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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

FZ 179-181 of 2020  
FZ 232 of 2020  
FZ 97 of 2021  
FZ 121 of 2021  
FZ 143-149 of 2021  
FZ 163 of 2021  
FZ 169 of 2021  
FZ 180 of 2021  
FZ 198-200 of 2021  
FZ 253 of 2021  
FZ 454-455 of 2021

THE STATE OF WESTERN AUSTRALIA

and

ES  
and  
JD

QUAIL P

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 1 OCTOBER 2021, AT 2.20 PM

MS T. WESTON represented the State of Western Australia.

MS N. ANDERSON appeared for Youth Justice Services.

MS A. WILLIAMS appeared for the accused.

**THIS PROCEEDING WAS CONDUCTED BY VIDEO CONFERENCE**

**ASSOCIATE:** Calling the State of Western Australia v JD & ES. JD, is that your name?

**JD:** Yes.

**ASSOCIATE:** And ES, is that your name?

**ES:** Yes.

**ASSOCIATE:** Thank you. Please be seated.

**HIS HONOUR:** Now, Ms Williams, do you appear for both boys?

**WILLIAMS, MS:** May it please the court. Yes, your Honour.

**HIS HONOUR:** All right. Now, can I just ask again, which one is ES? Stick your hand up, would you, ES? All right. ES, I'm Judge Quail. Sit down. Thanks very much. And JD - are you there, JD?

**JD, MR:** Yes.

**HIS HONOUR:** I'm Judge Quail. All right. You can have a seat too. Now, Ms Williams, have either of the boys got relatives with them in court: responsible adults?

**WILLIAMS, MS:** Yes, they do. They both do. I have ES's mother, Ms PB, at the back of court.

**HIS HONOUR:** Yes.

**WILLIAMS, MS:** And I have JD's sister, SC.

**HIS HONOUR:** SC. All right. Well, Ms PB and Ms SC, thanks very much for coming along as well today. I can't see you unfortunately but I know you're at the back of the court. I will just check who else is here. Ms Weston, you're for the DPP today?

**WESTON, MS:** Yes, may it please the court. Thank you, sir.

**HIS HONOUR:** And Ms Anderson for Youth Justice.

**ANDERSON, MS:** Yes, your Honour.

**HIS HONOUR:** All right. Counsel, can I just identify what materials I've had regard to since I programmed the matter today? Now, I've received - in addition to the reports and materials I referred to last time I've now received the updated Youth Justice reports. In relation to ES that's a report dated 27 September 2021. For JD it's dated 28 September 2021 and I think I referred last time to the fact I also had that Patches assessment report for him. For both boys, Ms Williams, I've got - I think the submissions were prepared by you. Is that right?

**WILLIAMS, MS:** That's correct, your Honour.

**HIS HONOUR:** All right. Well, I've read both sets of submissions. They were very helpful and you refer to some cases as well which I'm familiar with. Now, is there any other materials that I should have, Ms Williams?

**WILLIAMS, MS:** No. That's everything that I would expect that your Honour would have.

**HIS HONOUR:** All right. Ms Weston, you've seen all of that material?

**WESTON, MS:** I haven't seen any submissions in relation to JD. I only received some submissions in relation to ES. Sorry. I wasn't aware that there were submissions for both boys. Sir, I'm happy to proceed. If there's any issues I will certainly let you know.

**HIS HONOUR:** All right. Well, no doubt Ms Williams will elaborate on anything that she wants to.

**WESTON, MS:** Yes.

**HIS HONOUR:** Look, we're ready to go then. Because it's a hearing afresh I would like to hear the facts so that they are on the record - - -

**WESTON, MS:** Certainly.

**HIS HONOUR:** - - - and then, Ms Williams, I will hear from you after that, so you can have a seat while I hear from Ms Weston. And when you go through the facts, Ms Weston, if you just identify which charges the two boys are co-offenders on.

**WESTON, MS:** Yes, sir.

**WILLIAMS, MS:** Thank you, sir.

**HIS HONOUR:** Thank you, Ms Weston.

**WESTON, MS:** So starting with - if I can start with JD. So this is Fitzroy charge 121 of '21. The facts are as follows. At about 4.40 am on 30 March of this year JD, and four others, went to the Fitzroy River Lodge located at 277 Great Northern Highway in Fitzroy. The offenders tried to gain entry to the (indistinct) door, however they were unsuccessful. A co-offender used a large rock and threw it at the top glass panel of the main foyer door causing it to break whilst JD was in close proximity.

The second co-offender used the same rock and threw it a second time through the same window damaging it further. The second co-offender reached through the broken window to unlock the door before throwing another rock at the lower window as well as picking up a table nearby to poke a hole through the damaged window. JD reached through the lower window to lift the security latch of the door allowing the door to be opened. All of the offenders entered the main foyer and used a rock to smash the sliding glass door of an ice-cream freezer near the front counter.

An audible alarm was active whilst the offenders were stealing about five ice-creams with a total value of \$30. The offenders ran from the scene. The incident caused damage to the freezer which cost approximately \$2500 and also damage to the glass door which was valued at \$750. The incident was captured by CCTV footage. On 30 March police attended the B Community, Fitzroy Crossing, and found JD and the co-offenders wearing the same clothing as in the CCTV footage. He was arrested and taken to the Fitzroy Police Station where he declined to participate in an interview. He was then released on bail. Curfew conditions on this charge was preferred.

The following charge, sir, is charge - Fitzroy charge 143 of '21. This is a charge of aggravated burglary with intent. Between 11.30 pm on 18 April and 10 past midnight on 19 April JD went to the Broome Youth Support Group in Dora Street in Broome with other offenders. The group forced entry to the front door damaging the doorframe with screwdrivers. On entry the offenders walked through the multiple areas of the building and activated an alarm. The group then ran from the address.

At the time the business was closed and there were no staff members present. Police were contacted to attend and CCTV footage was obtained. At 11.25 am on 19 April the

offenders were found travelling into Fitzroy on a Greyhound bus where they were arrested in relation to this and other matters. JD was taken to the Fitzroy Crossing Police Station where he declined to participate in an interview and was subsequently charged.

Following on from that is Fitzroy charge 144 of '21 which is a charge of steal motor vehicle. Between 8.30 pm on 18 April and 4.55 am on 19 April of this year JD went to the victim's home address in Rodriguez Road, Cable Beach, with other co-offenders. The group entered the victim's Toyota HiLux, registration VM24010, and forced the ignition by unknown means allowing the vehicle to start. The group drove the vehicle from the address and travelled along the Great Northern Highway in Camballin where the vehicle was involved in an incident and the group set the rear canopy of the vehicle on fire before abandoning it on the side of the road.

The group was seen by police a short distance from the vehicle walking away. At 11.25 am on 19 April JD and the co-offenders, again, as I mentioned, were found travelling into Fitzroy on a Greyhound bus where they were arrested in relation to this and other matters. He declined to participate in an interview.

Charge - Fitzroy charge 145 is a further charge of steal motor vehicle. The facts are as follows. At 2.10 pm on 15 April JD and others were present at the B Community in Fitzroy. The victim was a tradesperson conducting work within the community. The group found the victim's vehicle parked outside an address. The - sorry - JD and the others entered the victim's Toyota LandCruiser, registration 6817JH, and started the vehicle by unknown means. They then drove the vehicle from the address. Whilst outstanding the vehicle was involved in several incidents including a fail to stop where the tyres of the vehicle were punctured after a police stinger was deployed. The vehicle was subsequently recovered by police.

Again, the - JD was arrested when - on 19 April on that Greyhound bus as I mentioned. Charge 146 - Fitzroy charge 146 of '21 is in relation to the Toyota HiLux. That was referred to in charge 144 of '21. This is a charge of criminal damage by fire. The facts relate to the rear canopy of the vehicle being set on fire and being damaged. Following on from that, your Honour, is charge - Fitzroy charge 163 of '21 which is a charge of steal motor vehicle. This also relates to Fitzroy charge 180 of '21 which is an aggravated home burglary and commit but the facts are the same for those charges.

The facts are as follows. At about 11.30 pm on 27 April of this year the offenders, including JD, went to the Fitzroy River Lodge in - on the Great Northern Highway in Fitzroy Crossing. They attended the Fitzroy River Lodge with the intent of stealing a motor vehicle. In company with five other co-offenders JD approached a pitched tent within the camping grounds. He was present when a co-offender tried to unzip the tent, before another co-offender started to beat the side of the tent with a large stick.

One of the offenders produced a screwdriver plunging it through the tent wall and cutting a large hole. JD and the co-offenders made demands to the victim saying, "Give us your fucking keys or we will kill you." The victim, feeling extremely frightened and threatened, threw the keys to a Toyota HiLux, registration 1EWM602, through the large hole in the tent wall. JD, in company with co-offenders, used those keys to gain entry to the Toyota motor vehicle, starting the vehicle, before driving away towards Great Northern Highway in the direction of Halls Creek.

On 28 April Fitzroy Crossing police arrested several offenders in possession of the stolen motor vehicle in Fitzroy Crossing. A review of a mobile telephone seized from one of the offenders - sorry - one of the co-offenders showed JD inside the stolen motor vehicle 30 minutes after the incident in company with the co-offenders as they drove to Halls Creek. The video shows JD discussing the stolen motor vehicle. On 29 April Fitzroy Crossing police arrested JD at a house in the B Aboriginal Community.

He refused to participate in an interview, however he did provide a statement and he was refused bail. Your Honour, those facts, the ones that I just read, they relate to both boys.

**HIS HONOUR:** Yes.

**WESTON, MS:** The incident that occurred on 27 April. If I could now go to ES. Your Honour, there are three charges that are on the list, I believe, that were actually referred to the Juvenile Justice Team. Do you wish to hear the facts in relation to those?

**HIS HONOUR:** So - yes. I only want to hear the ones which are the subject of review.

**WESTON, MS:** Right.

**HIS HONOUR:** So which ones - which charge numbers were sent to the JJT, because I thought the JJT was all completed and I only had live matters before me?

**WESTON, MS:** No. So my understanding, and Ms Anderson can correct me, that there's 179, 180 and 181 of 2020 and there's also 232 of - - -

**HIS HONOUR:** Hang on. Just slowly.

**WESTON, MS:** Sorry.

**HIS HONOUR:** So 179 of 2020, 180 of 2020?

**WESTON, MS:** Yes. 181.

**HIS HONOUR:** 181 is not on my review list.

**WESTON, MS:** It's not on your list. Okay. It's on the list that I have.

**ANDERSON, MS:** Sorry, your Honour. 181 was no further punishment when ES was sentenced to the intensity supervision order.

**HIS HONOUR:** Yes. That's - yes. I don't have that one on my review.

**ANDERSON, MS:** No, you shouldn't.

**HIS HONOUR:** So that's section 67.

**ANDERSON, MS:** Yes.

**HIS HONOUR:** It's not JJT, but 179 and 180, Ms Anderson?

**ANDERSON, MS:** Yes, your Honour. Fitzroy Crossing 232 of '20, 179 - - -

**HIS HONOUR:** Yes.

**ANDERSON, MS:** - - - of '20 and 180 of '20 - - -

**HIS HONOUR:** Yes.

**ANDERSON, MS:** - - - were all originally referred to the Juvenile Justice Team. Then he was re-sentenced and they're included in the current intensive youth supervision order with - - -

**HIS HONOUR:** Okay. So the - right.

**WILLIAMS, MS:** That was my understanding as well, sir.

**HIS HONOUR:** I will come back to you, Ms Williams. Ms Anderson, look, it's perhaps an appropriate point to mention it. The reports which have been provided by both - in relation to both boys, the updated Juvenile Justice reports, are all fine: adequate.

**ANDERSON, MS:** Yes. Yes, your Honour.

**HIS HONOUR:** They contain really very - well, not nearly as much information as I'm accustomed to - - -

**ANDERSON, MS:** Yes.

**HIS HONOUR:** - - - from Perth-based Youth Justice officers  
- - -

**ANDERSON, MS:** Certainly, your Honour.

**HIS HONOUR:** - - - and there really ought be no difference in standard - - -

**ANDERSON, MS:** No, I do agree, your Honour.

**HIS HONOUR:** - - - between Fitzroy and Perth.

**ANDERSON, MS:** Your Honour, I also make note that these - this sentencing - - -

**HIS HONOUR:** Yes.

**ANDERSON, MS:** I don't know whether you saw it in my email when I submitted the reports.

**HIS HONOUR:** No, I don't get the emails. I just get the reports.

**ANDERSON, MS:** That both of the original sentencings - - -

**HIS HONOUR:** Yes.

**ANDERSON, MS:** - - - were done without written youth justice reports

**HIS HONOUR:** Well, that's - when you were here last time that's what I said.

**ANDERSON, MS:** Yes.

**HIS HONOUR:** One of them - the magistrate only had the benefit of verbal reports.

**ANDERSON, MS:** Yes.

**HIS HONOUR:** Someone handed up, I think, as you said on the last occasion - it shouldn't have occurred - someone handed up a verbal report in writing.

**ANDERSON, MS:** That is - which is an internal Youth Justice document, your Honour.

**HIS HONOUR:** Yes. So, now, the new reports I have give me some information about compliance which is useful. That's what I wanted. But there's really nothing in terms of the background, family circumstances, which I would expect to have, and what I had understood from that report in relation to ES is that he completed his previous JJTs and they had been dismissed. So, what, are you telling me now is that one of them is, in fact - was up for the resentencing? Is that right?

**ANDERSON, MS:** That's correct, your Honour. He - the JJTs weren't completed - - -

**HIS HONOUR:** Right.

**ANDERSON, MS:** - - - unless someone was referring to the police JJTs. I believe that they may have been completed, but I'm not - but we don't count those, your Honour.

**HIS HONOUR:** All right. Okay. Well, let's not - look, it certainly wasn't clear to me. So the bottom line is, is that those three charges, 179, 180, 232 initially went to JJT. He obviously didn't complete the requirement so it came back for re-sentencing and they've ended up in the intensive youth - - -

**ANDERSON, MS:** Yes.

**HIS HONOUR:** - - - supervision order that he was placed on.

**ANDERSON, MS:** That is correct, your Honour. Yes. He failed to engage in those JJT.

**HIS HONOUR:** Right. Okay. Let me - I've just got to make a note of all that. Just give me a moment. All right. So - because his previous JJT referrals from the court were November '20 and January '21. All right. Then in April

'21 there's the five month YCBO (indistinct) those charges at the time.

**ANDERSON, MS:** They've been re-sentenced and are now incorporated in the current order, your Honour.

**HIS HONOUR:** No, no. I've got those ones but I'm just trying to - did it pick up the JJT charges, or were they separate to the YCBO? I'm just trying to see - - -

**ANDERSON, MS:** They were not included in the YCBO, your Honour.

**HIS HONOUR:** Right. Thank you, Ms Anderson.

**ANDERSON, MS:** Thank you.

**HIS HONOUR:** It now make sense sort of. Yes, carry on, Ms Weston.

**WESTON, MS:** Sir, did you receive the facts for the other charges that returned to court from the Juvenile Justice Team?

**HIS HONOUR:** So I don't need those JJT facts then. Just give me the facts - the additional matters which ES had.

**WESTON, MS:** Certainly, sir. So starting with charge = Fitzroy charge 97 of '21. The facts are - it's a charge of criminal damage. On 23 February ES, with multiple other suspects, was at the - at a roadhouse on 8 Great Northern Highway in Fitzroy. Due to a recent burglary at the address the reporting person had parked his company vehicle outside the roadhouse whilst he was inside guarding the premises as it was insecure. Whilst this particular person was inside ES and others approached the vehicle and threw rocks at it.

This resulted in every window on the vehicle being smashed. The reporting person heard the incident and went to check on his vehicle. This caused ES and the suspects to flee the area. At 5.39 am ES was seen in close - sitting in close proximity to Coles Express in breach of a 24 hour curfew. He was then arrested and his charge was preferred. Following on from that, sir, is Broome charge 198 of 2021. This also incorporates 199 and 200 of '21. The facts are as follows.

At 12.15 am on 20 March ES and co-offenders were at the Roebuck Bay Caravan Park at 91 Walcott Street in

Broome. ES with co-offenders attended site 82 and entered the onsite caravan through an unlocked door. They took cigarette tobacco, a Bankcard, \$75, a bag of toiletries and vehicle keys to a vehicle, registration 1CVS591. All items belonged to the victim and were taken without his consent. ES and the co-offender exited the caravan and searched the toiletries bag at the front of the caravan.

ES then entered the victim's vehicle, sitting in the front passenger seat, while the co-offender started the vehicle and started to drive. They had driven approximately 20 metres when the victim, who was woken up by the sound of his vehicle starting, opened the passenger side door and entered the vehicle. The co-offender got out of the vehicle and ES jumped into the driver's seat and kept driving through the caravan park. ES tried to steer the vehicle into other parked vehicles, caravans and trees, however the victim took hold of the steering wheel to prevent the vehicle from crashing.

ES then drove for about 300 more metres before the victim was able to move the vehicle out of gear and put his foot onto the brake. ES fled the vehicle as it came to a stop leaving behind his baseball cap. He was found by police in company with the co-offender still within the caravan park grounds. He was also found in possession of the victim's Bankcard and cigarette tobacco. He was arrested and these three charges were preferred.

Following on from that, sir, is charge - Fitzroy charge 147 of '21. This is a charge of aggravated burglary with intent and it's also common to JD. Facts are some time between 11.30 pm on 18 April and 10 past midnight on the 19<sup>th</sup> ES went to the Broome Youth Support Group in Broome with others. The group forced entry to the front door, damaging the front door frame with screwdrivers. On entry the offenders walked through multiple areas of the building and activated the alarm which caused them to run from the address. The business was closed at the time and there were no staff members present.

Police were contacted to attend and CCTV footage was obtained. At 11.25 am on 19 April ES and other co-offenders were found travelling into Fitzroy Crossing on a Greyhound bus where they were arrested in relation to this and other matters. ES was taken to the Fitzroy Crossing Police Station where he declined to participate in an interview and was subsequently charged.

Following on is Fitzroy charge 148 of '21 which is a charge

of steal motor vehicle and, sir, again, this is common to JD as well. This is the charge where a vehicle has been stolen and the rear canopy has been set on fire.

**HIS HONOUR:** Yes.

**WESTON, MS:** Did you wish me to read the facts for this as well?

**HIS HONOUR:** Yes.

**WESTON, MS:** Yes. Between 8.30 pm and on 18 April and 4.55 am on 19 April ES went to the victim's home address at number 12 Rodriguez Road, Cable Beach, with the co-offenders. The group entered the victim's Toyota HiLux, registration VM24010, and forced the ignition of the vehicle by unknown means. This allowed the vehicle to start. The group drove the vehicle from the address and travelled along the Great Northern Highway in Camballin where the vehicle was involved in an incident and the group set the rear canopy of the vehicle on fire before abandoning it on the side of the road.

The group was seen by police a short distance from the vehicle walking away and, again, ES was one of the offenders that were arrested travelling on the Greyhound bus on 19 April of this year.

**HIS HONOUR:** Who's the complainant on that one? It was?

**WESTON, MS:** The complainant on that one, sir, is - - -  
- - -

**HIS HONOUR:** Mr Masuda or Millard?

**WESTON, MS:** I believe that it's Mr Masuda.

**HIS HONOUR:** Right. Sorry, I've forgotten. Did you read those already for - it's the same facts as JD obviously - did you read them?

**WESTON, MS:** Yes. That's correct. So that - those facts in - sorry - I haven't read the facts in relation to the fire which is Fitzroy charge 149 of '21.

**HIS HONOUR:** Yes.

**WESTON, MS:** On 19 April ES in company with the co-offenders was involved in a traffic incident on the Great Northern Highway. This is in the Toyota HiLux, registration VM24010. The group set the rear canopy of the vehicle on fire before abandoning the vehicle on the

highway. The rear canopy of the vehicle was damaged as a result of the fire and the group was seen by police a short distance from the vehicle walking away and ES was arrested on 19 April on the Greyhound Bus.

Charge - Broome charge 253 of '21. This is the charge of aggravated home burglary and commit. At 11.30 pm on 27 April ES and others went to the Fitzroy River Lodge on the Great Northern Highway in Fitzroy Crossing. They went there with the intention of stealing a motor vehicle. In company with five others they approached a pitched tent within the camping grounds. ES was present when a co-offender tried to unzip the tent before waking the victim. Due to the victim waking up ES started beating the side of the tent with a large stick.

Another co-offender produced a screwdriver plunging it through the tent wall, cutting a large hole and entering the tent. ES and the co-offenders made demands to the victim saying, "Give me your fucking keys or we will kill you." The victim was extremely frightened and threatened and threw the keys to his Toyota HiLux, registration 1EWM602, through the large hole in the tent wall. On 29 April ES was arrested in the B Aboriginal Community. Those facts, sir, are also common obviously to JD and the facts also relate to ES's charge of steal motor vehicle which is Fitzroy charge 161 of '21.

Now, and lastly, sir, the facts for Broome charge 454 of '21. At about 8.15 pm on 11 July of this year the victim's 2015 Toyota LandCruiser, registration 8817, was stolen from the Fitzroy Crossing rodeo grounds. At about 7.30 on 12 July the stolen LandCruiser was being driven in a westerly direction along Sandpiper Avenue. Police identified the stolen vehicle and tried to conduct a vehicle stop by activating its lights and sirens. ES was driving. He failed to stop and continued to drive west along Sandpiper Avenue.

Police continued to follow with their lights and sirens on. He turned right on to Flying Fox Avenue, left on to Bandicoot Loop, before driving over an adjacent verge, crossing over (indistinct) Drive and into bushlands. The vehicle was swiftly located in the nearby bushland and was on its roof. Police found ES in company with three other co-offenders walking along (indistinct) Road walking away from the stolen vehicle. He was then arrested and handcuffed at the time. Those are the facts, sir.

**HIS HONOUR:** Thank you. Now, Ms Williams.

**WILLIAMS, MS:** Thank you, sir. Shall I, perhaps, address you in relation to JD first and do - I wasn't aware - - -

**HIS HONOUR:** Whatever suits you.

**WILLIAMS, MS:** Thank you sir. I do seek to rely on my written submissions that I've filed and - - -

**HIS HONOUR:** Yes. They're very helpful. Thank you.

**WILLIAMS, MS:** - - - today, perhaps, just provide your Honour with an update as I've spoken to each of the boys today.

**HIS HONOUR:** Excellent.

**WILLIAMS, MS:** And I think that might be - I even felt there was a gap lacking in those reports as to their personal circumstances.

**HIS HONOUR:** Well, look, the sort of problems that it does create, Ms Williams, is - well, not so much for me, I get reviews rarely from magistrates, but - and I'm sure Ms Anderson will pass this on to Youth Justice officers, it makes it very difficult for the magistrates if they don't have sufficient information from Youth Justice to, you know, have proper regard to all of the circumstances in arriving at a sentence. You end up - to a degree you're running blind, so the reports need to have the detail in them to assist the court.

**WILLIAMS, MS:** Yes, sir.

**HIS HONOUR:** Carry on.

**WILLIAMS, MS:** In relation to JD he was a child who had spent 107 days in custody away from his family and country. This review attempts to share with this court the significance of that time on his life and why that time in custody represented a curial punishment with the result that no further punishment was required. With respect to the court below it was wrong not to take into account the significant amount of time in custody for JD in a way that did not recognise the particular circumstances that meant that that time in custody was harder for him than other children.

In that regard, as mentioned in my written submissions, I rely on the case of the State of Western Australia v Richards. The time in custody represented a

curial punishment of the type in State of Western Australia v JC (A Child) with the result that section 67 is the appropriate disposition. In relation to my submission that section 67 is appropriate for JD I do rely on the time he spent in custody, his diagnosis as outlined in the multi-disciplinary report of fetal alcohol syndrome disorder and language disorder, his limited record, his personal circumstances, his pleas of guilty and cooperation.

In relation to JD's current personal circumstances he tells me he's currently attending school and enjoying it. He reports to Youth Justice Services as and when is required. He's spending time with his family. His brothers take him out fishing for barramundi, brim and catfish. They take him out hunting for goanna, turkey and kangaroo. His recent trip was three days ago where he caught brim and freshwater prawns at the Fitzroy River. He is still living with his grandmother, AD, at B Community outside of Fitzroy Crossing and he tells me they're still in the process of arranging to work for the rangers. He's still very keen to engage with the rangers.

In relation to sports he tells me that all the boys in B Community play football together. He was playing football whilst in Banksia and he maintains that now. They're currently off-season but he tells me he will play for the team next year.

He tells me his time in Banksia was bad. He struggled not seeing his family. He has never lived in Perth and as I highlighted in my submissions never been in the metropolitan area.

He tells me he definitely doesn't want to go back to Banksia, and that has been a significant motivating factor for him to stay out of trouble. He tells me has been stopping at home. I asked him what he does when the - if any boys come by in a stolen car. He tells me he says, "Go, go away. No, you mob can go", and I asked him why he tells them that. He said, "Because I don't like to go back to Banksia."

He grew up in B Community with his grandmother. He tells me he saw a fair amount of people that were intoxicated and those people would fight often. He can't remember too much about his childhood. He has recently had to attend sorry camp and that was due to a recent passing of a young girl in the community. He tells me they sit down in sorry side. He has still managed to continue his schooling during this time. He tells me that he attends school. There's a bus that comes out to B Community and he attends with other boys from his community

that haven't offended with him so are a positive influence on him.

His favourite thing is football as I've mentioned. He learnt how to play guitar and drums in Banksia and he has maintained that because there's an organisation, Nindilingarri, in Fitzroy Crossing and they have band equipment. He tells me you can record your own songs there, so he goes there after school. He can play songs. They have a drum set, guitars and a keyboard so he is engaging in pro-social activities in the community of his own accord, sir.

Fortunately, now, your Honour has the benefit of seeing the impact of the time in custody that it has had on JD and that it has had the effect of deterring him from future offending. I have made some notes to highlight particular parts of the FASD report, sir.

**HIS HONOUR:** No, you don't need to. I've read it.

**WILLIAMS, MS:** Okay. Your Honour, there was nothing further. Unless your Honour wished for me to address in detail any part of my written submissions - - -

**HIS HONOUR:** No, Ms Williams. That's - I really wanted to know what he has been up to, so it's very helpful that you've been able to give me that additional material. So you can move to ES and no doubt you will be able to tell me the same things about ES because I - he's the one I know least about.

**WILLIAMS, MS:** Yes, sir.

**HIS HONOUR:** And he's the one, it would seem, who has not been compliant as well.

**WILLIAMS, MS:** Yes, sir. His compliance hasn't been as good as JD's. He tells me he's staying at B Community as well. They both stay there. He has attended sorry camp for his 12 year old niece who passed away as well. There was a delay for the funeral as there was three other funerals, his mother told me, that they needed to attend to and so they had to wait for each, and sorry camp was then extended.

In relation to - if I can just address your Honour. In relation to that time between when he was granted bail and then reoffended there was things going on for him within his family life and he is, in terms of the transience, in the hands somewhat of his family and parents. He tells me during that time his mother had been

admitted to hospital with pneumonia. He was taken by family to a funeral at M Community which is another outlying community from Fitzroy Crossing. The car broke down when they were on their way back to Derby. They couldn't make it back in time for court. There were ongoing issues that he - he was going back and forth and that was the reason why his engagement with Youth Justice was somewhat affected.

He's in a similar position as JD. He tells me that if the boys rock up he tells them to go away. He doesn't want to go back to Banksia. He missed his family while he was in Banksia. He wasn't able to see anyone. He had no visits. He only saw his parents briefly on the court video-link when they would sit behind me.

He tells me has been reporting to Youth Justice and there was that time where he was given a warning letter and now he is maintaining that reporting. His favourite thing to do is play football. And just in relation to engagement with his orders I would note, and it's certainly no criticism, but Fitzroy Crossing is fairly remote and we only have one Youth Justice officer based here. I understand that officer has had to take periods of leave. There was a period of about a month.

**HIS HONOUR:** Yes. That's referred to in the report so it makes it difficult to comply I imagine.

**WILLIAMS, MS:** Yes, sir. So - but during those periods when they're on leave there's no-one that actually comes and bases themselves out here. I believe Youth Justice travel on the court plane which is a day trip plane and what my instructions are is that they have to report by telephone which makes it also difficult in terms of, you know, family maintaining telephones and remembering the phone numbers for Youth Justice Services and it's very difficult, I think, to engage with individuals that English is not their first language.

They don't speak fluent English over the telephone, sir. Apart from Youth Justice in town there aren't many services that they can otherwise engage with without the presence of Youth Justice, and there's only one officer on her own to cover a fairly large region with many communities outlying Fitzroy Crossing.

**HIS HONOUR:** And can you tell me, Ms Williams, how far - I'm not familiar with B Community - how far is it from Fitzroy?

**WILLIAMS, MS:** 20 kilometres outside of town.

**HIS HONOUR:** Thank you.

**WILLIAMS, MS:** So I also have additional information in relation to ES's background.

**HIS HONOUR:** Yes.

**WILLIAMS, MS:** I've been able to obtain some information from his mother who's at the back of court today, and I - she has been, certainly, a little bit hesitant and not as forthcoming as I would have hoped but I will provide your Honour with what I have. She tells me that ES's father, PS, spent time in custody for drink driving around the time when she was pregnant. She tells me he has been previously violent to her and it was usually alcohol fuelled violence. She says she didn't report these incidents to the police.

She informed me that she consumed alcohol while she was pregnant with ES. They were in Broome at the time as his father was in custody at Broome Regional Prison and Broome was - alcohol was more readily available in Broome at that time.

She also reported that ES suffered bullying in school and within the community when he was younger. She tells me that the kids would go against him and fight him and he would come home crying and she would have to go and speak to the other children and their parents. That's the information I have today, your Honour, in relation to an update.

**HIS HONOUR:** Thank you.

**WILLIAMS, MS:** Was there anything further in relation to ES that you wished - - -

**HIS HONOUR:** Well, look, ES is the one who I don't have - that additional information you've provided me with is helpful. Now, there is a reference in your submission to the fact that he has never had any investigations. Now, I'm not going to go down that path and I don't do that unless I'm absolutely persuaded that it's necessary. To my view that it might be in the interests of both boys to finalise these matters today by way of the review, but if you press on me that there ought be some further investigation in relation to ES then I would consider that but I can't see it for myself at the moment I have to say.

**WILLIAMS, MS:** Not at this time, sir. I'm not pressing that at this time.

**HIS HONOUR:** All right. Thank you. Carry on.

**WILLIAMS, MS:** Those were my submissions, sir, for ES.

**HIS HONOUR:** Thank you. Ms Weston.

**WESTON, MS:** Thank you, sir. Your Honour, the State's position is that the 107 days JD spent in custody were taken into account at the time that Magistrate Young sentenced him. Looking at JD's record he was sentenced to that YCBO on 20 April of this year and that was in relation to burglary and stealing offences and also some steal motor vehicle offences, and it was only seven days later that there was that aggravated burglary and steal motor vehicle that was committed.

This is the one at the Fitzroy River Lodge where the victim was in the tent and had the hole cut in the tent and then had to throw his keys out through the hole so terrified was he.

**HIS HONOUR:** There's no doubt some of these offences were very serious.

**WESTON, MS:** Very, very serious. So whilst the State accepts that 107 days in custody is an excessive - is a long period of time it's not excessive when you look at the amount of serious offences that have been committed and when you look at the fact that this would have been a very, very frightening experience for that particular complainant, and it's a shame that he didn't provide a victim impact statement as that would have been quite enlightening.

Your Honour, just in relation to this review what I did was I actually rang the detectives from Derby just to get an insight into what was happening up there. Are you interested in hearing some of that information?

**HIS HONOUR:** Look, I am. I've got a fair idea because I know about the epidemic of car theft and what's going on, not only in the Kimberley but in the Pilbara. The magistrate referred to it in his remarks and, you know, the tragic death of a young girl in - from this community - - -

**WESTON, MS:** Yes.

**HIS HONOUR:** - - - highlights the problem.

**WESTON, MS:** Yes.

**HIS HONOUR:** But, please, do place on record what the prosecution's view about this is.

**WESTON, MS:** Certainly.

**HIS HONOUR:** I'm just assuming that's what you're referring to.

**WESTON, MS:** Yes, sir, it is. So I spoke to a detective from Derby. To use his words, "Broome and Fitzroy are on fire at the moment in terms of juvenile offending", and as you say, sir, Magistrate Young was obviously cognisant of that and he refers to it in, I think, it was his sentencing of ES that there are certain community expectations and also the need to protect the community and that should be factored into sentencing. He actually said something along the lines of, "I don't live in a cave."

So the State says that when sentencing both of these boys those factors need to be taken into account particularly the need for general deterrence although personal deterrence is also a factor as well. Other information I received, sir, is that there is a group of adolescents known as the Fitzroy Group and they're effectively a gang, and there's also a gang in Derby called the Derby Boys, and there's another group of adolescents in Broome and what they are doing is they're competing with each other on Snapchat for who can commit the most serious offences and they're committing offences and they're videoing them on their phones and then they're swapping - they're sending them to each other.

And I understand that this may have been - and I'm not 100 per cent sure of this but this may have been in relation, or somehow involved in relation to the recent tragic death of that young girl. She was in, as I understand it, a stolen motor vehicle that was being driven way too fast and obviously the consequences on that occasion were tragic. So the police are very concerned at where this is leading because the seriousness of the offending behaviour of the young people seems to be escalating.

Another comment that was made was that the kids are using the Fitzroy Lodge as a used car lot, and I think that's borne out by the statement that JD provided. He said, this is at paragraph 10:

We were bored so we decided that we would just go and steal a car from the Fitzroy Lodge.

And then once the car was stolen they were using that car to play chicken with other vehicles. So, again, I think this is how the young girl came to pass because there was a stolen car being driven way too fast and obviously there was a - - -

**HIS HONOUR:** There are a number of - - -

**WESTON, MS:** Yes.

**HIS HONOUR:** - - - similar used car lots throughout the Pilbara and Kimberley unfortunately.

**WESTON, MS:** Right. I understand, sir.

**HIS HONOUR:** I mean, look, this is - it's information which is relevant really to deterrence and - - -

**WESTON, MS:** Deterrence particularly, sir.

**HIS HONOUR:** But these boys can only be sentenced for what they've done in their individual circumstances.

**WESTON, MS:** I understand. I understand. I just thought I would also - just wanted to bring that to your attention, sir.

In relation to the sentence that Magistrate Young handed down he obviously had the - both factors of personal, and in particular, general deterrence in mind at the time of sentencing. Also, sir, my learned friend has referred to JD's diagnosis and whilst that is serious and it is obviously a mitigating factor and that was recognised by Magistrate Young, but he also said, and I think this is really relevant, and this is at page 11 of the sentencing transcript that:

Whilst the diagnosis is a mitigating factor - it actually meant that JD was more likely to offend because he's more suggestible obviously and more easily led and perhaps that has been borne out by the offending.

So that also has to be taken into account, I would suggest, at the time of sentencing. So in relation to the sentencing for JD, sir, I understand the comments that have been made by my learned friend as far as the limited resources that are available to that particular community are concerned, but it seems that both of these boys, and this comment applies equally to ES, but both of these boys need some supervision and structure in their lives and that can be provided by way of an order. That can

be provided by Juvenile Justice.

JD - I understand he lives with his grandmother. He also has an older sister who is assisting in his care and I think that's his sister who has come to court with him. I would have thought that any additional support that they could be provided with would be beneficial and it's for those reasons, sir, that the State says that an IYSO is entirely appropriate as far as JD was concerned.

If I could turn to ES. The State's position is that he was very fortunate to get a conditional release order. Obviously his offences are perhaps a little more serious than JD's and there's a clear escalation in his offending and I think that was conceded by defence at the time of sentencing. ES has had numerous opportunities. He has had a couple of JJT referrals. They've been obviously mentioned. Both of those referrals have come back to court because they were unsuccessful.

He was out on bail. He got an arrest warrant issued in relation to some of his charges. He was let out again and reoffended which made him schedule 2. There has been - he has been schedule 2 as far as - when I look at his record he has been schedule 2 on several occasions. So he has had the benefit of being granted bail. He just goes out and reoffends. He gets an order seven days after he gets the YCBO. He then reoffends with serious offences. That's 27 April. Those are the offences that the - where the complainant was in the tent and had the hole cut in it, threw his keys through the hole. He was arrested in relation to that on the 29<sup>th</sup>. He was in custody until 18 May. He was let out on bail and he reoffended again so on that occasion he again became a schedule 2 offender.

So all of that, sir, is just to say that ES has had opportunity after opportunity and nothing seems to have worked and so the State's position is that because nothing else seems to deter him that a conditional release order which means that there is a sentence of detention hanging over his head would be an effective deterrent as far as personal deterrence for ES is concerned.

I also was just going to refer to the fact, and my learned friend alluded to the fact, that there may be some cognitive issue as far as ES is concerned, but obviously your Honour has dealt with that. The State's position is at this stage that's mere speculation. Obviously that can't be taken into account.

Your Honour, those are the State's submissions. We would say that a conditional release order as far as ES

is concerned is entirely appropriate because he does need that major deterrence factor hanging over his head which is that if he continues along the road that he is currently travelling he will be in custody, and he will be in custody for a lot longer. Sir, unless there's anything further.

**HIS HONOUR:** No. Thank you. That's helpful.

**WILLIAMS, MS:** Your Honour, if I could just respond.

**HIS HONOUR:** All right.

**WILLIAMS, MS:** In relation to the information that has been provided about the ongoing issues in the community I haven't been provided any information about that from my learned friend and I think it is speculation and it was inappropriate that it was raised at sentencing before.

**HIS HONOUR:** Ms Williams, it's not appropriate. It's a review. It's a submission made by the State which goes to deterrence. That's what the State's submission was. Normally you don't get a second bite of the cherry. You've taken it. If you want to make a further submission about that I will listen to it, but I'm certainly not going to discount what the State have told me about the position in Fitzroy.

**WILLIAMS, MS:** Yes, sir. And certainly I would say that this might have occurred at the beginning and what has subsequently occurred there's no allegation that these boys are involved with the ongoing offending and they have been in the community during that time, so I would ask your Honour to take that into consideration as well. In relation to the comment that JD is more likely to reoffend because of his diagnosis there's nothing in the report that actually states that he is more likely - he's more likely to be led by others, certainly, but not to reoffend. It wasn't stated like that in the report.

**WESTON, MS:** I wasn't quoting.

**HIS HONOUR:** Thank you. JD and ES, you can remain seated. I'm going to speak to you at the end of my remarks. All right. But because this is a review of a sentence there's a bit of information that I have to go through because I need to explain, not only to the lawyers, the reasons for my decision but also to anyone who's interested in the community: the police in Fitzroy and the other magistrates as well. All right. So I will speak to you at the end of my remarks but sit back for the time

being while I just go through some of the material I need to.

So both of you have brought section 40 reviews of sentences which were imposed by the magistrate sitting in the Broome and Fitzroy Crossing Children's Court on 13 August 2021. As I said when I programmed these hearings it's convenient to deal with both reviews together as you were co-offenders on a number of the serious charges. Your circumstances, although different, are nonetheless similar in that you both live in the same community and have been part of the same group of young offenders and are the same age.

In these reviews my jurisdiction to review is enlivened in each case because orders were made by a magistrate coming before me now as the president. There were findings that the charges were proved and orders were made in consequence of those findings and each of the applications has been brought within time.

The principles applicable to section 40 review are well-settled. This is a hearing afresh. It's not necessary to demonstrate any error by the magistrate and, indeed, I've had the benefit of not only additional reports but also information provided, particularly by Ms Williams in relation to the boys' personal circumstances and I have their history of compliance now with the magistrate's orders. So I'm in a truly fresh position in relation to conducting the review and proceeding to sentence, and I have the benefit of materials which the magistrate didn't have and I've had regard to all of that material in coming to my decisions.

Now, JD received a five month intensive youth supervision order from the magistrate with conditions and that was for a total of seven offences: two aggravated burglaries and commit, one aggravated burglary with intent, three steal motor vehicles and a damage. And those offences were committed between 30 March and 27 April 2021. is now 15 years and 10 months old and the offences occurred when he was 15 years two months to 15 years three months. Now, at the time of sentence he had spent three months and 16 days in custody which he was entitled to credit for.

ES, who is in a different position to JD, he had additional offences which I will come to in a moment, and less time in custody, he received a seven month juvenile conditional release order. So he had a sentence of seven months detention suspended to serve in the community. There were 15 offences. They were before the magistrate - there were two aggravated burglaries and commit,

two aggravated burglaries with intent, one aggravated home burglary, two criminal damages, five steal motor vehicle, two stealings and one unlawful possession. And those offences were committed between 27 October 2020 and 12 July 2021. ES is now 15 years and four months old and the offending occurred between when he was 14 years and five months old and 15 years and one month old. At the time he was sentenced he had spent some 42 days in custody which he was entitled to receive credit for.

Now, the facts of those charges have been read out by the prosecutor. There's no issue taken with them and so I will simply incorporate what the prosecutor read out about those facts and as can be seen in relation to the more recent charges and more serious ones the two boys were co-offenders. The facts weren't read out for three of the charges for ES, 179, 180 and 232 which was a steal motor vehicle on Gogo Proprietary Limited and an aggravated burglary on the Upinurra Community store and an aggravated burglary with intent on the Fitzroy River Lodge.

There's no need for me to go through the facts of those matters either. I've now read all of the original materials. They only came to be before the court because ES after having initially been referred to the Juvenile Justice Team did not comply with the requirements of the Juvenile Justice Team and so he was sent back to the court to be dealt with in another way.

Now, I've read closely the magistrate's detailed sentencing remarks for both boys. It's suggested that he was in error in some respects in his remarks. I don't find that to be the case, in fact, and as I said it's not necessary for me to find any error because this is a hearing afresh. Indeed, some of the sentencing remarks of the magistrate I would expressly endorse and adopt and they were the remarks which he made at the time of sentencing ES in the context of deterrence but they apply equally in relation to each of the boys. And what the magistrate, there said, which was entirely accurate in my view, is - this is at page 30:

Now, I've been told, and there has been no dispute from your lawyer -

so not at that time was there any such dispute -

that there is a serious issue in the Fitzroy valley and perhaps more broadly across the Kimberley of this sort of behaviour. Children stealing cars, breaking into houses,

for the fun of it. Young people who do that are almost always disengaged from school as you are. It's a normal part of childhood going to school and you're missing out on that.

He was talking there to ES. Now, that is - that is the truth. It is a serious problem in the Kimberley, more broadly, and even extending into the Pilbara that children, particularly children in communities from very young are stealing cars and often in order to steal the cars they have to break into either a motel or a house in order to get it. Now, I was not aware of what I've been told today by the prosecution, information coming from the police, that there's almost a form of challenging as between the boys in a number of the communities, or young people in a number of the communities, to record this offending and put it up on social media as a challenge to people in other communities.

I've heard of - I have seen it in Perth amongst some young gangs down here so perhaps it has now spread to the Kimberley, and the reason that it's relevant is it's relevant in relation to the issue of deterrence and that is exactly what the magistrate said going further on down the page of the transcript:

I raise this issue about your behaviour happening frequently -

I'm reading -

not just with yourself but with other people in Fitzroy because what that means, ES, is what - is that I have to have regards to a concept that we call deterrence.

And the magistrate went on:

That is to say that it must be understood by you and the other young people in Fitzroy Crossing who might behave in this way that there will be serious consequences in sentencing through the court. Of course, the case, as your lawyer rightly points out, that the court much take an approach with young people that is directed towards rehabilitation first and foremost and recognition of the fact you're 15 years old. You're obviously young.

The magistrate was exactly right, in my view, about all of that, and he went on over the page:

You're a young person. We do take the view young people are capable of learning from their mistakes,

and it's appropriate at this stage that there be some support made available to you in the community for that to occur. At the same time the sentencing of young people involves a balance between your personal situation and the interests of the community more broadly and the safety of the public, and that is an acute concern in this case for as I've mentioned you've been breaking into houses when people have been home. You've been stealing cars, driving them a long distance, you and your mates, and the public is entitled to feel that those offences have been treated seriously by the courts.

Now, I couldn't have put it better myself and that's why I read it out. So the magistrate got all of that completely right, and he recognised that there's a need to balance all of those competing considerations and he referred to the pleas of guilty and the other matters of mitigation that he had regard to.

Now, moving then to the other matters that I need to look at now in terms of looking at the matter afresh and I will deal with each of the boys individually now at this point.

In relation to JD, as I know now from all the reports and Ms Williams' helpful submissions, he was brought up by really a wider family, his grandmother, his aunt, but also his mother, living between Fitzroy and B Community and another community called Yiyerli which I'm also not familiar with. It must be nearby to Fitzroy I imagine. He's currently living in B Community with his grandmother. His father passed away a long time ago.

The environment that he has had, although there has been often that transience and moving around, it has nonetheless been a supportive environment and on the basis of the materials that I've read he has been well supported by his family and apart from some wider exposure to alcohol in the community and certainly a peer group, there was no trauma within his family home. But as we know he was exposed to alcohol in utero and as a consequence of that very regrettably he has sustained some brain damage.

And we've got a FASD report and a diagnosis has been made of FASD in that report of 12 July 2021, and it would be fair to say based upon the findings coming out of that report that it's clear that JD suffers from a significant cognitive impairment. That affects his motor skills in relation to looking at some of the particular domains. In relation to attention he scores extremely low. Very low in relation to cognition. Very low to extremely low in relation to memory and learning. Very low to

extremely low in relation to his executive function.

His reading and maths is at the age of about a six to seven year old, and one of the biggest impacts is in relation to his expressive and receptive language and his - in addition to FASD has a diagnosis of having a language disorder. Now, that cognitive impairment has a significant impact which is referred to in the report. Particularly relevant in terms of offending and going along with people, which is something the magistrate referred to, being easily led, is his ability to understand and remember rules, his ability to communicate, his ability to make decisions and understand the consequences. And there's also some indication of impulsivity on his part and a preparedness historically simply to go along with people who ask him to jump into stolen cars with them.

Now, notwithstanding that FASD, he's described in the reports as a very pleasant, cheerful and cooperative young boy and, indeed, seems to respond well to structure and previously completed referrals to the Juvenile Justice Team successfully in November 2020, December 2020, January 2021 and February 2021. All of those matters were dismissed in March of 2021. So there is that history of compliance.

In April of 2021 he was put on a five month youth community based order for offences which I am now dealing with again. Now, as was the case also with ES, who I will get to in a moment, breached very quickly by reoffending and, in fact, went into custody only nine days later on 29 April. So on the one hand it's fair to say that there was absolutely no compliance with the order and it was his own fault that he ended up in custody in that sense by reoffending in a serious way, but on the other hand, particularly where the focus of the Young Offenders Act and the focus of Juvenile Justice is on rehabilitation.

There simply wasn't any time for JD to demonstrate compliance with the order in the community in the sense of gaining some benefit from the agenda and the support that he was supposed to get within the community. So there wasn't really in relation to JD, apart from the Juvenile Justice Team which is a completely different regime, he has not had, at least to that point, the benefit of Youth Justice support in the community.

Now, what we have seen and what I know now and what wasn't before the magistrate is that since being placed on the conditional release order JD has demonstrated - sorry, I've just mixed something up here - just give me a moment. I've mixed up some of my notes here. So since being placed on the intensive youth supervision order he

has demonstrated good compliance with that order to the best of his ability given those impairments that he has.

He has been living with his grandmother in B Community. He has reported regularly as required. Now, both he and ES and their families have been engaged with sorry business. I thought it was just the one funeral in relation to the young girl who tragically passed away, but it seems that there has been a number of funerals and, of course, both ES and JD have to participate in sorry camp and sorry business and, indeed, in any event they are subject to the whim of adults in that sense and the adults, quite understandably and properly so, have been participating in sorry business so it does make compliance for both of them more difficult.

Now, in JD's case he has nonetheless, as I say, done everything that he was required to do. For both boys there has also been an issue in terms of where they are in B Community, 20 kms out of Fitzroy. There's only one Juvenile Justice officer in Fitzroy who was away on leave for some time and also there were some restrictions in terms of coming into the community during sorry business. So that has made it a little bit more difficult to provide them with services and support but nonetheless JD has done what he has been required to. I'm impressed to see that he has been going to school regularly and that he has been enjoying school.

He's in good health. He has got no substance abuse issues, playing football and basketball and, from what Ms Williams has told me, the peer group that he's involved with in the community who play basketball and football are a good influence on him. I'm also very pleased to see that he's going fishing and hunting with his brothers and that he has that wider support in the community.

I accept completely that he doesn't want to go back to Banksia Hill. It doesn't appear to be an entirely negative experience though because he obviously got the chance to participate in Banksia Beats from what Ms Williams has explained, so it wasn't all bad in that sense and I'm pleased to see that he's carrying on with some of the band activities around Fitzroy because of some of the drumming skills that he learnt while he was in Banksia.

So JD has mitigation available to him which has to be taken into account. He pleaded guilty at the first reasonable opportunity which entitles him, in my view, to a 25 per cent discount on his sentencing.

There was significant remorse and that, in his case, is particularly demonstrated also by his very significant cooperation with the police and authorities which I've read about. Because of his FASD he's not a good vehicle for deterrence and there was a lengthy period in custody to be taken into account, and for both him and ES the experience of being in custody was not only salutary in the sense that they seem, to me, to have both learned a lesson from being in custody, but it was a period for both of them spent in custody which is more onerous than for young people from Perth.

They were both taken away from their family and country. English certainly is not their first language and from what I've read JD struggles with it more particularly and they were both deprived of family visits other than phone calls and occasional video-link while they were in custody. So it was a more difficult experience of custody and I've got no doubt at all that they don't wish to return there. JD's history, in fact neither of these boys' history is very lengthy although ES's is certainly longer.

Turning to ES, he was born in Derby. Grew up in the B Community. His parents had long-standing alcohol issues. He was exposed to domestic violence in the home and alcohol abuse and Ms Williams has told me more about that today, including that his father spent a lot of time in custody. There was obviously a lot of dysfunction in his childhood. He lives, now, at home with his mother. It would seem that she has addressed some of the issues which she faced when he was a younger person.

He had limited schooling and from what Ms Williams has told me he was also bullied at school. He can, though, read and write. Like JD he very much enjoys football and basketball. He's enrolled, I see, in the [REDACTED] program at the [REDACTED], but he has not been attending as regularly as JD.

Now, his history - he has had two previous Juvenile Justice Team referrals in November 2020 and January 2021. One of those, it seems, was not completed successfully and consequently those charges I've already referred to are now before me again.

In April of 2021 he was placed on a five month YCBO and, again, he pleaded guilty straight away in relation to those charges but, again, minimal compliance on that YCBO because he breached it very quickly. He was remanded into custody on 30 April, so a day later than JD. He, though, did receive bail on 7 May but, again, no compliance

with his obligations and he ended being remanded into custody on 13 July. In that sense, although not to the same extent as JD, he has not had the benefit of supervision in the community.

He has thumbed his nose at it more often than JD has but, like JD, they are both young fellows without the history of supervision by Youth Justice behind them. Importantly ES has shown an ability to comply since he was placed on his juvenile conditional release order. He hasn't complied as well as JD has, but it's certainly an improvement on where he was on his YCBO. He has reported for supervision on 11 of the 19 occasions he was required to. He received a warning but I'm very pleased to see that he responded positively to that warning and he has been going along after that when he's required to be supervised.

And I recognise for the reasons that I said earlier that supervision has been a bit more difficult because of the location and the more recent difficulties in the community and Fitzroy. Of most concern, really, in relation to ES is that he has only been to school for that one week. I know sorry business intervened, but JD nonetheless has managed to go to school more reliably and as the magistrate pointed out on the last occasion, when boys are not at school, playing football, fishing, playing basketball, that's when they start getting into trouble.

So there's no doubt in my mind that ES needs to have ongoing supervision and some direction in relation to going to school. ES in relation to his specific matters in mitigation gets a 25 per cent discount for his very early pleas of guilty. Considerations in terms of family dysfunction apply in relation to him. The same considerations in terms of his experience at Banksia and like JD, of course, the overwhelming consideration in all of their - both of their cases is their youth and the application of the principles of juvenile justice.

Both of them have demonstrated some small steps in terms of rehabilitation under their new orders: JD more so than ES. Detention is, of course, a sentence of last resort. Now, when I have regard to all of those matters, particularly the progress subsequently, it is my view that on review in relation to both boys there are other dispositions that are open for both of them, and not only open but appropriate. Detention is a sentence of last resort and notwithstanding the seriousness of the offending

it does tend to mean that the sentence of last resort has not been reached in relation to ES.

So, boys, I want to talk to each of you individually now. Well, together, but I want to speak to both of you. All right. Are you listening?

**JD:** Yes.

**HIS HONOUR:** Right. Did you enjoy Banksia?

**JD:** No.

**ES:** No.

**HIS HONOUR:** No. Do you want to go back there?

**JD:** No.

**HIS HONOUR:** Right. Do you want to stay in the community?

**JD:** Yes.

**HIS HONOUR:** All right. Do you want to carry on playing football and basketball and go fishing?

**JD:** Yes.

**HIS HONOUR:** Well, I wish I was fishing up there, but I'm stuck down here so you're very lucky being up there and not down here. Right.

**JD:** Yes.

**HIS HONOUR:** So you've got to stay out of trouble.

**JD:** Yes.

**HIS HONOUR:** Now, I'm very impressed that both of you boys have been staying out of trouble since the magistrate spoke to you, but you've got to keep doing that. Okay.

**JD:** Yes.

**HIS HONOUR:** You're both going to be on orders for a bit longer, so that you've got somebody that you've got to report to and speak to and very - - -

**JD:** Yes.

**HIS HONOUR:** - - - importantly both of you boys have got to keep going to school. Do you understand that?

**JD:** Yes.

**HIS HONOUR:** And if anyone pitches up at your door and says, "Jump in the car I've just stolen", what are you going to do?

**JD:** No.

**HIS HONOUR:** You're going to say no.

**JD:** Yes.

**HIS HONOUR:** What about you? What are you going to say?

**ES:** (indistinct)

**HIS HONOUR:** What was that?

**ES:** I say no.

**HIS HONOUR:** You're going to say no. That's what you say.

**ES:** Yes.

**HIS HONOUR:** You say no. Okay.

**JD:** Yes.

**HIS HONOUR:** You boys know what happens when cars get stolen and they get rolled and crashed. All right. That could happen to you. It could happen to anybody. So you just don't get in stolen cars and you don't break into people's houses because their house is like their home. You imagine if somebody came into your house in the middle of the night how you would feel. It would be pretty bad, wouldn't it?

**ES:** Yes.

**JD:** Yes.

**HIS HONOUR:** Yes. All right. So stay out of trouble. Now, in relation to you, JD, are you prepared to be on a youth community based order for three months?

**JD:** Yes.

**HIS HONOUR:** Good. All right. It used to be for you an intensive youth supervision order but in your case I'm satisfied it should be a youth community based order for three months and that's on charges 121, 143 and 180. The other charges which are 144, 145, 146 and 163 are going to be section 67: both time in custody and other performance of obligations. All right. So it's a three month youth community based order with the supervision and attendance components of agenda as required. Anything else for JD required, Ms - - -

**ANDERSON, MS:** No, thank you, your Honour.

**HIS HONOUR:** All right. Now, for you, ES, I've decided it shouldn't be a sentence of detention but you do need a more intensive order. You need a bit more support and also you haven't been going as well as JD and you've also been in more trouble than him. So for you, are you prepared to comply with a five month intensive youth supervision order?

**ES:** Yes.

**HIS HONOUR:** What was that? Five months - - -

**ES:** Yes.

**HIS HONOUR:** - - - of supervision.

**ES:** Yes.

**HIS HONOUR:** Okay. I heard that as a yes. So you've got to - I don't want you getting another warning. Understood. You've got to report when you're required to for supervision. You've got to report. You've got to go to school. Do you understand that?

**ES:** Yes.

**HIS HONOUR:** Okay. And if - and if you boys breach these orders you will be back before the court and we will have to look at something else, so don't breach them.

**JD:** Yes.

**HIS HONOUR:** So the five month intensive youth supervision order with the supervision and attendance agenda is going to be on charge 198, 253, 454 and 169. All of the other charges for ES are going to be in section 67 for time in custody and performance of other obligations. Anything else, Ms Anderson, on that one?

**ANDERSON, MS:** No, thank you, your Honour.

**HIS HONOUR:** All right. Counsel, thank you for your assistance. That completes the matter.

AT 3.36 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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