PARTIES:	SARAH ANNE GREGO
	v
	MARK ANDREW SETTER
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	9706926
DELIVERED:	19 December 1997
HEARING DATES:	17 December 1997
JUDGMENT OF:	Thomas J

REPRESENTATION:

Counsel:

Appellant:	D. Conidi
Respondent:	I. Rowbottom

Solicitors:

Appellant:	NTLAC
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
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tho97020

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

No. 9706926

IN THE MATTER OF the Juvenile Justice Act

AND IN THE MATTER OF an appeal against sentenced imposed by the Court of Summary Jurisdiction at Darwin

BETWEEN:

SARAH ANNE GREGO
Appellant

AND:

MARK ANDREW SETTER
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 19 December 1997)

This is an appeal against a sentence imposed by Mr R. Wallace SM, delivered on 18 July 1997.

The appellant entered pleas of guilty in the Court of Summary Jurisdiction to the following three of five charges on information:

Between the 17th day of March 1997 and 18th day of March 1997 at Darwin in the Northern Territory of Australia.

Count 1: unlawfully entered a building, namely, Darwin Apostolic Church with intent to commit an offence therein.

AND THAT the said unlawful entry involved the following circumstances of aggravation:

(i) That the said Sarah Grego intended to commit the crime of stealing therein;
(ii) That the said unlawful entry occurred at night-time.

Contrary to Section 213 of the Criminal Code.

Count 3: did steal guitar, CD player, headphones, tape eraser, microphones and audio cassettes, valued at $650, the property of Peter Blasch:

Contrary to Section 210 of the Criminal Code.

Count 5: unlawfully set fire to property, namely a wooden cross, carpet and contents of a store-room, that was so situated that a building, namely the Apostolic Church, was likely to catch fire from it:

Contrary to Section 240(b) of the Criminal Code.

The learned stipendiary Magistrate imposed the following sentences:

"On charge number 1 the unlawful entry, on that charge you will be sentenced, convicted and sentenced to 4 months detention. On charge number 3 the stealing charge you will be convicted and sentenced to 4 months detention. And on charge number 5 the attempt arson charge you will be sentenced, convicted and sentenced to 12 months detention. All of those sentences are to be concurrent and suspended forthwith, on your entering into a recognizance of $1000 in your own recognizance to be of good behaviour for 2 years. That recognizance is to be supervised which is to say you will be supervised by a - I'm not sure what they're called these days, they used to be called juvenile justice workers, probation officers, whatever the term is.

You will have to report from time to time to your supervisor. Your supervisor is empowered to give you certain directions as to your residence, reporting, employment, education, associates and you have to obey those directions. If you don't obey the directions you will be in breach of the terms of your recognizance, your bond, your promise, the terms of your suspended sentence. You are not to associate [or] to have any contact with Charmaine Gallagher. I'm making that a separate condition, whatever your supervisor thinks, I don't think you should have any contact whatsoever with Charmaine Gallagher for the period of that bond which is 2 years. And you're not to consume any alcohol for the period of that bond, which is 2 years which is going to carry you a bit past your 18th birthday, not much. And you can put up with not having a legal drink for a few days that are involved in that matter.

If you are willing to sign that recognizance that will be the order of the court in relation to those. If you're not you can go off to detention for 12 months."

From the decision the appellant has lodged a Notice of Appeal and Amended Grounds of Appeal filed 17 December 1997, which states:

Ground 1: The learned sentencing Magistrate erred in that he failed to correctly apply the principles of sentencing relating to juvenile offenders.

Ground 2: The learned sentencing Magistrate erred in applying a sentencing decision relating to an adult when sentencing a juvenile.

Ground 3: The learned sentencing Magistrate failed to take sufficient account of the appellants:

(a) age;

(b) personal disposition at the time of committing the offences as compared to her disposition at the time of sentencing;

(c) efforts towards her rehabilitation;

(d) lack of prior convictions;

(e) remorse;

(f) plea of guilty.

Ground 4: That the sentence was manifestly excessive in all the circumstances.

The facts alleged by the prosecution were admitted by counsel for the defence before the learned stipendiary Magistrate and are as follows:

> "… during the night of Monday, 17 March 1997, the defendant in company with an adult, Charmaine Anne Gallagher, went to the Apostolic Church, 82 Leanyer Drive. They gained entry through an unlocked sliding window. Once inside they removed the following property, one court bass guitar, one Sony CD player, one pair of Hannimex headphones, one tape eraser, two microphones and seven audio cassettes. They left the premises and took the property to 2 Nandina Court, Leanyer, which was the residence of Charmaine Gallagher at the time. On the way to Charmaine Gallagher's premises the Juvenile suggested that they return to the church and cause some damage to it by fire.
>
> They returned to the church and with them in their possession they had two large rolls of toilet paper and lighter fluid. They again gained entry to the church through the unlocked sliding window. Once inside they set fire to a fabric cross situated above a piano which caused the piano to catch fire. The defendant and the co-offender also rolled the toilet paper out across the room and set fire to it causing a large amount of damage to the carpet. The defendant then opened the door to a store room, placed toilet paper in the doorway, put some lighter fluid on the paper and lit it. The storeroom contents were completely destroyed. Both persons then left the church.
>
> Police attended at 2 Nandina Court on Wednesday, 26 March 1997, with a search warrant. All of the property which was stolen was recovered. It was immediately surrendered to the police by Charmaine Gallagher. During a subsequent record of interview the defendant made full admissions to the offences. She stated that she only decided to do the burning after doing the unlawful entry. In her record of interview she stated that she had no intention of burning down the building only that she intended to burn the contents of the storeroom, the carpet and the cross, which she set alight.
>
> At page 9 of her record of interview the defendant stated: 'When I seen it on the news I couldn't believe it because I'm positive what we did wasn't

enough to burn like it had inside that storeroom'. The value of the damage to the church is actually $39,929. This includes the value of the piano which was almost $10,000 worth. All amounts except for $3532 have been paid by the insurer to the church. The $3532 is personal property damaged in the fire, Your Worship. That has not been recovered. Damage was limited due to the early notification of the fire by passers by and prompt action by the fire service."

I turn now to consider each of the grounds of appeal:

Ground 1

The learned sentencing Magistrate erred in that he failed to correctly apply the principles of sentencing relating to juvenile offenders.

The principle in sentencing juveniles are set out in two decisions, to which I was referred, *Simmonds v Hill* 38 N.T.R. 31 and *M v Waldron* 56 N.T.R. 1.

See also *GDP* (1991) 53 A Crim R 112 at 116:

"The approach to be adopted in the sentencing of young offenders has been discussed in a number of cases. In *Wilcox* (unreported, Supreme Court, NSW, 15 August 1979), Yeldham J remarked during the course of sentencing a young offender that "in the case of a youthful offender … considerations of punishment and of general deterrence of others may properly be largely discarded in favour of individualised treatment of the offender, directed to his rehabilitation". His Honour relied upon *Smith* [1964] Crim LR 70, where it was said: "In the case of a young offender there can rarely be any conflict between his interest and the public's. The public have no greater interest than that he should be come a good citizen." This principle was also adopted by Hunt J in *Bellavia* (unreported, 16 August 1980).

Subsequent decisions of this Court, however, suggest that considerations of general deterrence should not be ignored completely when sentencing young offenders. In *Broad* (unreported, 30 March 1984), Street CJ

referred to "the necessity to deter antisocial conduct … commonly manifested by vandals in this city in current times" but also was

> "concerned that for a young man of 19 with a clear earlier record and a supportive family background, importing as it does the prospects of real confidence in rehabilitation, a custodial sentence does not reflect the appropriate approach to be taken".

In *C, S and T* (unreported, Court of Criminal Appeal, NSW Gleeson CJ, Allen and Studdert JJ, 12 October 1989), Gleeson CJ accepted a submission that

> "in sentencing young people … the consideration of general deterrence is not as important as it would be in the case of sentencing an adult and considerations of rehabilitation should always be regarded as very important indeed."

I am not persuaded that the learned stipendiary Magistrate failed to apply these principles. He was clearly aware he was dealing with a juvenile who had "committed a very serious crime". In his remarks on sentence, his Worship placed great stress on the aspect of rehabilitation. I refer in particular to the following passage in the learned stipendiary magistrate's reasons for decision at p7:

> "However, I want you to understand, Ms Grego that these crimes are serious. That you cannot hope to re-offend … in this way or anything like that way and get away with it. Not that you're getting away with it this time. In my view the unlawful entry, the stealing and in particular the attempt arson offence are punishable only by sentences … involving the loss of liberty on your part, and only the improvement and your behaviour that's been spoken of by your mother, and by the referee … Doctor Walton and by exhibit 1 the reference letter from Ms Simone Dayer. Only the improvement of your behaviour gives me a hope, and it's quite a strong hope in this case, that you will be able to stay out of trouble and that society would be better served by letting you get on with your own rehabilitation with the assistance of your family and a lot of other people."

Mr Conidi, counsel for the appellant, conceded that the aspect of general deterrence was a factor that could not be ignored when sentencing a juvenile. I consider general deterrence does have a role to play in the sentencing of a juvenile offender, and adopt, with respect, the remarks of Mildren J in *Forrester v Dredge* (unreported) No. JA78 of 1996, delivered 19 February 1997 that:

> "general deterrence does have a role to play even in the sentencing of juveniles and the weight to be given to it must vary according to the circumstances of the case, including the nature of the charge."

Overall, however, the consideration of general deterrence is not as important in the sentencing of juveniles as it is in the case of sentencing an adult. When sentencing a juvenile, considerations of rehabilitation should always be regarded as very important, *GDP* (supra).

His Worship, with respect, quite correctly stresses the seriousness of the offence but there is nothing in his remarks on sentence to indicate he placed too great an emphasis on the aspect of punishment and deterrence.

This ground of appeal is dismissed.

Ground 2

The learned sentencing Magistrate erred in applying a sentencing decision relating to an adult when sentencing a juvenile.

During the course of his remarks on sentence, the learned stipendiary Magistrate referred to a decision of this Court, *The Queen v Lance Sobieralski* (unreported) No.136 of 1992, delivered on 14 September 1993. Lance Sobieralski was 17 years of age and, accordingly, dealt with by the Court as an adult. The learned stipendiary Magistrate made reference to a number of aspects of this decision and quoted an excerpt from p47:

> "The offences committed in August of 1992 were committed on church and school property. Churches and schools are vulnerable to vandalism and to theft. I accept the submission made by the Crown that such offences give rise to considerable concern in the community. It is, in effect, an attack upon community property and community property which, by its very nature, is very vulnerable. I accept the community views these offences with some horror and that the community looks to the courts to punish severely those persons responsible for the offending."

In my opinion, counsel for the appellant has misconstrued the learned Magistrate's reasons for sentence on this aspect. The sentencing remarks of the sentencing Magistrate indicate he was making reference to the case of *Lance Sobieralski* (supra) because it was a like offence and to draw to the attention of the appellant how seriously the Court and the community regarded the offences to which she had pleaded guilty. In doing this, he drew to the attention of the appellant the sentence that was imposed on a 17 year old offender whom the Court sentenced as an adult committing a similar offence. This was, in effect, a warning to the appellant as to the serious consequences which could flow from such type of offending.

I am not persuaded that his Worship applied the sentencing principles relevant to an adult when he imposed sentence on the appellant, merely because he referred to a decision of this Court for a similar type of offending committed by a 17 year old adult. His Worship was clearly conscious of the appellant's age and the desirability, if possible, of avoiding a term of actual detention.

This ground of appeal is dismissed.

Ground 3

The learned sentencing Magistrate failed to take sufficient account of the appellants:

(a) age;

(b) personal disposition at the time of committing the offences as compared to her disposition at the time of sentencing;

(c) efforts towards her rehabilitation;

(d) lack of prior convictions;

(e) remorse;

(f) plea of guilty.

In his Worship's remarks on sentence, he indicates he was aware the appellant had "virtually no previous offending history". He took into account

her age, her plea of guilty, the changes she had affected to her own life since the commission of the offences, and her own efforts at rehabilitation.

During the course of submissions on the plea of guilty, the learned stipendiary Magistrate heard evidence from the appellant's mother, Ms Paula Grego. Whilst I do not propose to canvas this evidence in detail, a reading of the transcript of the evidence reveals the significant problems in the appellant's life at that time, which included problems with alcohol and with drugs. Mrs Grego gave evidence relating to the facts which lead to her seeking a restraining order against her daughter, her concerns about her daughter's association with Charmaine Gallagher, and the efforts her daughter had made to rehabilitate herself since committing the offences. In addition, the learned stipendiary Magistrate had before him a report from psychiatrist, Dr Lester Walton, dated 9 July 1997 (Exhibit 2). His Worship carefully analysed the evidence given by Ms Grego in the course of his reasons for sentence stated at transcript p7-8:

> "In reference to the evidence given by your mother, I pay particular regard to that. Anyone hearing me say that would be entitled to scoff at the concept and would be entitled to think that any mother is likely to speak up in these circumstances for her daughter. I don't think that's the case between you and your mother. I have seen both of you on various occasions in connection with the domestic violence orders taken out by her against you, and I don't think they ever came to much. And I have heard her give her evidence today. She's not a woman who would speak up for you, would not say that she had hope for you, would not say you'd changed unless she believed those things to be thoroughly true.
>
> She seems to be of the view that even if you have contact again with Charmaine Gallagher you wouldn't be tempted to re-offend. In that

> respect I dare say she's being overly optimistic. I accept that you won't be tempted to re-offend straight away, but in my view if you have contact with Charmaine Gallagher or anyone else of Charmaine's inclinations, chances are you'd be back on the drink and the drugs in a fairly short time and one thing thereafter would lead to another. To some extent I can guard against those risks by these conditions I propose to place on your suspended sentence. And I intend to do the best I can."

His Worship acknowledged the appellant's own efforts towards rehabilitation. Mr Conidi on behalf of the appellant complains that the learned stipendiary Magistrate has not given the appellant sufficient credit for her maturity and ability to deal with her own problems and rehabilitate herself. Specifically, the appellant asks that the condition relating to her not associating with Charmaine Gallagher be deleted from the conditions of suspended sentence of detention. In my opinion, his Worship, whilst acknowledging the efforts the appellant had made towards her own rehabilitation, was making a realistic appraisal of the support and assistance she would need to continue that rehabilitation in the future. In totally suspending the period of detention, his Worship was giving his expression of confidence in the appellant's ability to be rehabilitated. The conditions he imposed were neither onerous or excessive, but rather carefully constructed to tailor a sentence appropriate to the offence and to the offender.

In my opinion, the sentence imposed indicates his Worship did take sufficient account of all of the matters referred to under Appeal Ground 3.

This ground of appeal is dismissed.

Ground 4

That the sentence was manifestly excessive in all the circumstances.

The offences themselves, involving as they did an attack on church property, and a considerable amount of loss and damage, were deserving of a period of detention. I am not persuaded that a period of 12 months detention is manifestly excessive.

In making the sentences concurrent, his Worship had regard to the principle of totality. The learned stipendiary Magistrate expressed his concern to keep the appellant from serving a term of actual detention. To facilitate her rehabilitation he gave careful thought to the conditions of a fully suspended sentence to assist the appellant in that rehabilitation process. These conditions are not onerous or excessive in the circumstances.

I am not persuaded the sentence was, in all the circumstances, manifestly excessive.

The appeal is dismissed.

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