

CITATION: *Police v FC and AB* [2013] NTMC 008

TITLE OF COURT: YOUTH JUSTICE COURT

JURISDICTION: Criminal

FILE NO(s): 21309791, 21309812, 21310209, 21312157,  
21312173, 21306869, 21309785, 21312192,  
21312193

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JUDGMENT OF: Hilary Hannam CM

**CATCHWORDS:**

*Youth Justice Act* – Objects and Principles  
Nexus between welfare and offending  
Role of the Office of Children and Families under s 51 *Youth Justice Act*  
Education in remote communities  
Substance misuse  
Parental supervision  
Lack of services for youth

**REPRESENTATION:**

*Counsel:*

Complainant: Mr Teague  
Defendants: Ms McCarron

*Solicitors:*

Complainant: Police Prosecutions  
Defendants: NTLAC

Judgment category classification: A  
Judgment ID number: [2013] NTMC 008  
Number of paragraphs: 37

IN THE YOUTH JUSTICE COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 21309791, 21309812, 21310209, 21312157, 21312173, 21306869,  
21309785, 21312192, 21312193

BETWEEN:

**POLICE**  
Complainant

AND:

**FC & AB**  
Defendants

REASONS FOR JUDGMENT

(Delivered 22 May 2013)

Ms Hilary Hannam CM:

1. The youths, FC and AB who are both 17 are being sentenced in relation to a number of offences committed in February and March this year. Both youths have lived in Wadeye throughout their lives and have not been in trouble until February this year, when, with a group of other youths in the community they began breaking into various buildings in the community in the early hours of the morning, damaging these buildings and stealing from them.
2. On the first occasion, on 6 February AB went to the Council Workshop with four other young men. They removed a large security bar which was bolted across the front door and jemmied the doors, breaking two locks. Once inside, they took food and drinks, a DVD player and 14 torches. All of the property has been found and returned. The cost of repairing the workshop is said to be estimated at around \$3,000, although there are no documents to support this estimate.

3. The next break-in involved both AB and FC and occurred less than a week later. The youths and two others were walking around the community in the early hours of the morning and decided to break into the Women's Centre to steal football guernseys and food. One of the others took a hammer to use as an implement to break into the building. At the Women's Centre, one of the group used the hammer to smash the lock on the building. Once inside, they covered their faces with shirts and cardboard boxes and stole four football guernseys, a bottle of milk and food.
4. The next day, again in the early hours of the morning, FC and one of the others from the previous break-in and other young men decided to break into the Wadey Workshop. One of the group carried a spanner and as the group found it was difficult to break into the building, which was described as highly secure, they climbed onto the roof and used the spanner to remove fixings and create a hole large enough to enter the building. As they climbed through the ceiling, the group covered their faces with clothing and then searched the rooms for food and drink. FC took cans of soft drink and pies from the freezer and put them in a backpack.
5. Eight days later, FC, AB and other youths from the community agreed to break into a house. They found that it was secured and forcibly kicked out and damaged the wooden screen door and another door to break their way in. They searched and took food and alcohol which they ate and drank nearby. A couple of days later, both of the youths were interviewed by Police and admitted to being involved in the offences, which FC said he committed because he was hungry. Although the Court has not been provided with a victim impact statement in relation to any of the offences, the statement of facts for this offence indicates that one of the people whose home was broken into was a medical staff officer who resigned and left the community due to fear for her safety and destruction of her property as a result of this and other similar offences.

6. A couple of weeks, later, on 6 March 2013, AB, FC and some other youths decided to break into other businesses in the community. In the early hours of that morning, they armed themselves with an assortment of house breaking implements and at about 2.00am, approached the Wadeye Sport & Recreation Office. Using one of these items, they smashed the door handle off the office door, allowing them access into the building. Once inside, the offenders began rummaging through the drawers, cupboards and tables and caused damage to the building and contents. They took some unspecified items and then went to the Wadeye Childcare Centre.
7. At the Childcare Centre, FC, AB and the others cut the security screen over the office and kitchen window, bent the mesh out and removed the louvres from the window to gain access into the office. Once again, they are described as rummaging through the building and causing a large amount of damage and removing some unspecified items. The statement of facts in relation to these last two matters indicate that the damage caused by the youths is estimated at \$10,000 and that restitution is sought. However, there are no documents to support this claim.
8. Both youths were arrested by Police later that morning and granted bail. The only bail conditions imposed on them were that they were to reside with family members, abide by a curfew between 8.00pm and 7.00am and report to Police two times per week. Within a few days, FC failed to report to Police as required and AB failed to appear in Court as required.
9. Both youths were also part of a group who on 21 March broke into other buildings in Wadeye in the early hours of the morning. On this occasion, the two youths and other offenders from the previous offences decided to break into the Women's Centre and Centrelink Office. At around 4.00am they chopped a large hole in the roller door of the Women's Centre with a tomahawk, pulled sections of the door away with their hands to create a hole and entered. They stole money and a cap. The group then went to the

Centrelink Office and took turns kicking the back staff entrance until the door cracked around the lock. Once inside, they searched through the cupboards, drawers and fridges and took \$80 in coins from a charity box and a box with keys for a car and the office.

10. After leaving the Centrelink Office, AB, who was armed with the tomahawk, went to the furniture store where he began chopping at the door hinges in an attempt to enter the building, which set off the intruder alarm.
11. The store manager attended the furniture store in response to the alarm and while he was doing this, AB smashed the store manager's car using the tomahawk, causing considerable damage.
12. Both youths were arrested shortly after these offences and have remained in custody since that date.
13. In the case of both youths, there has been some difficulty in obtaining instructions due to a lack of interpreters, responsible adults have on most occasions not attended Court and there were conflicts of interest in legal representation, causing a change of lawyers. In these circumstances, the pleas of guilty by both youths to all offences were entered reasonably early in the proceedings. Neither youth has previously been dealt with by a Court, but FC has had one offence dealt by way of youth diversion in 2009.

### **Youth Justice Act**

14. The Objects and Principles in the *Youth Justice Act* make it clear that a youth who has committed an offence should be made aware of his obligations and rights under the law and the consequences of breaking the law and that he be given appropriate treatment, punishment and rehabilitation.
15. There is a strong emphasis in the Act on acceptance of responsibility for offending behaviour (section 4(a) and (e)), including that responsible

adults are encouraged to fulfil their responsibility for the care and supervision of a youth. There is also a strong emphasis on rehabilitation, including Principle 4(b), (that a youth should be dealt with in a way that acknowledges his needs and will provide him with the opportunity to develop in socially responsible ways), 4(f) (that he should be dealt with in a way that allows him to be reintegrated into the community), 4(n) (that punishment must be designed to give him an opportunity to develop a sense of social responsibility) and 4(p) (that programs and services for youth should foster their sense of responsibility and encourage attitudes and the development of skills that will help them to develop their potential as members of society).

16. Taking account of these and the other Principles in the context of dealing with a youth in the Youth Justice Court involves an examination of the circumstances of the youth in his community. It has become apparent throughout these proceedings that there are a number of risks to the wellbeing of these youths which relate to both the cause of their offending and the appropriate sentence. These include overcrowded housing, lack of parental supervision, exposure to violence and regular cannabis use by close community and family members, cannabis use by the youths, insufficient access to food and disengagement with school.

### **Section 51 *Youth Justice Act***

17. Early in the proceedings, as myself and another Youth Justice Magistrate were concerned about these issues, a report in relation to each of the youths under section 51 of the Act, was ordered. Section 51 provides that where the Court believes that a youth offender may be in need of protection or there is a risk to the wellbeing of the youth, the Court may require the CEO of the Office of Children and Families to investigate the circumstances of the youth, take appropriate action to promote the wellbeing of the youth and report on the youth's circumstances and the

action taken to the Court. The wellbeing of a child under the Act includes the child's physical, psychological and emotional wellbeing<sup>1</sup>. These youths could also fall within the definition of being in need of protection<sup>2</sup>, as they were not under the control of any person and were engaged in conduct that caused or was likely to cause harm to themselves or others.

18. Unfortunately the reports provided by the Office of Children and Families are not particularly helpful. Rather than investigate risks to the wellbeing of the youths, take action to promote their wellbeing and report on the actions, the reports simply contain general statements about the youth's offending behaviours and the youth justice system itself such as "Wadeye Correctional Services ... will work with AB and his co-offenders after sentencing" and "AB could greatly benefit from community schemes and programs that are available in Wadeye community aimed at reducing his risk of re-offending".
19. The purpose of section 51 is in my view a legislative recognition of the nexus between welfare and wellbeing and offending. It is unfortunately my experience that despite the large number of youths in a similar position to these youths, the OCF will only very rarely conclude that there are risks to their wellbeing or that they are in need of protection when they are involved in the criminal justice system, especially when they are Aboriginal and reside in remote communities. The reason for the Department's reluctance to become involved is unclear, although it is possible that the reason is similar to that which is noted by the authors of the Board of Inquiry into the child protection system that there is subtle pressure on workers to conclude that a child is not in need of protection where services are not available to meet the need<sup>3</sup>.

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<sup>1</sup> See s 51(5) *Youth Justice Act* and s 13 *Care and Protection of Children Act*

<sup>2</sup> See *Youth Justice Act* s 51(5) and *Care and Protection of Children Act* s 20(d)

<sup>3</sup> Muriel Bamblett, Howard Bath and Rob Roseby 'Report of the Board of Inquiry into the Child Protection System in the Northern Territory' (2010) at p 263

20. Another common conclusion in section 51 reports for Aboriginal youths from remote communities who are offending is that engagement in cultural activities will be sufficient to address the offending behaviour. In one of the section 51 reports in relation to FC, it was concluded by the OCF worker that “family members on an outstation were willing to engage FC in cultural activities such as fishing and hunting which the Department believe would divert his attention from engaging in anti-social and criminal activities”. It is unclear why the OCF Officer felt that it was within his role or his expertise to comment on criminogenic factors. In any event, based upon my experience it is unlikely that engaging in cultural activities alone, without addressing other welfare issues which are within the responsibility of the OCF, will reduce re-offending.

### **Pre-Sentence Reports**

21. The pre-sentence reports prepared by an officer of the Department of Corrections were more helpful, in that some of the circumstances relevant to both offending and wellbeing are set out in those reports. In particular, in the case of FC, as he emphasised when he was first interviewed and was restated in sentencing submissions, all of his offending was to obtain food as he was always hungry as there was no food in the house. In the case of AB, particular emphasis was placed on his cannabis use.

### **Home Circumstances**

22. The first issue raised by the Corrections Officer relating to FC’s wellbeing and offending was his home circumstances. FC described to the Corrections Officer a home in which there was ongoing domestic violence, not restricted to his parents and that it was regularly occupied by other members of his immediate family who were engaged in violence and substance misuse. He said that there were so many people residing at his property on occasions there was little space for him to have any privacy



and there was often a shortage of food, due to the number of residents and to the family spending money on cannabis instead of food.

### **Substance Misuse**

23. The second issue identified in the pre-sentence reports relates to cannabis use of the youths themselves. Although there are concerns that FC himself is currently a cannabis user, he was adamant in stating to the Corrections Officer and to his lawyer that he has not used cannabis since 2009. One thing is clear, whichever version is accepted, FC began using cannabis at a very young age, as he would only have been 13 in 2009 when he ceased. There are certainly a number of sources in FC's pre-sentence report that confirm that cannabis use is widespread within his community and family including by his father. FC told his lawyer and the Corrections Officer that it would be difficult to maintain abstinence from cannabis given his family's ongoing use. It is also concerning that his lawyer submitted that FC had an added incentive not to use cannabis as it has induced fits, which family members treated by pouring water on him. The concern arises as when FC's mother was interviewed for the pre-sentence report, she told the Corrections Officer when asked about his health that FC had fits as 'a child', but no longer suffered from this affliction, but did not make a connection between the fits and cannabis use.
24. AB appears to have a significant cannabis use problem directly related to his offending and has grown up in a family environment where cannabis use is normalised with his father being a regular user. In the case of both boys, the Corrections Officer stated that their parents admitted to providing them with money to purchase cannabis as a strategy to keep them calm. In AB's case at times, so much money has been spent on cannabis, that there is insufficient money for food and at least one of his offences was also motivated by hunger.

## **Education**

25. AB has been disengaged from school for at least three years, that is, since he has been 14. His pattern of attendance prior to then is unclear. In FC's case, according to the Office of Children and Families, the school had some difficulties with him stealing, while FC says he left school due to ongoing bullying and harassment by other students. On either version, he has not attended since the beginning of last year and his pattern of attendance over the years is unclear. It is of concern in the case of both boys that when they did attend, it may not have been regularly enough to have benefited them to any great degree. Both boys understand and speak little English, as an interpreter has been used both in the proceedings and in the preparation of the pre-sentence report. Whilst the school may be doing its best, these youths have not been provided with the benefit and protective effect that an education ought to bring and which is also acknowledged in the Youth Justice Act.

## **Parental Supervision**

26. The other issue that clearly arises relevant to both the causes of the offending and the appropriate sentence and which is included in the Principles underlying the Act, is the level of parental responsibility for the care and supervision of these youths. FC and AB's parents have clearly not ensured that they attend school for some time, as is both the youths' right and the parent's responsibility under NT law, nor were any adults supervising them on any of the occasions they were offending in the early hours of the morning. All parents say they are concerned about their sons' cannabis use, but in both cases, their fathers and other family members have openly habitually engaged in cannabis use themselves and encouraged it in their children.

27. That the combination of the home circumstances, substance misuse, education history and level of supervision are not seen by OCF as risks to these youths' wellbeing is of grave concern to the Court.

### **Appropriate Sentence**

28. In determining an appropriate sentence, the Court first must consider the objective seriousness of the offences. Unlawfully entering buildings is a serious matter, especially with other circumstances of aggravation being present, as indicated by the maximum penalty. In all these cases there was some degree of planning such as the use of implements specifically taken to the scene, there was also an attempt, albeit a very unsophisticated one by the youths to disguise themselves. These types of offences are also prelevant in and have a significant impact on the community.
29. However, in the range of offences of this type, taking into account the value of the items taken and the unsophisticated nature of the planning and execution, the offending objectively falls at the low end of the scale. In each of the matters, other youths appear to be the ones who armed themselves with implements and used them to gain entry, virtually all of the offences seem motivated at least in part by a need for food and both youths immediately confessed their involvement to Police. They each pleaded guilty at an early opportunity and although it is of concern that each re-offended in exactly the same fashion whilst on bail, I am now satisfied that the youths have leant a salutary lesson having spent two months on remand in circumstances which have been isolating and difficult. Each of the youths are first offenders. In all of these circumstances, further time in custody is not warranted.
30. AB particularly needs treatment for his substance misuse which may be so entrenched that residential rehabilitation is required. However, there is no residential rehabilitation program for any youth in the NT despite the widespread and serious levels of misuse of cannabis in particular

encountered in this Court on a daily basis. Although I am informed that Catholic Care provides counselling in Wadeye which is a service not available in many other remote communities, I am not aware of how regularly it is available, whether it is particularly appropriate for youths and whether it is available in the youths' language. Without the important verification of abstinence which can only be provided by random urine testing, abstinence will be very difficult to monitor. Once again, it is of concern to the Court that random urine testing is not available in any place outside the main centres in the Northern Territory. I also imagine that maintaining abstinence in a home environment where cannabis is normalised will be very challenging for both of these youths.

31. Both FC and AB's parents seem to believe that the time in Don Dale will act as a deterrent to each of them further engaging in crime. The author of pre-sentence reports also states that with the assistance of the limited services available in the community it is "possible" that the youths may be successful in remaining free from further criminal activity.
32. In imposing a sentence in these matters I return to Objects and Principles of the Act to which I referred at the outset. In my view there is very little scope to give effect to most of those Principles because of the lack of services at all levels to meet the needs of youths from remote communities in the criminal justice system in the NT. To the extent that welfare factors contribute to offending, the Office of Children and Families seem unwilling to recognise the risk factors of these youths, possibly because of the lack of services to address them.
33. Whilst the *Education Act* mandates that children up to the age of 17 attend school, school is not seen as a child's right and no-one ensured that the youths attended school. As these cases show a child can miss at least three years of compulsory schooling without it coming to the attention of authorities and children can technically complete years of school without

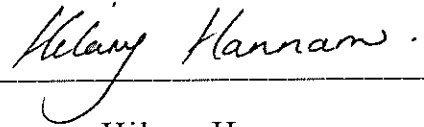
learning to speak English or achieving literacy. This very limited level of education is highly unlikely to equip youths such as these to participate in meaningful employment which itself is also very limited in remote communities. Without meaningful work, the factor of boredom will again arise and with it the risk of re-offending.

34. These youths like countless others encountered in the Youth Justice Court are growing up in communities where cannabis use is endemic and as these cases show where parents condone and encourage drug use. In both the homes in which these young men live there has been so much money spent on cannabis that at times children go hungry.
35. Without any capacity to address welfare needs unless the Office of Children and Families choose to become involved, or to ensure children receive the education to which they are entitled, and without youth specific services to address issues such as substance misuse, the Court can do little to give effect to the Principles in the Act. Instead, the Court can do nothing more than the Corrections Officer and simply hope that it's possible for these youths to remain offence free.
36. In each case, without recording a conviction the youth will be released on a good behaviour bond of 12 months in respect to each of the groups of offences, with the following conditions:-
  1. That the youth be of good behaviour and commit no offence.
  2. That the youth accept the supervision of Community Corrections and obey all reasonable directions for participation in programs, including, but not limited to NAAJA Throughcare, and programs organised by the Wadeye Youth Worker.
  3. That the youth undergo assessment in relation to his substance misuse and comply with directions of a probation officer for treatment and monitoring including random urinalysis.
  4. That the youth not use any illicit substance.

5. That the youth return to school or participate in education or employment programs as directed by a probation officer.

37. In respect of the breaches of bail, without recording a conviction, the youths are sentenced to the one day's detention to commence on 21 May 2013.

Dated this 22<sup>nd</sup> day of May 2013

A handwritten signature in cursive script, reading "Hilary Hannam", positioned above a horizontal line.

Hilary Hannam  
CHIEF MAGISTRATE