.

23 I understood this was to inform YJ of the best approach for rehabilitation.

Ben's second Youth Justice Background Report

24 I am readings parts of the second Background Report ordered for 21 June 2024.

Ben regularly attends his supervision appointments and usually attends for periods of 90 minutes or more.

Ben has been engaging well in conversations and worked with his caseworker to formulate case plan goals and begun work on those goals.

YJ are very pleased with Ben's positive engagement.

Ben has been engaged in pro-social activities and teaches staff and visitors skills techniques in basketball and ping pong.

YJ have commenced a program in collaboration with police.

The program involves pro social activities such as fitness fishing and cultural activities.

YJ have often observed Ben to voice his love and care for his mother when leaving his residence for supervision - with little to no response from his mother.

Ben has no personal belongings and limited clothing suitable for current cold weather.

YJ assisted with a bed, blankets and warm clothing.

Ben expressed great appreciation, even taking photos of his new bedding to proudly show other YJ staff.

Ben accepted a referral to FlatTrack and is attending.

Ben was successful in gaining a job interview.

Ben has a referral to Youth Insearch and has a good rapport with his caseworker.

Ben is polite and responsive and eager to please.

Ben says I want to change my life.

Basic human needs

- 25 Children deserve a safe home to live, food to eat, clothes to wear, a bed to sleep, blankets for warmth, health needs met, nurturing carers, education, stable and secure environments.

The Bugmy Bar Book

- 26 Child maltreatment can fundamentally change a child's cognition and neurobiological systems and impair emotion recognition and regulation.

Attachment theory

- 27 The earliest bonds formed by children with their primary caregiver/s (particularly before 4 years of age) have a tremendous impact affecting neurological, physical, cognitive, emotional and social development, which continues throughout life.

Offences

- 28 The carried in a conveyance charge did not involve Ben taking or driving but as a passenger with others. There was some harm to the owner of the car who was deprived of its use. The two possess House Breaking Implement charges did not result in harm to others, nor any violence.

Record

- 29 Ben has had several interactions with Police.
- 30 There are two other charges of intimidation to be dealt with separately. One from June. This involved threatening a former friend of his mother. After the threats Ben left with his mother. The other intimidation is from August.

Young Offenders Act

- 31 The *Young Offenders Act 1997* (YOA) provides a practical alternative to allow courts to focus on early intervention and crime prevention. This is done by the child accepting responsibility and being involved with targeted rehabilitation.

Conferencing

- 32 A court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if—

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the court is of the opinion that a conference should be held under this Part.

- 33 The principles and purposes of conferencing include:

- to promote acceptance by the child of responsibility for their own behaviour,
- to strengthen the family or family group of the child
- to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual
- to enhance the rights and place of victims in the juvenile justice process
- to be culturally appropriate, wherever possible
- to have due regard to the interests of any victim.

34 Ben had admitted his guilt to eligible offences and was referred to YJ for a conference.

35 At the conference an outcome plan was developed; and subsequently approved by the Court.

Extract from the Second reading speech on 4 June 2002 following changes to the Young Offenders Act

The Bureau of Crime Statistics and Research [BOCSAR] recently released a report entitled "Reducing Juvenile Crime: Conferencing Versus Court". The report shows that conferencing can be considerably more effective than the court process in reducing reoffending and in increasing the crime-free period for those juveniles who do reoffend. The report found that the risk of reoffending was almost 28 per cent lower for juveniles who were conferenced than for those who went to court. Another report released by BOCSAR in 2000 found that young offenders and victims who participated in the conferencing process experienced high levels of satisfaction. More than 80 per cent of victims surveyed as part of the study said they were satisfied with the outcome of the conference and with the way their case was handled by the justice system. The report also found that young offenders who attended conferences accepted responsibility for their offence, felt that the offence they had committed was wrong, understood what it felt like for those affected by their actions, and understood the harm they had caused to the victim. These findings stand as irrefutable evidence of the success of the Young Offenders Act.

36 Ben was excused from attending Court but had attended mostly over the 7 adjournments so I could check progress of the outcome plan.

37 Ben's mother had attended court each time. It was difficult to engage the mother but her attendance was appreciated.

38 There is often trauma associated with parents who were exposed to the Care system – not always historically exclusively the fault of the parent.

Ben has completed his outcome plan.

39 The Court must make sure children understand what happened at Court and why: see s12 of the Act.

40 Ben attended Court today but was then excused.

- 41 Ben has done brilliantly well in completing the outcome plan.
- 42 Apart from those two offences referred to earlier, Ben has not been in any trouble with the police for over a year.
- 43 Sadly, recently, Ben seemingly is not compliant with his medication. Perhaps without the structure of the outcome plan now it is completed.
- 44 But I am told Ben is trying to get his driver's licence. He had trouble with employment because he did not have a tax file number. His licence will provide some identification to enable a tax file number. There are other barriers as well.
- 45 Ben completed his outcome plan.
- 46 I am dismissing these charges under the YOA.
