Lansen v Marshall, Lansen v Meredith, Lansen v Kerr [2003] NTSC 5

PARTIES:	MAXWELL GREGORY LANSEN v ADRIAN ARTHUR MARSHALL MAXWELL GREGORY LANSEN v ANDREW JOHN MEREDITH MAXWELL GREGORY LANSEN v DARREN SCOTT KERR
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NOS:	JA 61/02 & JA 62/02 (20202315 & 20201949) JA 63/02 & JA 64/02 (20201952 & 20200088) JA 65/02 (20112583)
DELIVERED:	25 February 2003
HEARING DATES:	5 November 2002 and 31 January 2003
JUDGMENT OF:	THOMAS J

CATCHWORDS:

APPEAL - JUSTICES - appeal against sentence - unlawful entry - stealing - receiving - assault police officer - drink driving - drive unlicensed - disorderly behaviour in a police station - whether the offender was entitled to be dealt with as a first time offender and on all the principles pertaining to juvenile offenders - whether magistrate erred in finding offences breached suspended sentence where offences pre-dated the suspended sentence imposed - whether magistrate erred by sentencing a juvenile offender in the Court of Summary Jurisdiction - whether magistrate failed to apply the principle of imprisonment as a last resort for young offenders -whether sentence was manifestly excessive - Justices Act 1928 (NT)

Sentencing of Juveniles (Miscellaneous Provisions) Act 2000 (NT), s 7
Juvenile Justice Act 1999 (NT), s 53(4C) & (4D)

Simmonds v Hill (1986) 38 NTR 31, *Nelson v Chute* (1994) 72 A Crim R 85, *C (a juvenile) v Gokel* (1999) NTSC 93, *Seears v Oldfield* (1985) 36 NTR 65, *R v Williams* (1992) 109 FLR 1, *Casey v Hayward* [1997] NTSC 51, *Yovanovic v Pryce* (1985) 33 NTR 24, applied.

REPRESENTATION:

Counsel:

Appellant:	K. Roussos & D. Lewis
Respondent:	M. Johnson

Solicitors:

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

Judgment category classification:	C
Judgment ID Number:	tho200304
Number of pages:	19

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

Nos. JA 61/02 (20202315);
JA 62/02 (20201949; JA 63/02 (20201952)
JA 64/02 (20200088); JA 65/02 (20112583)

Lansen v Marshall & Ors [2003] NTSC 5

BETWEEN:

MAXWELL GREGORY LANSEN
Appellant

AND:

ADRIAN ARTHUR MARSHALL
(JA 61/02 - JA 62/02)

and:
ANDREW JOHN MEREDITH
(JA 63/02 & JA 64/02)

and:
DARREN SCOTT KERR
(JA 65/02)

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 25 February 2002)

[1] This is an appeal from a sentence imposed in the Court of Summary Jurisdiction at Katherine on 31 May 2002.

[2] The appellant pleaded guilty to a number of charges including three charges of Unlawful Entry and two counts of Stealing that occurred between 18 October and 30 October 2000. One count of receiving that occurred on

1 February 2002. One count of Assaulting a Police Officer, Drink Driving, Drive Unlicensed and Disorderly Behaviour in a Police Station, all of which occurred on 7 February 2002 and an offence of Driving Under the Influence, Driving Whilst Disqualified and Resisting a Police Officer in the Execution of his Duty, which offence occurred on 14 February 2002.

[3] In addition to these matters the learned stipendiary magistrate dealt with the appellant for Breach of Suspended Sentence imposed on 5 September 2001.

[4] A schedule containing relevant file numbers, the offences and the sentence imposed has been prepared by Ms Roussos, counsel for the appellant. This schedule is of great assistance in understanding the relevant orders made by the learned stipendiary magistrate that are subject to appeal. I have set out the schedule hereunder:

FILE NOS:	SENTENCE:	
20200088	1. Unlawful Entry 2. Stealing 3. Unlawful Entry 4. Unlawful Entry 5. Stealing	Aggregate total six months imp. from 9 April 2002 suspended 18 month superv. Good Behaviour Bond
20112583	Breach Suspended Sentence	Revoke order suspending sentence 6 months impr. concurrent with sentence imposed on file 20200088

20201952	Counts 1&2 withdrawn 3. Receiving	 14 days imp cumulative
20201949	1. Assault Police 2. Exceed .150 3. Withdrawn 4. Withdrawn 5. Disorderly in Police Station 6. Drive Unlicenced	2 months imp. $300 + $20 VL 1 mnth imp. conc $150 + $20 VL MVDL 12 mnths Total 2 mnths imp cumulative on 20201952
20202315	1. Driving Under Influence 2. Driving without Due Care 3. Withdrawn 4. Resist Arrest	$200 + $20 VL $200 + $20 VL 1 mnth imp. cumulative on 20201949
TOTAL	9 months and 14 days imprisonment from 9 April 2002 suspended immediately 18 months supervised good behaviour bond.	

[5] The appellant was sentenced to nine months and 14 days imprisonment from 9 April 2002 suspended immediately on condition he be of good behaviour for 18 months and accept the supervision of Correctional Services.

[6] The appellant has filed Amended Grounds of Appeal which area as follows:

"1. The Learned Magistrate erred in law by sentencing the appellant in the Court of Summary Jurisdiction on file 20200088.

2. The Learned Magistrate erred in law by revoking the suspended sentence on file 20112583 in the Court of Summary Jurisdiction and not re-sentencing the appellant under the provision of the Juvenile Justice Act.

3. The Learned Magistrate erred in law and fettered his sentencing discretion by failing to sentence and re-sentence the Appellant according to the principles applicable to the sentencing of juveniles on file 20200088 and 20112583.

4. The Learned Magistrate erred in law and fettered his sentencing discretion by failing to sentence the Appellant according to principles applicable to youthful first offenders on the charges of assault police and disorderly in a police station on file 20201949 and resist arrest on file 20202315; and for the charge of receiving on file 20201952.

   (a) The Learned Magistrate placed greater emphasis on general and specific deterrence

   (b) The Learned Magistrate failed to adequately apply the principle of imprisonment as a last resort for young offenders of the nature of this Appellant on files 20201952; 20201949; 20202315

5. The Learned Magistrate erred in law in imposing a sentence, which was manifestly excessive in all the circumstances of the offender and the offence.

   (a) The Learned Magistrate failed to give sufficient weight to the Appellant's early pleas of guilty on all files and his full cooperation with law enforcement agents on files 20200088; 20201952

   (b) The Learned Magistrate failed to take into account or give sufficient weight to relevant subjective features of the Appellant.

[7] I deal with each of these grounds in turn.

Ground 1:

The Learned Magistrate erred in law by sentencing the appellant in the Court of Summary Jurisdiction on file 20200088.

[8] Mr Johnson, counsel for the respondent, concedes the magistrate was in error in dealing with these offences in the Court of Summary Jurisdiction. The offences occurred between 18 October and 30 October 2000. At the time of the offending the appellant was 17 years of age. Pursuant to s 7 Sentencing of Juveniles (Miscellaneous Provisions) Act, which came into force on 22 October 2000, the appellant should have been dealt with as a juvenile.

[9] Mr Johnson on behalf of the respondent, conceded that the magistrate was in error in the sentence imposed on file 20200088 as he dealt with the appellant as an adult. Further, it is conceded that as a result, he did not take into account, or did insufficiently take into account, the particular principles of sentencing applying to juveniles. In addition he should have dealt with the appellant as a juvenile first offender. In making this concession, which I will detail further in these reasons, it is nevertheless the thrust of submissions on behalf of the respondent that the sentence imposed on the appellant is not manifestly excessive and not outside the sentencing discretion of the learned stipendiary magistrate.

[10] In her submissions to the learned stipendiary magistrate on 14 April 2002, counsel for the appellant made the following submission (tp 9):

> "The court, though, dealing with 00088, sir, can deal with him as if he was a first-time juvenile offender and, further, sir, that the principles of rehabilitation and the different sentencing options that are open for the juvenile court, would enable the court, sir, to deal with Mr Lansen in a way that doesn't warrant a term of imprisonment actually suspended."

[11] I agree with the submission of counsel for the appellant that with respect to these offences the appellant was entitled to be dealt with as a first time juvenile offender and on all the principles pertaining to juvenile offenders (*Simmonds v Hill* (1986) 38 NTR 31 at 33; *Nelson v Chute* (1994) 72 A Crim R 85; *C (a juvenile) v Gokel* (1999) NTSC 93 at 4). I do not agree that the learned stipendiary magistrate failed to recognise that he was dealing with a juvenile offender and proceeded on any wrong principle.

Ground 2:

The Learned Magistrate erred in law by revoking the suspended sentence on file 20112583 in the Court of Summary Jurisdiction and not re-sentencing the appellant under the provision of the Juvenile Justice Act.

[12] The submission on behalf of the respondent is as follows:

> "As was the case with the charges on file 20200088, it seems clear that the Magistrate dealt with the Appellant on these charges while he was sitting as the Court of Summary Jurisdiction at Katherine on 31 May 2002. He sentenced the Appellant on these charges at the same time, and without seeking to close the Court of Summary Jurisdiction, as the charges in the other files. As a consequence, the Respondent submits that the Magistrate was in error in so doing."

[13] It would appear from a reading of his Worship's reasons for sentence that he revoked the order for suspended sentence on file 20112583 as a consequence of the offences committed in October 2000. His Worship stated (tp 8):

> "In relation to file 20112583, which is the breach file, I revoke that under (sic) suspending the sentence and I order that you be sentenced to six months' imprisonment. That sentence is to commence on 9 April this year. In relation to file 20200088, that's the offending back in October 2000, on counts 1 to 5, I impose an aggregate sentence and you are convicted and sentenced to six months' imprisonment. That sentence is to be served concurrently with the restored sentence on file 20112583. That is also to commence on 9 April this year."

[14] I did also refer to the Juvenile Court file 20112583 endorsed thereon under the magistrate's hand and dated 12 April, is the following endorsement "Breaches admitted - see files 20200088 adj 31/5/02 at 10am for sentence RIC".

[15] The six month suspended sentence had been imposed following a conviction in the Tennant Creek Juvenile Court on 5 September 2001. The conviction was for offences of Unlawful Entry and Stealing committed on 17 August 2001. The learned stipendiary magistrate referred to the fact that the earlier offences committed in October 2000 were not brought to the Court's attention on 5 September 2001 otherwise all matters could have been dealt with together.

[16] The offences committed in October 2000 pre-dated the suspended sentence imposed on 5 September 2001 for offences committed on 17 August 2001 and should not have been the basis for breaching the sentence imposed on 5 September 2001. In dealing with the matters in this way the learned stipendiary magistrate was in error.

[17] The submission by counsel for the respondent is that the magistrate was in error in the way in which he dealt with the Breach of Suspended Sentence on file 20112583 because as with the offences on file 20200088 he did not close the Court of Summary Jurisdiction and open the Juvenile Court.

[18] I considered there had been an error in breaching the suspended sentence on the basis of offences committed on a date before the suspended sentence was imposed. Because this was not how the matter was argued, I re-listed the matter to give counsel an opportunity to address me further on this issue. Both counsel agreed that the offences committed in October 2000 should not have been the basis of the breach of a suspended sentence which had been imposed on 5 September 2001.

[19] Mr Johnson submits that the passage quoted by me in paragraph 13 of this decision does not clearly indicate the learned stipendiary magistrate breached the suspended sentence imposed on 5 September 2001 on the basis of offences committed in October 2000.

[20] Mr Johnson and Mr Lewis who appeared to represent the appellant on 31 January 2003 are in agreement that the learned stipendiary magistrate was in error in the following passage of his reasons for sentence (tp 5):

> "On 12 April this year you pleaded guilty before me in relation to a number of matters; namely, on file 2200088 (sic) three unlawful entries of people's homes and two counts of stealing that occurred between 18 October and 30 October 2000; on file 20201952 one count of receiving that occurred on 1 February this year; on file 20201949 one count of assaulting a police officer, drink driving, driving unlicensed and disorderly behaviour in a police station, all of

> which occurred on 7 February this year; on file 20202315 an offence of driving under the influence of alcohol, driving whilst disqualified and resisting a police officer in the execution of his duty. Each of those offences occurred on 14 February.
>
> The prosecution outlined the factual scenario alleged in relation to each of those matters and you agreed with them. I don't intend to reiterate them again today, but, as a result of those scenarios, I found the relevant offences proved, and as a result of that finding of guilt, you came into breach of a suspended sentence that was imposed upon you on file 20112583 on 5 September 2001 at the Tennant Creek Court."

[21] The error which both counsel agree occurred is that the offences committed in October 2000 being file 20200088 were included in the matters the learned stipendiary magistrate found breached the suspended sentence and they should not have been so included.

[22] The submission by Mr Johnson is that although an error has been made it does not affect his overall submission that the sentence is not manifestly excessive and is not outside the sentencing discretion of the learned stipendiary magistrate.

[23] Mr Lewis submits that by virtue of the offences on file 20200088 being included in the offences that breached the suspended sentence on file 20112583 then the breach of suspended sentence should be set aside and this Court record no action taken on the breach.

Ground 3:

The Learned Magistrate erred in law and fettered his sentencing discretion by failing to sentence and re-sentence the Appellant according to the principles applicable to the sentencing of juveniles on file 20200088 and 20112583.

[24] I have partly dealt with this Ground in the reasons set out under Ground 1 and 2. The Juvenile Justice Act defines a juvenile as:

> "(a) a child who has not attained the age of 18 years; or
> (b) in the absence of proof as to age, a child who apparently has not attained the age of 18 years; .."

[25] I accept the principle which has been enunciated by this Court on a number of occasions that the date of the offence is the relevant date for the purpose of considering sentence. The fact that an offender has turned 18 between the date of the commission of the offence and the date he is sentenced does not affect his status as a juvenile. He must be dealt with as a juvenile for the purpose of imposing sentence if he was a juvenile at the time of the commission of the offence (*Seears v Oldfield* (1985) 36 NTR 65 cited by Mildren J in *R v Williams* (1992) 109 FLR 1 at 5).

[26] The appellant was a juvenile when he committed the offences in October 2000 (file 20200088). He should have been dealt with in the Juvenile Court as a first offender. With respect to the Breach of Suspended Sentence (file 20112583) he should have been dealt with in the Juvenile Court and pursuant to s 53(4C) and (4D) Juvenile Justice Act. In addition the magistrate was in error by finding that the suspended sentence on file

20112583 had been breached by commission of offences on file 20200088. The offences on file 20200088 were committed in October 2000 prior to the date of the suspended sentence imposed on 5 September 2001 on file 20112583. The offences on file 20200088 did not constitute a breach of the suspended sentence because they were committed at an earlier time.

[27] That error having been identified I agree that I should set aside the orders made by the learned stipendiary magistrate on file 20112583 and in lieu thereof make an order that no action be taken with respect to the breach of suspended sentence.

Ground 4:

The learned magistrate erred in law and fettered his sentencing discretion by failing to sentence the appellant according to principles applicable to youthful first offenders on the charges of assault police and disorderly in a police station on file 20201949 and resist arrest on file 20202315; and for the charge of receiving on file 20201952.

(a) The learned magistrate placed greater emphasis on general and specific deterrence

[28] The appellant was 18 years old at the time of committing offences on files 20201952, 20201949 and 20202315. He was 18 years old at the time of sentence on 31 May 2002.

[29] It is the submission of counsel for the appellant that the learned stipendiary magistrate placed greater emphasis on general and specific deterrence and retribution in the sentencing of the appellant than the sentencing principles applicable to youthful first offenders. Counsel for the appellant referred to

an unreported decision of Kearney J, *Christine Josephine Casey v Gillian Ruth Hayward* [1997] NTSC 51, in particular the following paragraphs (Butterworths Online p 6):

> "There is no sentencing 'tariff' for assault. The sentence in each case of assault has to be determined on the basis of the facts of the particular case, and the circumstances of the particular offender. In particular, not all assaults on Police officers are so serious as to warrant the imposition of a sentence of imprisonment. There is no presumption that the punishment for assault should be a sentence of imprisonment. …"

and page 9:

> "… The correct approach to sentencing for the offences of 'assault police' and 'resist arrest' is the same for any other offence. In accordance with the well established principle, a sentence of imprisonment is only imposed when all other sentencing options have been eliminated …"

and page 12:

> "… Too much weight was given to the accepted need for general deterrence in cases of assaults on Police officers, in the abstract, and insufficient weight was given to the facts of this particular assault, and to the circumstances of this particular youthful first offender. The need for general deterrence is always a significant sentencing consideration in cases of this type, but must always be weighed against the consideration of achieving the rehabilitation of a young first offender. …"

[30] With respect I agree with the principles of sentencing as stated by Kearney J.

[31] I do not agree with the submission by counsel for the appellant that in this case the learned stipendiary magistrate placed greater emphasis on general

and specific deterrence. The learned stipendiary magistrate made a number of references in the course of his reasons for sentence on the appellant's youth and the aspect of rehabilitation (tp 6):

> "… Because you are a young man, as Ms Roussos has quite rightly pointed out, there is still a major consideration in this matter for your rehabilitation. That basically means, Mr Lansen, doing something that would ensure or assist you to stay out of trouble in the future."
>
> ……..
>
> I'm sure for a young bloke like yourself there's a lot better things for you to be doing with your family and your friends in your community than spending time getting locked up and being isolated from them.
>
> The court has a responsibility in relation to these sorts of cases to bring a message home to you that this sort of conduct won't be tolerated, but as I've already mentioned, it also a responsibility to give you some assistance in relation to getting your life back on track and the sentence that I'm going to impose upon you today, I hope, will to some measure assist you to get yourself organised and assist you not to commit further offending.

and tp 8:

> "And finally, in dealing with you today I take into account those matters that I'm bound to under the Sentencing Act and I also, because two of these offences were committed when you were a juvenile, have regard to the general principles in relation to sentencing of young people."

[32] The learned stipendiary magistrate had the benefit of a Pre-Sentence Report with respect to this appellant. His Worship gave very anxious and careful consideration to structuring a sentence which would be effective in the rehabilitation process for this young offender.

[33] I would dismiss this ground of appeal.

Ground 4

(b) The Learned Magistrate failed to adequately apply the principle of imprisonment as a last resort for young offenders of the nature of this Appellant on files 20201952; 20201949; 20202315

[34] I accept the principle that Courts should be slow to imprison young offenders (*Yovanovic v Pryce* (1985) 33 NTR 24 at 27).

[35] I do not accept the submission that the learned stipendiary magistrate did not consider sentencing options consistent with the principles applicable to the sentencing of young offenders, especially with imprisonment as a last resort. The whole tenor of the reasons for sentence indicate the learned stipendiary magistrate was very conscious of the appellant's youth and the aspect of rehabilitation. His Worship called for a pre-sentence report and placed the appellant under supervision of an officer of the Correctional Services Department.

[36] In the course of his reasons for sentence the learned stipendiary magistrate stated on 31 May 2002 (tp 6 - 7):

> "In relation to the offending in February, the drinking and driving and assaulting the police officers, the court and the community view very seriously people who assault members of the police force while they're doing their job. It's not an easy job for them to do, particularly when they have to confront people who have had too much to drink, who are charged up and perhaps angry, not necessarily at the police officer, but maybe at themselves and the world generally.
>
> Be that as it may, people must be aware that that sort of conduct will not be tolerated and they can expect that they will be dealt with severely for it.

> Your conduct at the police station on 7 February is probably an extension of that anger that you were feeling and frustration and it was an opportunity there for you to take out your anger on those things that were around you. But nevertheless, it's not your property and you had no right to interfere with it or behave the way you did in the police station.
>
> In relation to the couple of drink matters that you've pleaded guilty to, I want you to remember that using motor cars is a serious thing and with it comes a lot of responsibility. Each of us don't have a right to use those cars, it's a privilege that's given to us by the broader community and with that privilege comes a lot of responsibility. That's why we all have to get a driver's licence so the community knows that we know the road rules and know how to drive those motor cars."

[37] His Worship was correctly, in my opinion, explaining to the appellant why the community regarded the offences the appellant had committed in February 2002 as serious offences. He then went on to explain the possible consequences of drinking and driving and the penalties provided in the Northern Territory for such offending.

[38] The learned stipendiary magistrate suspended the periods of imprisonment imposed with conditions which he explained as follows (tp 7 - 8):

> "… I'm going to order that you accept the supervision from the probation service because Mr McGuiver and those other people who are over there are there so that you can seek guidance from them and they'll help you make proper decision so far as you own life's concerned.
>
> I'm also going to order that if they think it necessary, and it seems to be an issue that's been raised both by Ms Roussos and in the presentence report, that you should go to FORWAARD or maybe to Rock Hole or BRADAAG in Tennant Creek to undergo some counselling in relation to alcohol so that you know really what it's all about, then you'll have to do that. I'm not going to include those conditions to further punish you but they're there to help you make the right decision."

[39] It is relevant to note under this ground of appeal that the offences on file 20201949 committed on 7 February 20092 of Assault Police, Drive Exceed .08, Disorderly Behaviour in a Police Station and Drive unlicenced, were serious offences. I will not repeat all of the facts alleged by the prosecution and agreed to before the learned stipendiary magistrate on behalf of the appellant. The actions of the appellant included driving a motor vehicle such as to cause alarm to numerous persons at Borroloola. The police were called. The appellant was driving with an alcohol reading of .181. He had never obtained a licence to drive. When he was arrested the assault upon the police officer included kicking an officer in the upper leg, striking the officer on the face with his hand, struggling, wildly kicking out and scratching. He was restrained by the use of handcuffs. He subsequently committed acts of vandalism in the cells at Borroloola Police Station including soaking the cell mattress under the shower, attempting to block the drains and urinating on the glass front cell door.

[40] With respect to the offences on file 20202315 of Drive Under the Influence, Drive Without Due Care and Resist Arrest, the agreed facts included driving a motor vehicle after consuming a large amount of beer. There were two 14 year old passengers in the car with him. He struck a parked car, drove through the locked gate of the Devil Springs Community. When arrested he smelt heavily of intoxicating liquor. He struggled with police who arrested him pushing against them and when he was placed in the rear of the police

van, kicked out with his feet striking a police officer on the chest and chin area.

[41] The offence of Receiving committed on 31 January 2002 involved receiving alcohol, tobacco and cigarettes which had been stolen by others from the Borroloola Inn and knowing them to have been stolen.

[42] These three sets of offences were all committed while the appellant was five months into the period of twelve months during which he had placed on him a condition to be of good behaviour following his release on a six month suspended gaol sentence.

[43] I do not consider this ground of appeal has been made out.

Ground 5:

The Learned Magistrate erred in law in imposing a sentence, which was manifestly excessive in all the circumstances of the offender and the offence.

(a) The Learned Magistrate failed to give sufficient weight to the Appellant's early pleas of guilty on all files and his full cooperation with law enforcement agents on files 20200088; 20201952.

[44] In his reasons for sentence, the learned stipendiary magistrate acknowledged the appellant's pleas of guilty at a "relatively early opportunity". The learned stipendiary magistrate referred to the fact that the pleas of guilty spared the community the cost of calling witnesses and spared the various witnesses from having to give evidence.

Ground 5

(b) The Learned Magistrate failed to take into account or give sufficient weight to relevant subjective features of the Appellant.

[45] The learned stipendiary magistrate was well aware the appellant was a youthful offender and referred to the fact that two of the offences were committed whilst the appellant was a juvenile.

[46] I have already referred to comments made by his Worship in addressing the appellant's need to have an opportunity for rehabilitation and the thought given by the learned stipendiary magistrate to the orders which would facilitate such rehabilitation.

[47] His Worship made reference to the appellant's home environment and to the pre-sentence report and CAAPS assessment that he had received.

[48] I do not consider the Grounds of Appeal set out in 5(a) or 5(b) have been substantiated.

[49] I now turn to consider the consequences of the errors made by the learned stipendiary magistrate that have been conceded by the respondent with respect to the offences on file 20200088 and 20112583, which are in effect that in dealing with these matters altogether, the learned stipendiary magistrate did not formally open the Juvenile Court to deal with the offences on these files and then formally open the Court of Summary Jurisdiction to deal with the other matters. If this does amount to an error then it is one of form rather than substance. From a complete reading of his

Worship's reasons for sentence it is quite clear that he was aware some offences were committed when the appellant was a juvenile and others when he had reached adulthood.

[50] In particular I refer to the learned stipendiary magistrate's comment on tp 8 of 31 May 2002:

> "And finally, in dealing with you today I take into account those matters that I'm bound to under the Sentencing Act and I also, because two of these offences were committed when you were a juvenile, have regard to the general principles in relation to sentencing of young people."

[51] I agree with the overall submission made by Mr Johnson for the respondent that irrespective of any such error, the magistrate's sentencing discretion has not miscarried. I am not persuaded that the sentences are manifestly excessive.

[52] I allow the appeal to the extent already stated in that I set aside the order breaching the suspended sentence on file 2012583 and in lieu thereof make an order that there be no action taken on the breach of suspended sentence.

[53] In all other respects the sentences imposed by the learned stipendiary magistrate are confirmed.

[54] This in effect means the total sentence imposed by the magistrate of nine months and 14 days imprisonment from 9 April 2002 suspended on condition he be of good behaviour for 18 months remains the same.

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