CITATION:	*ZL v Lyons* [2024] NTSC 49
PARTIES:	ZL
	v
	LYONS, Mark Richard
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	LCA 21/2023 (22321968)
DELIVERED:	4 June 2024
HEARING DATES:	30 April 2024
JUDGMENT OF:	Blokland J

CATCHWORDS:

APPEAL – Youth Justice Court – sentencing – appeal against the imposition of a conviction – offender placed on good behaviour bond for 12 months – domestic violence order imposed – offence of assault with circumstances of aggravation – whether Local Court Judge erred by characterising the offending as 'very adult offending' and imposing a conviction – whether conviction was manifestly excessive - appeal allowed – on ground one – ground two manifestly excessive not made out – conviction set aside.

Statutes
Criminal Code 1983 (NT), s 188(2).
Criminal Records (Spent Convictions) Act 1992 (NT)
Sentencing Act, s 78DD
Youth Justice Act 2005 (NT), s 3(c), s 144(1), s 83(1)(f)

AEM, KEM and MM [2002] NSWCCA 58; *AK v The Queen* [2021] NTCCA 4; *Bloomfield* [1999] NTCCA 137; *Cook v Nash and Mc Garvie* [2007] NTSC 14; *Cranssen v The King* (1936) 55 CLR; *DD v Cahill* [2009] NTSC 62; *DN v Burns* [2020] NTSC 12; *Edmond & Moreen v The Queen* [2017] NTCCA 9; *Forrest v The Queen* [2017] NTCCA 5; *Girrabul v The Queen* [2003] NTSC 101; *Gordon* (1994) 71 A Crim R 459; *Hawkins* (1993) 67 A Crim R 64; *KT v The Queen* (2008) 182 A Crim R 571; *LA v Kennedy* [2007] NTSC 36; *Nichols* (1991) 57 A Crim R 391; *Pham & Lee* (1991) 55 A Crim R 128; *R v GDP* (1991) 53 A Crim R 112; *R v Goodwin* [2003] NTCCA 9; *R v Smith* [1964] Crim LR 70; *R v Wurramara* [1999] NTCCA 45; *Richards v The Queen* [2024] NTCCA 14; *SE v Mancini* [2023] NTSC 96; *TM v R* [2017] NTCCA 3; *Verity v SB* [2011] NTSC 26; *Wild v Balchin* [2009] NTSC 53; referred to.

REPRESENTATION:

Counsel:

Appellant:	J. McHugh
Respondent:	T. Gooley

Solicitors:

Appellant:	Territory Criminal Lawyers
Respondent:	Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	BLO2406
Number of pages:	25

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

ZL v Lyons [2024] NTSC 49
No. LCA 21/2023 (22321968)

BETWEEN:

ZL
Appellant

AND:

MARK RICHARD LYONS
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 4 June 2024)

[1] This is an appeal against the imposition of a conviction by the Youth Justice Court sitting in Tennant Creek on 14 August 2023. The appeal is brought pursuant to section 144 (1) of the *Youth Justice Act* 2005 (NT) ('the Act').

Proceedings in the Youth Justice Court

[2] On 14 August 2023 the appellant entered a plea of guilty to one charge of aggravated assault. The circumstances of aggravation were that the assault caused harm and the victim was threatened with an offensive weapon, namely rocks, contrary to s 188(2) of the *Criminal Code* 1983 (NT).

[3] The appellant was also dealt with for one charge of a contravention of a domestic violence order. The protected person was his mother, not the victim of the aggravated assault. It is not clear from the transcript what the particulars of the contravention were. From the facts read by the prosecutor it is apparent he failed to comply with an order prohibiting him from being with his mother when he was intoxicated. Police attended a disturbance and the appellant returned a positive reading of .113 grams of alcohol in 210 litres of breath in contravention of the order.[1]

[4] On the charge of aggravated assault the appellant was sentenced pursuant to s 83(1)(f) of the *Youth Justice Act*, to enter a good behaviour bond for a period of 12 months. A conviction was recorded. Aside from the obligation to be of good behaviour, no other conditions were imposed by the Youth Justice Court. Additionally, the sentencing Judge imposed a domestic violence order on the appellant for a period of 12 months. The victim of the aggravated assault was the protected person.

[5] On the contravention of the domestic violence order for which his mother was the protected person, the Youth Justice Court ordered he be of good behaviour for 6 months pursuant to s 83(1)(f) of the *Youth Justice Act*. No conviction was recorded for that offence.

---

1 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023 at 6.

[6] The facts of the offending are set out in the agreed facts and may be summarised briefly as follows.[2]

[7] At the time of the offending, the appellant was 16 years old and the victim was 15 years old.

[8] The appellant and the victim had been in what was described as a 'domestic boyfriend – girlfriend' relationship for a period of approximately two years.

[9] On 10 July 2023, the appellant and the victim walked from an address in Tennant Creek where the appellant asked her for cigarettes. She declined to give him one. This angered the appellant who located some nearby rocks and started throwing them at the victim's back and legs. One of the rocks struck her ankle. This behaviour continued as the pair continued walking.

[10] Once the appellant and victim had reached the Tennant Creek pool, the appellant again asked the victim for a cigarette. She declined. This refusal further angered the appellant. He walked up to victim and punched her in the face with a closed fist. The victim attempted to flee. The appellant picked up another rock and threw it at the victim which struck her to the back of her head. This caused her head to bleed and her ears to ring.

[11] The appellant then chased her into a nearby alleyway and once he had caught up with her, he punched her in the face again. She again fled and ran

---

2 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023, Exhibit P1 'Agreed Facts'.

home where she told her mother what had occurred. Police were notified and took a body worn footage statement from the victim.

[12] As a result of the offending the victim suffered bruising on her ankle and a cut on the back of her head.

[13] The appellant presented himself in to the Tennant Creek Police station in relation to the offending on 11 July 2023, the day after the assault.

[14] The appellant's counsel told the Youth Justice Court the cigarettes were the appellant's and he was trying to retrieve them; he was upset and he overreacted.[3] His counsel accepted that the use of weapons elevated the objective seriousness of the assault and that it would have been 'quite scary' for the victim. However, the Court was asked to have regard to the injury being 'quite minimal'; a small cut to the victim's head and bruising to her ankle.[4]

[15] Counsel before the Youth Justice Court told the sentencing Judge the appellant was sorry and emphasized that this was supported by the fact he presented himself to police. He also consented to the imposition of a domestic violence order protecting the victim, notwithstanding they were no longer together.[5]

---

3 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023 at 6.

4 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023 at 7.

5 Ibid.

[16] In terms of the subjective features, the Youth Justice Court was told the appellant was 16 years old, he grew up in Tennant Creek, Alice Springs and Ampilatwatja. His parents separated when he was very young. There had been Territory Families involvement with him. He had more recently been living stably with his mother. He was not currently attending school but was interested in working, although he was not sure what type of work. His interests were football, he trained two nights per week and also played video games.[6]

[17] His criminal history was limited. The Information for Courts[7] showed he was dealt with in the Youth Justice Court in 2021 and 2022 for property offending. All of the previous offending was committed in 2021. However, it was not an extensive record. There were no previous findings of guilt for offences of violence.

[18] The sentencing Judge's remarks directed to the aggravated assault charge were as follows:

> But that trouble with [J] is serious trouble. Assaults on people are considered to be really bad, and when they occur where people are in what's called a domestic relationship like you were with her, as a boyfriend and girlfriend, they're considered particularly serious.[8] The maximum penalty for assaulting someone is up to 5 year's imprisonment. So this is very adult like behaviour, although it's just over some cigarettes. And when you think about it, it's pretty stupid to be behaving that way towards another young person who you're supposed to be in a relationship with and care about.

---

6 Ibid.

7 *Police v ZL*, Transcript Youth Justice Court, 14 August 2023 Exhibit P2.

8 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023 at 8.

> I do note that you did the right thing and presented yourself to the police station, to take responsibility for the trouble, and you've done that today as well by entering a plea of guilty. So I'm going to take that into account, as well as the fact that although you've been to court before you've never been to court for any of this sort of trouble. And that's a good thing too that you're taking responsibility.[9]
>
> [His Honour referred to the breach of the domestic violence order concerning his mother]
>
> As far as the aggravated assault is concerned, that is a much more serious matter, as I've tried to explain to you, and although it's the first occasion you're before the court for that sort of offending, it is in my view sufficiently serious in all of the circumstances to make a big statement about it and record a conviction.[10]

Grounds of Appeal

[19] The two grounds of appeal overlap considerably. Ground 1 is that the Youth Justice Court erred in recording a conviction. Ground 2 is that the sentence passed by the Youth Justice Court by the imposition of a conviction was manifestly excessive.

[20] If the imposition of the conviction with a good behaviour bond was in error, it potentially goes some way towards making out ground 2, the manifestly excessive ground. However, as is well accepted, the ground manifestly excessive, absent identifiable error, requires particular findings that a sentence was effectively out of range once all of the relevant factors were considered.

---

9 Ibid.

10 *Police v ZL*, Transcript, Youth Justice Court, 14 August 2023 at 9.

[21] What must be kept in mind is notwithstanding the obvious gravity of domestic violence offending, the use of rocks as a weapon, and the ongoing nature of the assault by punches to the face, the appellant was to be dealt with as a youth, and afforded the protections the *Youth Justice Act* provides as a matter of law. However, the sentencing exercise requires balance between the need to rehabilitate young offenders with the overall need to utilise the principles of sentencing in order to protect the community as the criminal law is designed to do.

Ground 1: That the Youth Justice Court erred in recording a conviction

[22] Without more, on its face, this ground fails to identify how or why the recording of a conviction was in error. However, the written submissions provide particulars and clarify that the error alleged was the Youth Justice Court proceeded on an unsound basis[11] when exercising the discretion to record a conviction. More particularly, it was submitted the sentencing Judge classified the offending as "very adult-like" and that in exercising the discretion to record a conviction the sentencing Judge did not take into account the subjective case, save for the lack of previous findings of guilt for violence in the appellant's history. Further, it was submitted the sentencing Judge did not undertake consideration as to whether a lesser sentencing option was available; did not consider whether the imposition would personally deter the appellant; did not consider the potential of the

11 *Cranssen v The King* (1936) 55 CLR at [520].

mandatory sentencing regime for future offending[12] and that the Judge exercised the discretion without taking 'particular care' as to the future impacts of the imposition of a conviction. Consequently, it was argued, the Judge exercised the discretion on an unsound basis.[13]

[23] On behalf of the respondent the relevant principles, including examples from recent cases dealing with youths have been drawn to the Court's attention.[14] The appellant essentially relies on the same authorities. From the many cases provided by counsel, a well-established consensus regarding the sentencing of youths can be discerned and more particularly some consensus about the exercise of the discretion to impose a conviction.

[24] As the respondent pointed out, the objects of the *Youth Justice Act* are set out in s 3; the principles are set out in s 4; s 81 provides the general principles and considerations to be applied to youths and s 83 provides the various sentencing options open to a court.

[25] The principles do not direct any particular outcome. The sentencing process is a balancing exercise. However, s 81 requires a court to have regard to the general principles set out in s 4. Those principles are important in any sentencing exercise involving youths.

---

12 As provided by the *Sentencing Act*, s 78DD as it then was. That provision has now been repeated.

13 Appellant's outline of submissions, 31 October 2023, [19]-[27].

14 Outline of submissions on behalf of the respondent, 19 April 2024. For example, *R v Goodwin* [2003] NTCCA 9; *AK v R* NTCCA 4; *TM v R* [2017] NTCCA 3; *SE v Mancini* [2023] NTSC 96; *Verity v SB* [2011] NTSC; *DN v Burns* [2020].

[26] The principles which seem most pertinent to this case include: s 4(a) ‘if a youth commits an offence, he or she must be held accountable and encouraged to accept responsibility for their behaviour.’ The appellant presented to the police station the day after the offending, was charged, pleaded guilty, was sentenced and additionally consented to the imposition of a domestic violence order. Regardless of the formal conviction, the appellant was held accountable. This principle was well acknowledged in the proceedings overall.

[27] Section 4(b) ‘the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in a socially responsible way.’ The good behaviour bond and the imposition of the domestic violence order following the plea of guilty aligns with this principle. It is questionable whether the imposition of a conviction at his age would further serve this principle.

[28] The principle set out in s 4(b) would be more appropriately served if the courts had more programs at their disposal to deal with youths who offend in this way. At sixteen years old the appellant and other youths who have offended by assaulting their girlfriends should be subject to orders requiring them to engage in age appropriate behavioural change programmes and programmes to foster an understanding of respectful relationships. The provision of such programmes is a matter for the executive, but engagement with such programmes would seem to be more effective for youths than other forms of penalty. It may go some way to reducing the risks of re-

offending. It is unlikely that any such programme was available to the Youth Justice Court sitting in Tennant Creek. Nothing was put to the sentencing Judge which would serve the principle under s 4(b) to provide him with 'the opportunity to develop in a socially responsible way'. Section 4(p) of the *Youth Justice Act* implies that programmes will be available that are 'culturally appropriate; and promote health and self-respect; and foster a sense of responsibility and encourage attitudes and the development of skills that will help them to develop their potential as members of society'. The absence of suitable programmes is not a matter any court can fix during sentencing proceedings and cannot result in a more severe sentence.[15]

[29] Section 4(d), 'a youth must be dealt with in the criminal law system in a manner consistent with his or her age or maturity and have the same rights and protections before the law as would an adult in similar circumstances.' ZL's rights and protections were protected. ZL was 16 at the time of the offending. He was not in the category of a very young offender, but neither was he on the cusp of adulthood. The reason, as far as can be ascertained, for the offending (cigarettes) strikes as a sign of immaturity although within an overall offending context of domestic violence. It is not uncommon for adult males to behave in an immature way in the context of such offending. Nothing in his background, so far as can be ascertained would lead to a conclusion that he was mature for a 16 year old. Although he and the victim were in a domestic relationship, it was described in the facts as 'boyfriend-

15 *Youth Justice Act*, s 81(4).

girlfriend' which does not indicate a relationship of maturity or where as a party to the relationship the appellant had a level of maturity akin to an adult.

[30] Section 4(e) 'a youth should be made aware of his or her obligations under the law and the consequences of contravening the law.' As above under s 4(a) after the appellant presented himself at the police station, attended court, pleaded guilty and was sentenced, his obligations and the consequences of breaching were made clear. The sentencing Judge used age appropriate language, and skilfully explained what a domestic relationship was and how the law treats such assaults seriously. He also told the appellant he would make a "big statement" about it and impose a conviction, potentially going some way to explaining what a conviction was to a youth who may not understand what it was.

[31] Section 4(f) 'a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community.' Nothing in the sentencing proceedings or the ultimate sentence prevented the appellant's re-integration into the community. The conviction *may* operate negatively in terms of finding employment or engaging in activities which require a person to be conviction free. The conviction would not, for instance be spent for five years. The Judge was not told the appellant had any particular plan to be employed, but rather that he had expressed an interest in working. Nevertheless from 16 a youth's circumstances and maturity may change significantly.

[32] Section 4(g) ‘a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth’s offence and interest of the community.’ The sentencing Judge’s approach aligned with this principle. However, whether the imposition of a conviction was required to vindicate the rights and needs of the victim and the community is one of the issues at the heart of the appeal. The rights of the victim were substantially protected by the proceedings being brought and the imposition of a domestic violence order.

[33] Section 4(h) ‘family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened.’ Nothing in the proceedings or the sentence would contravene this principle. The Youth Justice Court was told the appellant was living stably with his mother.

[34] Section 4(i) ‘a youth should not be withdrawn unnecessarily from his or her family environment and there should be no unnecessary interruption of a youth’s education or employment.’ The appellant was not attending school or work. He was interested in working but was not sure what he wanted to do. There was no interruption of education or employment but some potential for an adverse impact due to the imposition of a conviction.

[35] Section 4(n) ‘punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.’ The proceedings,

sentence and the imposition of a domestic violence order well served this principle. As above, tailored programmes directed to behavioural change and understanding respectful relationships would assist to strengthen the development of social responsibility.

[36] Essentially the courts take an approach consistent with the *Youth Justice Act* which pays due regard all relevant principles and factors referred to in ss 4 and 81. Section 81 draws upon similar sentencing principles as are found in the common law and the *Sentencing Act* 'as modified' by the *Youth Justice Act*. Section 81(4) requires a court to give the youth opportunities to engage in programmes but the absence of such programmes must not result in the youth being dealt with more severely. Rehabilitation is a *key* consideration, but it by no means follows that on the basis of rehabilitation alone, no record of conviction will be the appropriate order.[16] It is a question of balancing all of the relevant factors before the discretion is exercised.

[37] The respondent drew attention to the series of cases which establish the principle that when a youth commits offences like an adult, he or she may be sentenced in the way that an adult is sentenced. In *The Queen v Goodwin*[17] the Court of Criminal Appeal (Angel ACJ, Mildred J and Priestley AJ) said:

> There is a well-established line of authority to the effect that in the case of serious offending the youth of the offender is not the prevailing consideration in sentencing. A number of the cases are collected in the judgment of this Court in *Serra* (1996) 92 A Crim R

16 *Wild v Balchin* [2009] NTSC 53.

17 [2003] NTCCA 9 at [11].

> 511; see also *Bloomfield* [1999] NTCCA 137 at paras 21 and 34. It is well established that if a young offender commits a criminal offence like an adult then that justifies sentencing him or her in a fashion more akin to an adult. Where crimes of considerable gravity are committed the protective function of the criminal court would cease to operate unless denunciation, general deterrence and retribution are significant sentencing considerations even in respect of juveniles: *Pham & Lee* (1991) 55 A Crim R 128 at 135; *Nichols* (1991) 57 A Crim R 391 at 395; *Hawkins* (1993) 67 A Crim R 64 at 66*; Gordon* (1994) 71 A Crim R 459 at 465; *AEM, KEM and MM* [2002] NSWCCA 58 paras 95-102.[18]

[38] Additionally, the respondent submitted that given the particular prevalence of violence inflicted by some Aboriginal men on their partners, the Court must, in accordance with *R v Wurramara*[19] place strong emphasis upon denunciation, general deterrence and the need to protect other Aboriginal women from such violence. This has been held in *SE v Mancini*[20] to be 'particularly important in relation to youthful offenders and more so where the victims are also very young. Other youths need to be made aware that if they engage in this kind of conduct they are liable to be sentenced to a term of detention, notwithstanding they are youths.' I agree with the sentiment expressed by his Honour, at the same time, plainly each case must still be considered on an individual basis. Further, the issue of prevalence of certain types of offending must be considered with care. In terms of youths, it has

---

18 See also *SE v Mancini* [2023] NTSC 96; *AK v R* [2021] NTCCA 4 quoting *KT v R* [2008] NSWCCA 51 at [25].

19 [1999] NTCCA 45.

20 [2023] NTSC 96, Hiley AJ.

been held that prevalence continues to have some relevance to general deterrence but should not be the sole reason for imposing a conviction.[21]

[39] In *SE v Mancini*, after pleading guilty to a charge of aggravated assault with some similarities albeit somewhat magnified gravity than here, a sentence of detention of 15 months (fully suspended) was imposed. No conviction was recorded. The appellant there had no previous convictions. The appeal was directed to the imposition of a sentence of detention, rather than the issue of conviction (or not) and was dismissed. It is an example of relatively serious offending where despite being assessed as being worthy of detention, no conviction was recorded. Such sentencing outcomes are not unusual in the case of youths.

[40] In *Cook v Nash and Mc Garvie*[22] when setting aside convictions for a young offender, Southwood J summarised the principles which illustrate the required balancing exercise:[23]

> First, the overwhelming concern of a court when sentencing juveniles is the young offender's development as a law abiding citizen. The court should be at pains to ensure that its sentences do not alienate young offenders. This is particularly so in the case of a first offender. Before imposing a particular sentence on a juvenile a court must ask itself if it is necessary to go beyond the lesser options.
>
> It is also important to have regard to the needs of the juvenile to ultimately obtain employment and to take into account the need to minimise the stigma to a juvenile resulting from a court

---

21 *LA v Kennedy* [2007] NTSC 36, [17]-[21].

22 [2007] NTSC 14.

23 [2007] NTSC 14 at [27]-[30].

determination and to avoid amplifying the juvenile offender's deviance.

None of the above principles exclude consideration being given to the objective facts of the offending; to protection of the community; to holding juveniles properly accountable; and to deterrence in the appropriate case. Those factors must still be considered. However, those factors are to be considered in accordance with the principles enunciated in *Simmonds v Hill* (supra). In *Girrabul v The Queen* [2003] NTSC 101 Martin (BF) CJ (as he then was) stated:

> The sentencing remarks in those cases derive from particular circumstances of the offence and the juvenile offender there under consideration. However, there is a theme which recognises that in the case of juveniles the sentencer is required to consider sentencing options by firstly taking into account the psychological and social needs of the individual wrongdoer and applying that which can be best directed towards meeting his or her needs and aiding rehabilitation. The appropriate resources of the state available to support that welfare objective are often to be engaged both before the sentencing and after. Accountability, personal responsibility for the offending, and deterrence both personal and general, may be brought to bear within that framework by the imposition of restraints which can work together with the rehabilitative measures. The two models are not mutually exclusive. Striking the desirable balance between divergent objectives may often be a difficult task but the nature of the offending must not be allowed to overshadow its cause. The offender's background, including age and criminal history, will always be relevant factors as will the family and state resources available.

In the case of a juvenile offender there can rarely be any conflict between his or her interest and the community's. The community has no greater interest than that he or she should become a good citizen: *R v Smith* [1964] Crim LR 70; *R v GDP* (1991) 53 A Crim R 112 at 116 per Mathews J.

[41] In the context of dealing with very young offenders, in *DD v Cahill*,[24] Riley J summarised the importance of the exercise of the discretion to impose a conviction. While his Honour set out general principles, it must be remembered the context was a 12-year-old offender. Nevertheless his Honour's comments have broader application to youths who may not readily appreciate the significance of the punishment by conviction (footnotes omitted):

> The decision whether or not to impose a conviction on a young person requires careful consideration by a court. In relation to adult offenders there is some guidance to be found in the Sentencing Act. Section 8 of that Act requires a court, in deciding whether or not to record a conviction, to have regard to the circumstances of the case including the character, antecedents, age, health or mental condition of the offender; the extent to which the offence is of a trivial nature; and the extent to which the offence was committed under extenuating circumstances. Section 8 does not apply to the Youth Justice Court. The Youth Justice Act itself does not provide any guidance as to the matters to be taken into account in determining whether or not to record a conviction. The decision involves an exercise of discretion. However the discretion must be exercised judicially and, in that process, all of the relevant surrounding circumstances must be considered including factors of the kind identified in s 8 of the Sentencing Act.
>
> In addition, it is appropriate to consider the consequences of the imposition of a conviction upon the person concerned. The recording of a conviction has been described as a formal and solemn act marking the court's and society's disapproval of the defendant's wrongdoing. The recording of a conviction is in itself an element of punishment. In some cases, notably with adult offenders, it may encourage an offender to refrain from further offending and may act as a deterrent to others. That is less likely to be a consideration in the case of a very young offender who may be expected to be less mature, less aware of the consequences of acts, subject to peer pressure and less responsible than an adult.

---

24 [2009] NTSC 62.

> It is readily apparent that a conviction may impact upon the ability of a person to obtain employment. Many employers require applicants to complete a declaration regarding convictions as part of the employment process. Others who have an interest in convictions may include various licensing authorities, government departments and insurers. A conviction may impact upon the ability of the person to travel to some countries. When sentencing an adult it is possible for there to be direct evidence of the consequences of recording a conviction. However, when dealing with a child as young as 12 it is difficult to identify whether, and if so in what manner, the recording of a conviction may impact upon the child. Nevertheless, the prospect of adverse consequences is real and the recording of a conviction remains for the child "a significant act of legal and social censure."
>
> Further, the deterrent aspect of imposing a conviction is likely to be of little weight for an offender who is so young and not readily able to appreciate the significance of such a punishment. Whilst it may be argued that the recording of a conviction may be necessary in cases where a very young offender has committed quite serious offences or a crime of a particular character, it is difficult to see any public interest in so doing in the circumstances of the matter under consideration. Viewed from the perspective of the rehabilitation of the child there would seem to be no reason to record a conviction, indeed it would seem to be likely to be counterproductive.

[42] Other cases have recently applied those principles, for example in *Verity v SB*[25] in the context of a Crown appeal, Barr J reiterated the recording of a conviction was not a matter precedent to a youth's sentencing, even in the most serious of matters. The relevant principles have been summarised helpfully by Chief Justice Grant in *DN v Burns*,[26] a case in which convictions were set aside: (footnotes omitted)

> (a) When sentencing juvenile offenders the principles prescribed in the *Youth Justice Act* have application such that a finding that an offence has been proved without proceeding to conviction should not be reserved for special or unusual cases.

25 [2011] NTSC 26 at 34.

26 [2020] NTSC 12.

Equally, however, there is no rule or presumption that youthful offenders, and even first offenders, will not have a conviction recorded.

(b) The recording of a conviction is not a condition precedent to the imposition of punishment under the terms of the *Youth Justice Act*, and the exercise of the discretion may give rise to considerations separate to and distinct from those which inform the assessment of the objective seriousness of the offending.

(c) In the case of very young offenders and first offenders committing minor offences, the interests of the community are best served by emphasising rehabilitation and the youth's positive social development over the deterrent purposes of sentencing.

(d) The recording of a conviction may not serve the purpose of personal deterrence if the consequences of that disposition are not apparent to or ascertainable by the youth.

(e) Before imposing a conviction a court must ask itself whether it is necessary to go beyond the lesser options. In making that determination it is necessary to bear in mind that the recording of a conviction it is both punitive in itself and a significant act of social censure. It may also be detrimental to a youth's future prospects of securing employment, occupational and other licences, insurance cover and travel documentation, and as a result counter-productive to the purpose of rehabilitation.

(f) Under the terms of the *Criminal Records (Spent Convictions) Act 1992* (NT) a conviction imposed by the Youth Justice Court will be spent after five years provided the offender does not reoffend, and where the Court does not record a conviction the record is spent immediately upon the offender being discharged.

(g) Particular care must also be taken in determining whether or not to record a conviction in circumstances where to do so might lead to some significant additional penalty (such as under a mandatory sentencing regime).

(h) The decision whether or not to record a conviction is discretionary and the ordinary principles which govern appeals from determinations of that nature have application.

[43] Whether it was helpful or correct in this instance to characterise the offending as 'very adult like' is questionable. As well as elements which might be seen as adult like, there were also elements of the offending which point to offending that tragically both adults and youths typically engage in. For example, the opportunistic use of rocks picked up and used as a weapon and the punches highlight a level of frustration and immaturity when it is appreciated there was simply a dispute over the appellant's access to cigarettes. The nature of the appellant's insight as a young offender was evident given the Judge understood the need to explain in clear and skilful terms what a domestic relationship was and why it was serious to assault a domestic partner. Adults, mainly men, who offend in this way often demonstrate immaturity which should have long been left behind in adolescence. An adult offender may well behave as a child, but that does not mean when a youth engages in such offending it is 'very adult like' offending.

[44] In *AK v The Queen*[27] the Court of Criminal Appeal referred to the observations of Mc Clennon CJ in *KT v The Queen*[28] confirming the principle that the emphasis given to rehabilitation rather than general deterrence and retribution when sentencing young offenders may be

27 [2021] NTCCA 4 at [42].

28 (2008) 182 A Crim R 571 at [25].

moderated when the young person has conducted himself or herself in the way an adult might, and has committed a crime of violence of considerable gravity. In determining whether a young offender has engaged in "adult behaviour", the Court will look to various matters including the use of weapons, planning or pre-meditation, the existence of an extensive criminal history and the nature and circumstances of the offence.

[45] Although domestic violence offending is offending which some adult males engage in and although there were weapons used here, the weapons were rocks, picked up from the area where they were walking. Although ugly and awful offending, it did not have the hallmarks of 'very adult like' offending.

[46] The nature of the 'domestic relationship' itself did not appear to be particularly adult like. It is unclear from the facts whether the appellant and the victim lived together – on the facts the victim ran home to her mother. The appellant lived with his own mother, at least at the time of the plea hearing in the Youth Justice Court. The appellant did not display the characteristics of an adult partner.

[47] The distinction between adult and youth offending is sometimes required in sentencing scenarios when the Court needs to determine whether a youth should be sentenced under the *Sentencing Act* or the *Youth Justice Act* or a combination of both. There was no issue that the appellant would not be dealt with under the *Youth Justice Act* in this instance. There was never a suggestion that an adult sentencing regime should apply. Indeed the

appellant was not sentenced as an adult. He would have received a more substantial sentence if he had been. Nevertheless the characterisation of the offending as 'very adult like' substantially contributed to a sentencing outcome which is somewhat unusual for a 16 year old with no history of violence, who was being sentenced under the *Youth Justice Act*.

[48] Offending of this nature is still plainly serious. The appellant and the victim were in a domestic relationship of some kind at the time and the assault potentially could have caused more significant and long-lasting injuries to the victim. The victim herself was young, elevating the gravity. Fortunately for all concerned, both for the victim and incidentally the appellant, the injuries themselves did not reach the higher thresholds of injuries seen in cases of this kind, noting that it is not uncommon for more serious forms of assault such as cause serious harm to be dealt with without proceeding to conviction when the offender is a youth.[29]

[49] The characterisation of 'very adult like' effectively dominated the remaining sentencing considerations. It was an erroneous characterisation, although I do not agree the subjective case was disregarded by the Judge. His Honour noted the appellant wanted to continue with football and had not previously offended in this way. It is well accepted the Tennant Creek Court is an overly busy list which does not allow for each and every consideration to be spelt out by sentencing Judges.

---

29 Eg, *R v JC*, SC21937373, Kelly J.

[50] At 16 the appellant or his circumstances could change for the better in the years before adulthood and after. The conviction could operate to his detriment in employment or other settings in the future. As pointed out in *DN v Burns*, the recording of a conviction may not serve the purpose of personal deterrence if the consequences are not apparent to the youth. The sentencing Judge attempted to explain both the significance of domestic violence and a conviction to the appellant indicating the appellant likely did not have a mature grasp of the importance of those concepts. The sentencing Judge did not impose a conviction for the breach offence, a much less serious matter but did not characterise that breach as 'very adult like'.

[51] Although at the time of sentence the appellant may have later been subject to a mandatory sentencing regime, those provisions have been repealed and it is not a matter to be considered here as favouring the appellant's case.

[52] The observations made in *DN v Burns* regarding the operation of the *Criminal Records (Spent Convictions) Act* (NT) are of relevance given the appellant's age and interest in work.

[53] The additional protection by the imposition of a domestic violence order with the victim as the protected person was an appropriate measure additional to sentence to protect the victim and remind the appellant of the behaviour expected of him.

[54] Specific error has been made out. The appellant will be re-sentenced by the conviction being quashed. I would have preferred to order he be subject to

further conditions, however given the effluxion of time, that would no longer be appropriate.

Ground 2: that the sentence is manifestly excessive

[55] The principles governing an appeal against sentence based on this ground are well known. A sentence is not to be disturbed unless error is shown. If no specific error is shown, appellate intervention is warranted only where the sentence is such that in all of the circumstances the appellate court concludes error must have occurred or there must have been some misapplication of principle even though it is not apparent from the remarks on sentence.[30] Manifest excess may be identified if the sentence imposed is out of the range of sentences that could have been imposed to such an extent that there must have been error even though it may not be identified.[31]

[56] I do not think the sentence was necessarily out of range in the sense of being a manifestly excessive sentence. The exercise of the discretion on an unsound or erroneous basis has been dealt with under ground one.

Orders

1. Ground one is upheld.

2. Ground two is dismissed.

3. The appeal is allowed.

---

30 *Forrest v The Queen* [2017] NTCCA 5 at [63]-[64]; *Edmond & Moreen v The Queen* [2017] NTCCA 9 at [4]; *Richards v The Queen* [2024] NTCCA 14 at [35].

31 *Richards v The Queen* [2024] NTCCA 14 at [35].

4. By way of re-sentence the conviction imposed by the Youth Justice Court on 14 August 2023 is quashed. All other orders made by the Youth Justice Court remain in place.
