NOTES: Using the Bookmarks panel to navigate
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YOUTH COURT SUMMARIES 2011-1991

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K v K S and S N FC Auckland FAM-2010-004-002148, 4 November 2011

File number: FAM-2010-004-002148
Court: Family Court, Auckland
Date: 10 October 2011 and 4 November 2011
Judge: Judge Fitzgerald
Key title: Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261)

On 2 September 2010, the Police applied for a declaration that the young person was in need of care and protection. A care and protection Family Group Conference resulted in an approved plan, and a support order under s 91 of the Act. A condition of this was that if there was a breach of the plan, fresh proceedings could be brought, either for a s 78 or a s 101 order. There was a breach, and an application was made for a s 78 interim custody order as a result.

On 9 June 2011, a Family Group Conference was convened by a Youth Justice Co-ordinator to consider both the young person's offending and care and protection issues. At the time, the young person was in a temporary placement with CYF caregivers.

By the 10 October 2011, the young person was living with his mother. The Judge noted that it would be entirely inappropriate for him to remain with his mother, given significant problems historically with him being in her care. The Judge also noted that his concerns were increased by counsel for the young person's report about the young person's attitude and behaviour when she attempted, over the weekend before the hearing, to engage with him. He stated that a care and protection Family Group Conference needed to be held, and adjourned the proceedings to 7 November 2011 on the basis that a Family Group Conference would be held in the meantime (an earlier Judge had adjourned proceedings for this to occur on 10 August, but it was yet to occur).

On 4 November 2011, counsel for the Chief Executive sought an adjournment of the proceedings on 7 November because an Family Group Conference had not yet been held and was due to be held on 9 November 2011.

The Judge echoed the concerns of the lawyer for the young person that an Family Group Conference had not yet been held, despite strong concerns about the young person remaining living with his mother, which the mother and the Judge both noted at the hearing on 10 October 2011.

The Judge adjourned the judicial conference to 21 November 2011, but noted an expectation of urgent attention to now be given to these issues and an explanation for these failings at the next conference.

Result:

Judicial conference adjourned.

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MSD v G, M and M YC Auckland CRI-2011-204-000189, 29 August 2011; FC Auckland FAM-2011-004-001534, 26 September 2011

Filed under: *CEO v G, M and M*
File number: CRI-2011-204-000189, FAM-2011-004-001534
Courts: Youth Court, Auckland, Family Court, Auckland
Date: 29 August 2011, 26 September 2011
Judge: Judge Fitzgerald
Key title: Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261).

On 29 August 2011, the Judge considered both Youth Court and Family Court care and protection proceedings, refusal to engage.

The young person was not present at the hearing, and neither she nor her father were engaging with a s 333 assessment ordered by the court, meaning it was put on hold. The Judge noted concern that delay and the accused's lack of cooperation were concerning given the seriousness of the charges (an aggravated robbery and two burglaries). He issued a warrant for the young person's arrest.

He then considered care and protection proceedings and noted an application for a declaration that the young person was in need of care and protection on the grounds of ongoing physical abuse by her father. Despite a s 78 interim custody order being made in favour of the Chief Executive, she remained with her father. He noted that this seemed to be on the basis that a social worker was putting in place a plan for the young person's safety. A Family Group Conference had been directed but not yet held.

The Judge decided to keep proceedings under close review and allow the s 78 order to continue.

At an adjourned hearing on 12 September 2011, the Judge was given an indication that the matter was being treated urgently and that necessary checks were occurring to allow for the young person to be placed with her aunt.

On 26 September 2011, Child, Youth and Family reported that the necessary caregiver assessments would have been carried out in two or three weeks time. This was said to be on the basis of the matter being treated urgently and given priority.

The Judge stated that this delay was completely unacceptable, and not an example of a matter that has been given priority or treated with the urgency it deserves. He noted it would have been four weeks since he first raised the issue of an appropriate safe placement, and close to two months before the court would know whether an appropriate safe placement was found.

The Judge noted that his concerns should be drawn to the attention of the appropriate authorities, and that an explanation was required for the unacceptably slow approach being taken to this matter. He adjourned the Family Court proceedings to the same day as her Youth Court proceedings on 31 October 2011, with an expectation of a report on progress much sooner than that.

Result:

Proceedings adjourned to Youth Court Hearing on 31 October 2011, with report on progress to come sooner.

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P*olice v BG* YC Tokoroa CRI-2011-277-000021, 7 November 2011

File number: CRI-2011-277-000021
Court: Youth Court, Tokoroa
Dates: 7 November 2011, 17 November 2011, 12 December 2011
Judge: Judge Mackenzie
Key title: Jurisdiction of the Youth Court: s 276 offer/election, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): serious sexual offending.

B indicated a desire to plead guilty to one indictably laid charge of unlawful sexual connection (digital penetration). The victim was a 6 year old and B was a visitor in her home. B removed the victim's skirt and underwear and digitally penetrated her vagina causing pain and injury, stopping after he had been asked two or three times to stop. B then removed the victim's underwear from her home and discarded it in the grass on the roadside. B presented with a number of high and complex needs (detailed in summary of 17 November decision).

B was identified by several report writers as having high and complex needs. These included physical health needs stemming back to his early childhood and a number of other serious behavioural issues including antisocial behaviour, impulsive eating, fire setting and some concerns about whether the seriousness of his overall behavioural issues and needs were truly recognised both by B and his family. B's SAFE assessment noted significant risk factors that indicated he was at increased risk to repeat harmful sexual behaviour without specific therapy to address the identified issues. A psychological report recommended long-term specialised clinical psychological intervention.

7 November: Jurisdiction

The Judge considered factors relevant to the issue of jurisdiction. In favour of Youth Court jurisdiction, she noted that B's SAFE assessment had considered him suitable for a Youth programme of 12-18 months duration, dependent on the progress made. B was 16½ years and could be dealt with in the Youth Court until he was 18 through the SAFE programme. On the other hand, she noted that orders short of a custodial sentence are available in the District Court, such as a sentence of intensive supervision with a maximum duration of up to two years.

The Judge was prepared to offer B Youth Court jurisdiction, because of the likely possible sentencing response under band 1 of *R v AM*. She noted that any sentence in the District Court would be less than five years imprisonment and thus nothing would be lost in terms of offering B Youth Court jurisdiction. There would still be the option of transfer to the District Court for sentence. A social worker's report was directed, as was an inquiry to Community Probation Service to find out what might be available for B.

17 November : Youth Court Sentencing

The matter then appeared before the Court to determine whether B would be convicted and transferred to the District Court for sentence.

The Judge noted that the assessment was "finely balanced". She weighed in B's remorse and acceptance of responsibility, his genuine willingness, supported by his family, to address issues, his lack of previous offending and the fact that it did involve a single incident. She balanced against this the serious and opportunistic nature of the offending involving a young and vulnerable victim, and the fact that injury was caused to the victim. Finally, she weighed in B's high and complex needs, requiring a programme of sufficient longevity to really address issues given the very real risk of re-offending if they were not addressed.

The Judge stated that there was a very real issue of a lack of ability to ensure and compel compliance with attendance at SAFE once B was 17. She ruled out supervision and supervision with activity because of their duration (and the lack of suitable supervision with activity programmes). In considering supervision with residence, she noted that it may be possible for B to undertake a SAFE programme whilst in a Youth Justice residence with the permission of the manager (though there was no guarantee of this). However, there would still be the problem of B turning 17 and completing the SAFE programme when subject to the supervision part of the order.

She observed that a longer sentence duration and greater range of sentencing options would be available in the District Court which can specifically address punitive and rehabilitative needs, including intensive supervision of up to two years and electronic sentencing options. She noted also that a transfer to the District Court could mean that B stays at home, whereas the only available Youth Court sentence would be in a youth justice residence. This concerned her, particularly as it meant B would be mixing with other high end Youth Court offenders.

The Judge noted that balancing all those factors, she had reached the view that the only sentencing option available was to convict and transfer B to the District Court for sentence.

12 December: District Court Sentencing

On sentencing B, the Judge noted that particularly pertinent sentencing factors were rehabilitation, the need to promote a sense of responsibility, the need for accountability for harm to the victim and the need to deter and denounce the offending.

She considered the aggravating factors to be: the extreme vulnerability of the victim at aged six years, the fact that the offending occurred in her home and that some physical harm was caused to her. For the first time, information was available to the Court on the emotional

impact of the offending on the girl, and the Judge noted the effect it had had on the family. She found there to be no mitigating factors.

The Judge adopted a starting point of four years imprisonment, having regard to *R v AM*, the victim's vulnerability, the fact that it did occur in her home, the harm both physically and emotional, balanced against the relevant brevity of the incident, the fact that it was opportunistic and that there were no accompanying threats of violence by B.

The Judge considered aggravating personal factors to be: youth, remorse and previous good character. The Judge took into account again B's complex psychological needs (as detailed in a number of reports, including a new probation officer's report) and strong family support.

The Judge reduced the sentence to two years – this involved a significant discount for youth and previous good character, taking into account mitigating personal factors and having regard to *Pouwhare v R* [2010] NZCA 268 and the decision of Judge Cooper in *R v DM* DC Rotorua CRI-2010-263-000083, 2 June 2011.

The Judge considered a further discount of eight months was warranted in terms of family upbringing and health circumstances (cautioning herself, however, against translating directly the approach in the *R v DM* case as the facts in this case were different, and noting that an automatic formulaic discount would not be appropriate).

She then gave the full 25% discount for early non-denial: *Hessell v R* [2010] NZSC 135; [2011] 1 NZLR 607.

The Judge then weighed up whether B should receive home detention or intensive supervision. She noted that home detention coupled with intensive supervision is not a permitted combination of sentences available under the Sentencing Act 2002, and the fact that the maximum home detention sentence would be about 18 months (whereas the SAFE programme would take 18 months to 2 years to complete). She cited two recent High Court cases, *R v T* HC Auckland CRI-2009-090-013287, 20 April 2011 per Duffy J and *M v Police* HC Wellington CRI-2011-485-000072, 21 September 2011 per Mallon J which considered the question of approaching sentencing outside of the guidelines and contrary to the presumption effectively of imprisonment. She cited these to establish that quite clearly there can be circumstances which are unusual and require an examination of other sentencing options. She regarded B's circumstances as warranting a close consideration of intensive supervision.

She decided to sentence B to the maximum intensive supervision so that he could attend SAFE, but coupled with a community work order to reflect the need for a punitive aspect.

Decision:

24 months intensive supervision (with conditions) and 250 hours community work.

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Police v BMCG YC Invercargill CRI-2011-225-000040, 22 June 2011

File number: CRI-2011-225-000040
Court: Youth Court, Invercargill
Date: 22 June 2011
Judge: Judge Flatley
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

While in residence, young person committed further offending, was placed in secure care, misbehaved regularly, incited other residents, exposed himself. School work has not been satisfactory.

Result:

Young person not released early.

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Police v BT YC Hamilton CRI-2010-219-231, 9 March 2011

File number: CRI 2010-219-231
Court: Youth Court, Hamilton
Date: 9 March 2011
Judge: Judge Becroft
Key titles: Orders - type: Supervision with residence - s 283(n).

Superette robbery, planned, with knives and disguises. B agreed to be dealt with under the CYPFA Amendment Act 2010, which prompted Police to change their recommendation from conviction and transfer to supervision with residence.

Court commented that, given the strong public interest factor, if B were an adult, imprisonment would have been inevitable. Also that, but for the availability of longer sentences under the 2010 Amendment Act, B would have been transferred to the District Court.

Result:

Order for supervision with residence with 6 month residence component.

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Police v CP YC Manukau CRI-2010-257-000038, 24 March 2011

File number: CRI-2010-257-000038
Court: Youth Court, Manukau
Date: 24 March 2011
Judge: Judge Malosi

Key titles: Orders - type: Supervision with residence - s 283(n), Orders - type: Mentoring progamme - s 283(jb).

CP appeared for sentencing on one charge of causing grievous bodily harm with reckless disregard, for the same incident as in *Police v TK* YC Manukau CRI-2010-257-000037, 24 March 2011. CP was aged 14 years and one month at the time. The Court sentenced him on the basis that he punched the victim once in his back.

The Court distinguished CP from others already sentenced for this incident on the basis that he was the youngest and he was the least involved of all the young people charged.

The Court noted CP's remorse, his supportive family, his sporting achievements, that he was a diligent student and that he had no Youth Court history.

The Court ordered a six month supervision order and indicated that it would also impose a mentoring order at another hearing in five days time, when the consent of the programme provider has been obtained.

Result:

Supervision order for six months.

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Police v CP YC Westport CRI-2010-286-000009, 31 March 2011

File number: CRI-2010-286-000009
Court: Youth Court, Westport
Date: 31 March 2011
Judge: Judge Strettell
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other

The Court was asked to consider whether CP should be sentenced in the Youth Court jurisdiction or convicted and transferred to the District Court for sentencing.

CP was a first offender and was remorseful.

The Court indicated that had CP been sentenced earlier, there would have been Youth Court options available under the new legislation to have held him accountable. However as it was, his age at sentencing meant that all available Youth Court options would be inadequate. The Court noted that it did not consider that this case necessitated a custodial sentence of imprisonment.

Result:

Conviction and transfer to the District Court for sentencing pursuant to s283(o).

Police v CW YC Taupo CRI-2010-269-000030, 27 January 2011

Filed under:

Police v CW

File number: CRI-2010-269-000030,
Court: Youth Court, Taupo
Date: 27 January 2011
Judge: Judge Munro
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

Court held that the conditions in s 314(1) for early release had been met—no absconding, no offending, any non-compliance with plans was minor, and satisfactory compliance with activities and programmes.

The Social worker did not have plan for supervision ready so another hearing was ordered to impose the supervision order. The Court noted that unfortunately, the supervision order would have be to imposed by a different Judge. She urged the social worker to have the plan for supervision ready for the early release hearing in future.

Result:

Conditions for early release were met. Extra hearing for imposition of supervision order was ordered.

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Police v DBM YC Dunedin CRI-2009-212-000270, 31 January 2011

File number: CRI-2009-212-000270; CRI-2010-212-000186
Court: Youth Court, Dunedin
Date: 31 January 2011
Judge: Judge O'Driscoll
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

DBM was serving a six month residence order for aggravated robbery, assault with intent to facilitate flight, and burglary.

The Court had before it the Chief Executive's re-port and a letter from DBM setting out the effects and consequences of the residence on him.

The residential case worker gave the Court an up-date which indicated some further trouble from DMB in residence but those matters had not been discussed with DMB.

The Court said that it was incumbent on residential staff to raise such matters with a young person as soon as they are aware of a particular incident. The young person must have an opportunity to comment on the matter. DMB was twice admitted to secure care while in

residence but has otherwise adhered to all conditions and satisfactorily participated in programmes.

Result

Conditions for early release have been met. Early release on the two-thirds date was ordered subject to DBM's continued compliance with the s 314(1) conditions.

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Police v EK YC Lower Hutt CRI-2011-232-000073, 28 September 2011

File number: CRI-2011-232-000073
Court: Youth Court, Lower Hutt
Date: 28 September 2011
Judge: Judge Becroft
Key titles: Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261), Family Group Conferences: Plan.

15 year old, first offender. Minor charges, not usually requiring proceedings in Youth Court. Deep seated care and protection issues. Overly comprehensive Family Group Conference (FGC) plan put in place, which was not complied with. Police charged E in Youth Court to access proper services, with the effect that CYF put a previous notification on hold.

Court believed that care and protection authorities had abdicated their legal responsibilities, and left it to youth justice authorities to intervene for the sake of E's welfare.

Court would have made s 280 FGC order — but for the urgent needs of EK and the existence of a comprehensive plan — 'a pragmatic but unprincipled approach'. Care and protection authorities could not be trusted to deliver a proper intervention for E. What should have happened is that E‟s longstanding care and protection concerns should have been dealt with in a welfare plan with a shorter, more proportionate youth justice plan running alongside and only addressing the offending. A hijacking of youth justice to meet needs statutorily it is not designed to address.

Result:

Plan approved.

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Police v HTB YC Taupo CRI-2009-269-000083, 27 January 2011

File number: CRI-2009-269-000083
Court: Youth Court, Taupo
Date: 27 January 2011

Judge: Judge Munro
Key titles: Orders type: Supervision with residence - s 283(n): Early release, s 314.

Early release hearing. HTB committed an assault while in residence. The assault was admitted and a FGC was held. There were also a number of problems with her compliance with her plan, and failure to complete programmes.

Result:

Grounds not met for early release.

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Police v IMCC YC Invercargill CRI 2010-255-155, 2 February 2011

File number: CRI 2010-255-155
Court: Youth Court, Invercargill
Date: 2 February 2011
Judge: Judge Phillips
Key titles: Orders - type: Supervision with activity - s283(m).

School building set alight by I 'for fun' while older co-offender kept lookout. Previously offered Youth Court jurisdiction.

I suffered at school from bullying. Also had considerable hearing, learning, and developmental difficulties. Showing recent improvement. Family supportive.

I has offered monetary contribution towards the damage.

Result:

Order for supervision with activity (4 months) followed by supervision (5 months).

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Police v JC YC North Shore CRN 11044003873, 28 September 2011

File number: CRN 11044003873
Court: Youth Court, North Shore
Date: 28 September 2011
Judge: Judge L J Ryan
Key titles: Child offenders: Pushback provision - s 280A.

J aged 13 and a half. Charged with arson of cinema property. Charge admitted. Co-offender with KK.

Court held that, in determining the grounds for referring the information back to the informant, no other grounds in s 14(1) can be considered except for child offending ground in s 14(1)(e). Despite this, other factors impacted on assessment of whether the offending creates serious concern for the wellbeing of the child.

The two factors to the decision were:

1. is the evidence sufficient to say that J is in need of care and protection, and
2. is the Court satisfied that the public interest would be better served by making a s 67 declaration that J was in need of care and protection on the s14(1)(e) than proceeding in the Youth Court.

J not a first offender. Unsettled family. J stood down from school, and not achieving academically. Parents relationship dysfunctional.

Court in no doubt that J in need of care and protection on many grounds in s 14, and may need to be removed from the care of his parents for a time. CYF advised that J could not be placed in a youth justice residence due to his young age.

Result:

Charges referred back to the informant for consideration to be given to the making of an application for a declaration under s 67.

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Police v JG YC Invercargill CRI-2011-255-000017, 30 March 2011

File number: CRI-2011-255-000017
Court: Youth Court, Invercargill
Date: 30 March 2011
Judge: Judge Phillips
Key titles: Orders - type: Community Work - s 283(l), Orders - type: Supervision - s 283(k), Orders - type: Judicial monitoring - s 306A.

J admitted stealing a bike and a car. Became aggressive at police station. J on an existing Family Group Conference plan when offending occurred.

Court described personal history, drug and alcohol use, and other offending.

Result:

100 hours community work. 3 months supervision with judicial monitoring.

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Police v JO YC Rotorua CRI-2011-263-000072, 28 June 2011

File number: CRI-2011-263-000072
Court: Youth Court, Rotorua
Date: 28 June 2011
Judge: Judge Cooper
Key titles: Jurisdiction of the Youth Court: Charge type.

Offences include aggravated burglary, aggravated robbery, rape, sexual violation. Home invasion while armed with a knife and wearing a mask. At the time of the offending J was subject to a supervision with activity order from the Youth Court.

Very difficult to see how an end sentence of imprisonment within the District Court‟s 5 year summary jurisdiction limit would be possible. Other factors are serious nature of the offending, and the need to protect the public.

Result:

Jurisdiction not offered.

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Police v JP YC Waitakere CRI-2010-290-514, 23 February 2011

File number: CRI-2010-290-514
Court: Youth Court, Waitakere
Date: 23 February 2011
Judge: Judge Becroft
Key titles: Bail (s 233(1)(b)), Reports: Psychological

14 year old. Multiple charges. Extensive history of child offending. Application to be bailed to address where father will be but recently released from prison. Held that risks of reoffending are too great. Section 333 psychological report ordered. Judge asked that young people remanded in custody be given priority in preparation of s 333 reports. Judge also lamented that JP has fallen through the cracks of the education system due to being excluded from intermediate school and alternative education, and not eligible for college.

Result:

Application denied.

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Police v JS YC Manukau CRI-2011-292-000359, 22 December 2011

File number: CRI-2011-292-000359
Court: Youth Court, Manukau
Date: 22 December 2011
Judge: Judge Malosi
Key titles: Mental impairment/fitness to plead, Criminal Procedure (Mentally Impaired Persons) Act 2003.

The proceedings related to a charge of receiving. The Criminal Procedure (Mentally Impaired Persons) Act 2003 ('the Act') was triggered.

The police alleged that the young person received a packet of cigarettes having been reckless as to whether or not the cigarettes were obtained by crime.

Section 9 of the Act requires the Court to be satisfied on the balance of probabilities that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission. JS accepted he was given a packet of cigarettes, but did not know they were stolen. The Police argued that for the purposes of s 9, the Court need only be satisfied that the cigarettes were stolen or obtained by crime, and that they were then given to JS. Counsel for the young person argued that the act of receiving must also include a mental element of knowledge or recklessness.

The Judge noted the lack of clear precedent from higher courts on this. She favoured the approach of counsel for the young person and that of *R v Cumming* HC Christchurch CRI-2001-009-835552, 17 July 2009 and held that knowledge or recklessness is a composite element of the act and must also be proved. She noted the fundamental nature of the presumption of innocence, particularly in the context of fitness to plead and where a young person is involved. She noted also the approach of French J in *R v Cumming*, who considered the underlying social purpose of s 9 and held that there cannot be rigid adherence to an inquiry on the actions of the accused only when mens rea is a composite element of the actus reus. In circumstances where there was objective evidence raising matters of justification she also held that the prosecution must negative that on the balance of probabilities. She added that even if wrong about importing a mental element into the act, it would still be relevant in this instance because the position JS was advancing would require negation of the evidence in order to satisfy s 9.

The Judge considered that the young person must have known that the man he received the cigarettes from was intoxicated, and intended to commit a crime. She factored in the young person's statement that he knew the man had 'hassled' someone to get the cigarettes. She therefore was satisfied as to JS's involvement in the receiving charge. The Judge was also satisfied on the basis of the health assessor reports that the young person was fit to stand trial.

Result:

Section 9 of the Criminal Procedure (Mentally Impaired Persons) Act satisfied. Young person fit to stand trial.

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Police v JSR YC Tauranga CRI-2011-270-000072, 27 June 2011

File number: CRI-2011-270-000072
Court: Youth Court, Tauranga
Date: 27 June 2011
Judge: Judge Becroft
Key titles: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court)

J had not turned up to court, so sentencing is considered in her absence. Nine charges. J aged 14. Her first charges in Youth Court. History of serious child offending, and failed child offending and care and protection interventions. J's boyfriend described as the son of the leader of the Notorious Mongrel Mob chapter in O.

Court questioned whether the suggested supervision with residence sentence was the least restrictive in the circumstances. Court also questioned suggested length of 6 months in residence, which would put J in the category of 150 worst youth offenders in New Zealand.

Court asked whether supervision with activity had been considered, despite the lack of programmes available for girls. Court also warns against "welfarising‟ the Court's response when what is really required is a long term care and protection plan to run alongside any youth justice elements. Court also considered that it would be failing in its duty if it did not impose a parenting order, despite the parent's lack of support or co-operation.

Despite a care and protection plan for J‟s family as a whole, J has no separate care and protection status. The Court questioned why this should be.

Court recommended a s 261 FGC.

Result:

Warrant issued for J's arrest.

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Police v JW YC Manukau CRI-2011-290-000017, 22 December 2011

File number: CRI-2011-290-000017
Court: Youth Court, Manukau
Date: 22 December 2011
Judge: Judge Malosi
Key title: Orders - type: Supervision with residence - s 283(n), Jointly charged with adult (s 277), Remand to a penal institution

Case Summary

The young person was serving a term of supervision with residence under s 311. He was denied early release. In the meantime, he turned 17 years old and was jointly charged with

grievous bodily harm and assault. A memorandum was filed pursuant to s 142 of the Criminal Justice Act 1985 that he be remanded to a penal institution.

The Judge held that the young person must finish his sentence in the residence. She noted a lacuna in the law for the type of situation where a young person is serving a term of supervision with residence, but is then charged as an adult with further alleged offending. She remarked that there was no power to either cancel or suspend his supervision order, despite her concerns that this could potentially pose a very serious risk to both other young people and staff members.

Result:

Remand at large. Young person returned to residence. District Court appearance to follow.

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Police v KK YC North Shore CRN 11244000103, 26 September 2011

File number: CRN 11244000103
Court: Youth Court, North Shore
Date: 26 September 2011
Judge: Judge L J Ryan
Key titles: Child offenders: Pushback provision - s 280A.

K aged 13 and a half. Charged with arson of cinema property. Charge admitted.

Court held that, in determining the grounds for referring the information back to the informant, no other grounds in s 14(1) can be considered except for child offending ground in s 14(1)(e).

The two factors to the decision were

1. is the evidence sufficient to say that K is in need of care and protection, and
2. is the Court satisfied that the public interest would be better served by making a s 67 declaration that K was in need of care and protection on the s 14(1)(e) than proceeding in the Youth Court.

K is a first offender, but the seriousness of the circumstances were enough to satisfy the Court that the magnitude of the offending was sufficient to give serious concern for K's wellbeing.

Other factors: recent death of K's grandmother who was his sole caregiver, difficult relationships with other members of his family, concern for educational and behavioural issues. Court found K in need of care and protection.

Despite difficult home life, there is funding available to send K to boarding school. K has been accepted to RYOP MST programme, and is working with another counsellor as well. Funding for this counsellor is only available if K remains in the Youth Court.

Court agreed that Youth Court disposition offers more accountability in the event that there is non-compliance with the Family Group Conference (FGC) plan.

Result:

Section 281 FGC ordered and K‟s charges remain in Youth Court

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Police v KT and NI YC Nelson CRI-2011-242-000037, CRI-2011-242-000038, 6 July 2011

File number: CRI-2011-242-000037, CRI-2011-242-000038
Court: Youth Court, Nelson
Date: 6 July 2011
Judge: Judge Zohrab
Key titles: Custody (s 238): Police (s 238(1)(e)).

Violence against friend that was sober, planned, clinical, measured and unhurried. Complete lack of empathy. Offences admitted. Both young people taken out of school and thus lost their chance at a New Zealand education. Loss of education funds by parents.

Result:

Further remand in custody for differing periods based on culpability. Differing amounts of emotional harm reparation to the victim. Eventual deportation.

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Police v LM YC Rotorua CRI-2011-263-000093, 28 June 2011

File number: CRI 2011-263-000093
Court: Youth Court, Rotorua
Date: 28 June 2011
Judge: Judge Cooper
Key titles: Arrest without warrant (s 214), Admissibility of statement to police/police questioning (ss 215-222): Explanation of rights, Admissibility of statements to police/police questioning (ss 215-222): Nominated persons

L questioned and arrested by police for breaching bail conditions of curfew and non-association. Airgun, length of pipe and disguise found on L after search by police.

Court held that constable had reasonable grounds to arrest L, as he was found on the street, past curfew, with co-offender in burglary, for which he was on bail.

L interviewed at police station. L made admission during interview. Court found L had 'a pretty scant understanding of his rights'. L's nominated person was passive. Police obliged to take extra care to explain rights in simple language. Admission was the only evidence against L on charge of conspiracy to commit aggravated robbery.

Result:

Arrest lawful. Evidence of admission inadmissible. Conspiracy charge dismissed.

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Police and MSD v JS YC Hamilton CRI-2011-219-000113, 27 May 2011

File number: CRI-2011-219-000113
Court: Youth Court, Hamilton
Date: 27 May 2011
Judge: Judge Cocurullo
Key titles: Custody (s 238): Police (s 238(1)(e)).

JS appeared before the Court on the same day as two other young people, all charged with separate offending. The Police opposed bail for all three, but the Court was told that there was only one bed available in the youth justice residence. The Court made a s 238(1)(d) order (custody of the Chief Executive) in respect of JS, a s 238(1)(e) order (Police custody) in respect of the second young person, AP, and granted bail to the third young person on strict conditions.

After the orders were made the residential manager advised that the available bed had been 'ring fenced' for AP (not JS) based on CYFS previous knowledge of him and his needs. Consequently JS was held over-night in Police custody on the grounds in s 242(1)(b), that suitable facilities for detention were not available to the Chief Executive.

The Court was asked to determine whether the detention in Police custody of JS under s 238(1)(d) and s 242(1)(b) was lawful.

It held that once the Court made the custody decisions CYFS had no jurisdiction to withhold the available bed from JS, despite previously having sound reasons for ring-fencing it for AP. AP was not entitled to the bed after the order for Police custody was made in respect of him, so it should have been allocated to JS.

Result:

The detention of JS in Police custody was contrary to law.

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Police v MA YC Blenheim CRI-2011-206-00005, 12 July 2011

File number: CRI-2011-206-00005
Court: Youth Court, Blenheim
Date: 12 July 2011
Judge: Judge Russell
Key titles: Jurisdiction of the Youth Court: Age, Orders - deferred, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Sexual violation by unlawful sexual connection, Orders - type: Judicial monitoring (s 306), Orders - type: Intensive Supervision (s 296G), Family Group Conferences: Plan.

MA appeared on 10 sexual offending charges perpetrated against his siblings and cousins. The Judge described the offending as the worst he has dealt with and indicated that this offending by an adult could lead to an imprisonment term of 10 to 13 years in the District Court.

MA was 17 and a quarter years old at the time of this hearing.

Two family group conferences (FGC) agreed that MA should attend the STOP programme for two years and receive a s 283(a) discharge at the end of that time if he has adhered to the programme.

The Court partly approved the FGC plan. It offered Youth Court jurisdiction to MA and agreed to the STOP programme for two years. It indicated that it could monitor MA's progress with the programme after his 18 birthday and impose a s283(o) conviction and transfer to the District Court for sentencing if he does not comply or re-offends.

The Court declined the proposed s 283(a) discharge at the completion of the programme. Instead, it indicated that it will impose a s 283(o) conviction and transfer to the District Court for sentencing, followed by a two-year order for intensive supervision (s 54 of the Sentencing Act 2002) which will also be judicially monitored under s 80ZJ of the Sentencing Act. In this way, MA will be monitored for four years.

Result:

Youth Court jurisdiction offered and accepted. FGC plan approved as to STOP programme. Indication from Court that s283(o) will be made on completion of programme, resulting in two-year intensive supervision order and judicial monitoring.

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Police v MD YC Auckland CRI 2010-204-000246, 3 March 2011

File number: CRI 2010-204-000246
Court: Youth Court, Auckland
Date: 3 March 2011

Judge: Judge Fitzgerald
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - type: Supervision with residence - s 283(n), Intensive Monitoring Group Court, Family Group Conferences: Non agreement

Other charges include reckless driving (police chase, speeds up to 175km/h) and dangerous driving causing injury. Incidents of driving were appalling with aggravating features including failing to remain at the scene of a crash, failing to give assistance, avoiding police and covering up forensic evidence. MD also had a history of behavioural and psychological problems, plus a risk of reoffending assessed as very high.

No agreement at Family Group Conference (FGC) as to sentence. No prison sentence available due to age and charges. Options included 6 month supervision with residence, or 6 month supervision with activity (allowing attendance at a drug and alcohol programme), or placement in IMG (intensive monitoring group) Court. The IMG Court would also allow attendance at programme plus fortnightly judicial monitoring visits to court. Other conditions of judicial monitoring could include community work, residential restrictions, education and job training, and mentoring.

IMG Court has been evaluated and found to bring about a significantly greater (two to three times) reduction in the risk of re-offending than any other Youth Court option.

A sentence of community work and supervision in the District Court would not put MD in touch with specialist services that are needed, and would expose M to adult offenders.

Other sentencing options still available if conditions of IMG are not complied with.

Result:

Young person sent to IMG Court.

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Police v MPC YC Waitakere CRI-2011-290-000043, 14 September 2011

File number: CRI-2011-290-000043; CRI-2011-204-000061.
Court: Youth Court, Waitakere
Date: 14 September 2011
Judge: Judge Taumaunu
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

M had not absconded, or committed further offences while in residence. There had been some non-compliance and misbehaviour. A window was broken, and a play fight turned into a real fight.

Court holds that moderately serious misbehaviour and non-compliance will not automatically disqualify a young person from early release. Courts still need to consider whether the young

person's compliance and behaviour have been satisfactory in an overall sense. Courts should adopt the least restrictive interpretation where the liberty of the young person is at stake.

Court finds that, in context, misbehaviour was minor. All parties supported granting early release.

Result:

Early release granted.

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Police v NN YC Napier, CRI-2011-241-000071, 16 December 2011.

File number: CRI-2011-241-000071
Court: Youth Court, Napier
Date: 16 December 2011
Judge: Judge Callinicos
Key titles: Reports: Cultural, s 336, Summary Offences Act 1981, Orders - type: Reparation - s 283(f), Orders - type: Come up if called upon - s 283(c).

The young person appeared for sentence and review of sentence on a number of matters including burglaries, offences under the Summary Offences Act 1981, threatening behaviour and assault and possession of a knife under the Crimes Act 1961. An earlier sentence of supervision with activity was cancelled because of breaches.

The Judge obtained a cultural report under s 336 of the Children, Young Persons and their Families Act 1989. The report noted the considerable difficulties faced by the young person , who came from a refugee family. This report, coupled with a psychological and social work report led the Judge to consider factors such as the bullying and isolation and aspects of racism experienced by the young person. It noted his motivation and his family's recent engagement with community organisations.

The Judge commented personally to the young person about the need to learn a sense of pride in his culture and search for positive relationships. He drew on an example from his own family life in explaining this.

Decision

Reparation Order granted (to be paid by young person over time rather than family) and s 283 (c) order to come before court if called upon within 12 months after order made.

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Police v RB and Others YC Rotorua CRI-2011-263-000053, 14 June 2011

File number: CRI-2011-263-000053, CRI-2011-263-000054, CRI-2011-263-000055, CRI-2011-263-000058, CRI-2011-263-000059
Court: Youth Court, Rotorua
Date: 14 June 2011
Judge: Judge MacKenzie
Key titles: Delay (s 322).

Offences alleged to have taken place 3 months prior. Disclosure by police only apparent on day of hearing. Court declared this 'inimical to the interests of justice'. Different standards apply to Youth Court.

Result:

Information dismissed.

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Police v RMTN YC Whakatane CRI-2010-287-000056, 28 January 2011

File number: CRI-2010-287-000056
Court: Youth Court, Whakatane
Date: 28 January 2011
Judge: Judge Harding
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

RMTN appeared for determination as to whether the Court would grant early release.

RMTN had allegedly assaulted staff while in the residence. The Court held that was not an offence as contemplated by s 314(1)(a) of the CYPFA because no charge resulted and no formal court process took place.

MTN's compliance with programmes and activities was satisfactory but his compliance with his plan was mixed. He had become a role model and had completed his duties without fuss and to a high standard. However, he had also been admitted to secure care three times, and there were 22 incident reports about him. Overall, compliance was unsatisfactory.

Decision

Conditions for early release not met. Residence transfer approved. Post release supervision order made for four months.

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Police v NEP YC Manukau CRI-2010-092-000196, 23 June 2011

File number: CRI-2010-092-000196
Court: Youth Court, Manukau
Date: 23 June 2011
Judge: Judge Malosi
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Arson.

Fourteen years old when offences committed. Six charges including school arson and burglary. Co-offenders dealt with in Family Court due to their age. $3m damage. Large amounts of students work and teachers resources destroyed. The school was without many classrooms for many weeks.

Supportive family. No bail breaches. In mainstream schooling. First time offender. Genuine remorse. Imprisonment unlikely if convicted and transferred. N too vulnerable to be sent to a youth justice residence.

Result:

Convicted and transferred to District Court for sentence.

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Police v RRR YC Waitakere CRI-2011-290-25, 23 February 2011

File number: CRI-2011-290-25
Court: Youth Court, Waitakere
Date: 23 February 2011
Judge: Judge Becroft
Key titles: Reports: Psychiatric, Custody (s 238): Chief Executive (s 238(1)(d)).

Court forced to continue remand in residence due to delay in providing detailed psychological report. Court commented that it would be cheaper to fly a psychiatrist from Australia than to keep the young person in custody for a further 8 weeks.

Result:

Remand in youth justice residence continued.

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Police v RT YC Christchurch CRI-2011-209-000019, 22 July 2011

File number: CRI-2011-209-000019
Court: Youth Court, Christchurch
Date: 22 July 2011

Judge: Judge Strettell
Key titles: Jurisdiction of the Youth Court: Age.

R, a special needs student, committed acts of sexual violation on 3 other students who also had diminished intellectual capacity. The offending was planned and backed up by threats. R was assessed as having conduct disorder, attention deficit and hyperactivity disorder, and mental impairment. Assessment concluded that, if not treated, R would continue to offend regularly and seriously and that the seriousness would escalate over time.

At the time of writing the decision, R was bailed to the adolescent sexual offending programme Te Poutama Arahi Rangatahi. Treatment at this programme would not be available to R if he was sentenced in the District Court, and in that scenario, he would probably end up leaving prison before being eligible to receive treatment in an adult prison setting. R's right of residence at Te Poutama expires at age 17 so thereafter he would need community treatment.

Court commented that a custodial remand would leave R in a black hole with regards to treatment. R‟s requirement for treatment is immediate. To decline Youth Court jurisdiction would be to decline treatment.

Court outlined sentencing objectives for R and proposed outcome. Youth Court jurisdiction offered. Final disposition put off until just before R's 17th birthday, to allow R to remain at Te Poutama. Thereafter, if all goes well, a 12 month supervision order to allow community treatment to continue. Any non compliance could be dealt with by conviction and transfer to District Court for sentence.

Result:

Matter adjourned. Three month progress report ordered.

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Police v SB YC Dunedin CRI-2010-212-000118, 31 January 2011

File number: CRI-2010-212-000118
Court: Youth Court, Dunedin
Date: 31 January 2011
Judge: Judge O'Driscoll
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

Early release hearing. While in residence SB was placed in secure care five times, but also attended a MAC programme and graduated with distinction.

Result:

Conditions for early release were met. Supervision order for 12 months was made.

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Police v SB YC Dunedin CRI-2011-202-000032, 28 April 2011

File number: CRI-2011-202-000032
Court: Youth Court, Dunedin
Date: 28 April 2011
Judge: Judge O'Driscoll
Key titles: Orders - type: Supervision with residence - s 283(n), Reports: Medical.

SB appeared for sentence on charges of burglary, unlawfully being in an enclosed yard, and two charges of unlawfully taking a motor vehicle.

The Judge said that he had dealt with SB over a long period of time and was familiar with his background, his offending and his file.

In sentencing SB to supervision with residence for three months, the Court also ordered a s 333 medical report to be prepared for the specific purpose of assessing whether SB had Foetal Alcohol Spectrum disorder. The report was to be written by two named experts in that field.

Such an assessment was indicated in part by the social worker's note that SB was born addicted to opiates and other substances. The Judge expressed concern that without a proper assessment, SB will end up spending most of his life in prison. A confirmed diagnosis may impact on assessments of SB's culpability.

Result:

Supervision with residence for three months, s 333 report.

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Police v SLG YC Nelson CRI-2011-242-000008, 23 March 2011

File number: CRI-2011-242-000008
Court: Youth Court, Nelson
Date: 23 March 2011
Judge: Judge Russell
Key titles: Bail (s 238(1)(b), Custody (s 238): CYFS.

Application for bail. Young person charged with burglary, assault and wilful damage. Previous bail breaches have been for curfew, non-association, and location reasons. Court satisfied that there are sufficient risks of further offending and absconding. Young person in custody of CYF under s101 of CYPFA.

Result:

Remanded under 238(1)(d) into the custody of CYF.

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Police v SJ YC Tauranga CRI-2010-270-183, 22 February 2011

File number: CRI-2010-270-183
Court: Youth Court, Tauranga
Date: 22 February 2011
Judge: Judge Harding
Key titles: Arrest without warrant (s 214), Evidence (not including admissibility of statement to police/police questioning)

SJ one of 3 people found in a small boat coming from Motiti Island. Police on the Island had also established that SJ was a person who they wanted to speak to in relation to burglaries and was missing from the Island. SJ arrested and his fingerprints taken, despite police knowing SJ's identity.

Court held that arrest to confirm identity was not objectively sustainable, and neither was it required for ensuring the appearance of the young person before the Court.

Discussion of s 30 of the Evidence Act 2006. Court found that the importance of the breach of the right in s 208(h) of CYPFA was significant. The evidence obtained was crucial. There were other investigatory techniques available. There was no physical danger to police, and there was no urgency in obtaining the evidence.

Result:

Arrest to determine identity unlawful. Fingerprint evidence obtained following arrest excluded.

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Police v SO YC Te Awamutu CRI-2011-272-00007, 14 June 2011

File number: CRI-2011-272-00007
Court: Youth Court, Te Awamutu
Date: 14 June 2011
Judge: Judge Cocurullo
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other, Orders - type: Supervision - s 283(k), Orders - type: Community Work - s 283(l), Orders - type: Disqualification from driving - s 283(i), Principles of Youth Justice (s 208).

SO appeared for sentencing on four charges, two of dangerous driving causing death, and two of dangerous driving causing injury. All charges were laid summarily.

The family group conference was well attended by victims, but did not reach agreement on how SO should account for her offending.

The court accepted that SO was remorseful and had no previous police involvement. It said that the offending, while a tragedy, was a result of youthful risk-taking, immaturity of driving, ill-judgement and limited life experience.

The question of whether SO should be convicted and transferred to the District Court for sentencing was finely balanced, but the principle of applying the least restrictive outcome adequate to the circumstances tipped the balance in favour of Youth Court orders.

The Court imposed supervision (s283(k)) for six months with conditions; community work (s 283(l)) for 200 hours to be performed within six months; and disqualification for 24 months. No reparation was ordered due to SO's financial situation.

Result:

Supervision order, community work order and disqualification order.

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Police v SPT YC Tauranga CRI-2011-270-000062, 9 May 2011

File number: CRI-2011-270-000062
Court: Youth Court, Tauranga
Date: 9 May 2011
Judge: Judge Harding
Key titles: Family Group Conferences: Convened/Held.

SPT appeared on charges of burglary and unlawfully taking a car. The offences were alleged to have occurred in 2008 and 2009. SPT's connection to this offending was made after he gave finger-prints in respect of recent offending. He was 17 years old at the time of appearance.

The Youth Advocate requested dismissal on the grounds that the information were improperly laid because SPT was not arrested, nor has there been a family group conference in respect of the offending, as required by s 245(1).

The Court held that s 2(2) (which negates the need for a family group conference) does not apply because SPT was not over 18.

Result:

Information dismissed without prejudice.

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Police v TAT YC Porirua CRI-2011-091-000527, CRI-2011-291-000029, 18 August 2011

File number: CRI-2011-091-000527, CRI-2011-291-000029
Court: Youth Court, Porirua (acting as District Court)
Date: 18 August 2011
Judge: Judge Walker
Key titles: Sentencing in the adult courts: Aggravated Robbery

T for sentence in District Court for an aggravated robbery committed while a young person, plus other burglaries and assaults committed after turning 17 years old. Second robbery of same dairy by T, which was dealt with in Youth Court. T admitted offending and was remorseful.

Starting point 4 years imprisonment. Factors considered by Court include youth, cannabis use, willingness to engage in treatment, remorse and guilty plea.

Electronic monitoring not available due to lack of suitable address.

Result:

13 and a half months imprisonment.

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Police v TK YC Manukau CRI-2010-257-000037, 24 March 2011

File number: CRI-2010-257-000037
Court: Youth Court, Manukau
Date: 24 March 2011
Judge: Judge Malosi
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - type: Mentoring programme - s 283(jb), Family Group Conferences: Report from.

TK appeared for sentencing on one charge of causing grievous bodily harm with reckless disregard. At the age of 14 years and three months, and together with a group of fellow students, TK assaulted an off-duty Police Officer as they left College after a sports day. TK punched the Officer once in the shoulder area and once in the face. TK then retreated, but the others continued the assault, some continuing to attack him while he was on the ground.

The court noted the FGC's recommendation for an activity order, TK's remorse, his family support, that this was his first time before the Youth Court, and that while awaiting sentence he had not breached bail and had engaged in school.

Result:

Activity order for six months, mentoring order for 12 months.

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Police v TM-P YC Whangarei CRI-2011-288-000072, 12 October 2011

File number: CRI-2011-288-000072
Court: Youth Court, Whangarei
Date: 12 October 2011
Judge: Judge Lindsay
Key title: Family Group Conferences: Timeframes/limits: intention to charge, s 247(b), s 249, s 250.

An intention to charge FGC was to be held for the charge of wounding with intent to cause grievous bodily harm. T's youth Advocate filed an application to dismiss the information because the FGC did not comply with the time limits set out in s 247(b) of the CYPFA. The timeframe was exceeded by 10 days.

The Judge applied *H v Police* [1999] NZFLR 966 (HC) per Smellie J, which held that the failure to comply with mandatory time limits invalidated the conference and therefore removed the jurisdiction of the Court to consider the information. *Police v V* [2006] NZFLR 1057 (HC) was distinguished, because it related to a conference that was convened under s 247(d) of the CYPFA. In case the Judge was wrong to conclude that Hansen J's approach should apply, she also justified the dismissal of the information in light of s 5 of the CYPFA, emphasising the young person's sense of time. She noted that the failure by professionals and Government agencies to adhere to timeframes gives rise to a risk that the integrity of the FGC process is undermined.

The Judge also considered whether or not "consultation" occurred pursuant to s 250 of the CYPFA. The co-ordinator paid a home visit to the young person and his whānau before the conference, but did not indicate a date, time or place on/at which a conference could be held. This was done by letter. Neither the young person nor his mother attended the FGC. The Judge concluded that it may have been helpful to have had some discussion as to the availability of the young person and his mother or other whānau member to attend the conference.

Result:

The application was successful. Information dismissed.

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Police v TW YC Rotorua CRI-2010-263-000143, 8 February 2011

File number: CRI-2010-263-000143
Court: Youth Court, Rotorua
Date: 8 February 2011

Judge: Judge MacKenzie
Key titles: Arrest without warrant (s 214).

T charged with intentionally damaging the top of the defendant dock at the Rotorua Youth Court. He was in the process of carving graffiti into the metal railing of the dock when he was arrested without warrant by a police officer present in the Court who thought T might be in possession of a box knife.

The arresting officer said that he considered the alternatives to arrest required in the CYPFA but determined that none were appropriate, and that the arrest was made to preserve exhibits and to ensure T's appearance in Court. The officer also thought that there was the prospect of further offending.

Court considered grounds for arrest of a young person in s 214 of the CYPFA, and noted that those must be proved beyond reasonable doubt (*Police v H* [2007] DCR 20; *Pomare v Police* HC Whangarei AP 8/02, 12 March 2002 per Harrison J).

Court found that the prosecution could not prove that an arrest was necessary to ensure T‟s appearance in Court, or to prevent further offences, or to prevent the destruction of evidence.

Court comments that it had no doubt that the officer was acting genuinely to protect others in the courtroom, but that that was not part of the s 214 test. The matter could have been dealt with by summons.

Result:

Arrest, and therefore information invalid. Charge dismissed.

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Police v UP YC Auckland CRI-2010-204-000314, 17 March 2011

File number: CRI-2010-204-000314
Court: Youth Court, Auckland
Date: 17 March 2011
Judge: Judge Fitzgerald
Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 9 trial, Insanity.

Hearing under s 9 of the Criminal Procedure (Mentally Impaired Persons) Act 2003. Detailed discussion of authorities relating to Court's consideration of mens rea elements in the s 9 enquiry. Court preferred approach in *R v Cumming* HC Christchurch, 17 July 2009 per French J. Also discussion of possible defences at the s 9 stage.

Result:

UP caused the acts that form the basis of the offences.

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Police v UP YC Auckland CRI-2010-204-000314, 9 May 2011

File number: CRI-2010-204-000314
Court: Youth Court, Auckland
Date: 9 May 2011
Judge: Judge Fitzgerald
Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: Disposition if unfit, Secure care (ss 367-383A)

UP previously found unfit to stand trial.

Police favoured making UP a special patient under Mental Health Act in the interests of public safety. Court held that no grounds existed for such an order as there was insufficient evidence of mental disorder in term of the Mental Health Act.

The Court had previously made a finding of mental impairment on the basis of an intellectual disability.

Recommendation by consultant psychiatrist and health assessor that U's young age and rehabilitation needs would be best met by a secure care order to a community secure facility for 2 years.

Result:

Secure care order made for 2 years under CP(MIP) Act, with 6 month reviews. Youth Court matters at an end. UP not to return to youth justice residence.

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Police v WF YC Auckland CRI-2010-204-000057, 20 January 2011

File number: CRI-2010-204-000057
Court: Youth Court, Auckland
Date: 20 January 2011
Judge: Judge Fitzgerald
Key titles: Orders - type: Supervision with residence - s 283(n): Early release.

Early release hearing. W sentenced to 3 months supervision with residence under 2010 Amendment Act, which includes the presumption of early release after two thirds of the residence term if certain conditions are met (s 314 CYPFA).

W repeatedly and deliberately breached residence rules, but did not abscond, or commit further offences, and complied satisfactorily with residence programmes. Court held that a young person must satisfy all grounds in s 314(1), but that the Court must finally satisfy itself that there has been no breach of any of the conditions in s 314(1).

Result:

Early release not ordered. W to serve full term in residence.

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R v CT and BS DC Christchurch CRI-2010-008-008489, 7 February 2011

File number: CRI-2010-008-008489
Court: District Court, Christchurch
Date: 7 February 2011
Judge: Judge Callaghan
Key titles: Delay (s 322)

Application for stay of proceedings based on delay pursuant to s 322. Complainant alleges assault with intent to commit sexual violation arising from an incident which occurred 5 years previously when complainant and defendants attended the same school. Complainant raised matter with police 5 years later after defendants were charged with other offences.

Court undertook a full review of authorities, including *Turner* (following). Held that the ultimate question is whether accused can have a fair trial, which can still be possible, even if the right against undue delay has been breached. No evidential basis that suggests defendants will not receive a fair trial, and defendants' young ages at the time of the alleged offence would be taken into account at sentencing if they were found guilty.

Result:

Application dismissed.

Note: This decision was subject to judicial review - see *CT and BS v AG and DC at Christchurch* HC Christchurch CIV-2011-409-000845, CIV-2011-409-000846, 26 July 2011

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R v DM DC Rotorua CRI-2010-263-000083, 2 June 2011

File number: CRI-2010-263-000083
Court: District Court, Rotorua
Date: 2 June 2011
Judge: Judge Cooper
Key titles: Sentencing in the adult courts: Sexual violation by unlawful sexual connection.

The defendant appeared for sentencing on three charges of sexual violation by unlawful sexual connection and to two charges of doing an indecent act. The offending, over a two year period, was against his two younger sisters. The defendant was aged 14 to 16 at the time of the offending and was aged 17 at the time of sentencing.

The Court regarded the circumstances of the case as falling within band 2 of *R v AM* (2010) 24 CRNZ 540 and fixed a starting point of 8 years imprisonment. Having regard to *Pouwhare v R* [2010] NZCA 268 the Court gave a 50% reduction for the defendant's young age. It made a further reduction of 1 year and four months to reflect the defendant's family upbringing, and a reduction of 25% for the guilty plea.

The resulting term of two years imprisonment being within the threshold for home detention, the Court then determined that home detention would meet the sentencing needs by permitting the defendant to attend a rehabilitative programme that would not be available to him in prison, due to his age.

A sentence of home detention for 10 months was imposed with conditions to undertake psychological assessment, counselling and treatment.

The Court also imposed special post-detention conditions for 12 months, that the defendant undertake and complete rehabilitative programmes, counselling, treatment and follow-up programmes, and 300 hours community work (which the probation officer can convert to basic work and living skills programmes.

Finally, the Court imposed judicial monitoring on the sentence of home detention.

Result:

10 months home detention with conditions, 12 months post-detention conditions, 300 hours community work.

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R v HLH YC Hamilton CRI-2010-219-000344, 9 March 2011

File number: CRI-2010-219-000344
Court: Youth Court, Hamilton
Date: 9 March 2011
Judge: Judge Becroft
Key titles: Bail (s 238(1)(b))

Application for electronically monitored (EM) bail. 14 year old charged with attempted murder of police officer. Attack occurred at young person's home after drinking and fighting with his brothers. Held that there would be no guarantee that contact with other family members or drinking could be avoided.

H doing well in residence, but that is not a reason to continue custody. Held that there is too great a risk of reoffending.

Result:

Application denied.

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R v JB YC Invercargill CRI-2011-225-000035, 8 June 2011

File number: CRI-2011-225-000035
Court: Youth Court, Invercargill
Date: 8 June 2011
Judge: Judge Flatley
Key titles: Jurisdiction of the Youth Court: Age, Jurisdiction of the Youth Court: s 275 offer/election.

JB was seeking trial by jury in respect of Youth Court charges of sexual violation by rape and indecent assault. He was simultaneously facing similar charges in the High Court for offending that occurred after his 17th birthday.

The Court was asked to determine whether Youth Court jurisdiction would be offered in respect of the Youth Court charges.

The Court held that Youth Court jurisdiction would not be offered to JB because—

- All the offending should be dealt with together, particularly because the complainant was six years old and should not have to give evidence in two trials;
- JB had some cognitive difficulties and so it would be to his benefit to have only one trial;
- Those difficulties would not be overlooked in a trial outside the Youth Court and can be taken into account in any sentencing ;
- The charges are serious and carry a significant penalty;
- JB was almost 17 when the alleged Youth Court offending occurred.

Result:

JB was committed for trial and Youth Court jurisdiction was not offered.

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R v MAC YC Christchurch CRI-2011-209-000118, 6 December 2011

File number: CRI-2011-209-000118
Court: Youth Court, Christchurch
Date: 6 December 2011
Judge: Judge N Walsh
Key title: Orders - type: Discharge - s 282, Child Offenders: Jurisdiction - s 272.

M was 13 years old when she participated in the arson of a house property, with a 14 year old companion. The Judge found the offending to be clearly premeditated. After leaving the scene, M went to the house of her co-offender and told the co-offender's mother. Extensive damage was caused to the conservatory of the house. Reparation of $4987.55 was sought for damaged items contained within the conservatory and an estimated $20,000 was sought for the rebuilding of the damaged conservatory (which was paid out by insurance).

M initially faced a charge of burglary, but there was no jurisdiction to lay this charge given age at the time of the offence. The arson charge was indictably laid, and referred to a Family

Group Conference, prior to being laid in the Youth Court. M did not have the benefit of representation by a youth advocate at that conference. M's youth advocate at the hearing submitted that in hindsight this matter could have been dealt with differently, in particular by a referral under s 14 (1)(e) of the Act given M's age at the time of the offending. Subsequently, the Chief Executive of the Ministry of Social Development had been involved with care and protection proceedings, was in foster care (but with regular access to her mother) and was having involvement with Youth Speciality Services for counselling.

The Judge considered a s 282 discharge to be appropriate for M. Factors weighed into this conclusion included the fact that she was a child offender when the offence occurred, that she was currently attending school and making steady and positive progress, that no further reoffending had occurred in the past year and that there was evidence of good character. The Judge noted that the need to hold M accountable for serious offending must yield in favour of the Youth Court's objective not to criminalise thereby blighting her record for ever. He weighed in s 208(e): the principle that a child or young person's age is a mitigating factor in determining whether or not to impose sanctions and the nature of any such sanctions.

Decision:

Section 282 discharge granted.

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R v MTR and VGTM YC Gisborne CRI-2010-216-155, 2 September 2011

File number: CRI-2010-216-000155
Court: Youth Court, Gisborne
Date: 2 September 2011
Judge: Judge Hikaka
Key titles: Orders - type: Supervision with residence - s 283(n), Orders - type: Mentoring programme - s 283(jb), Principles of Youth Justice (s 208)

Decision delayed for the Court to take greater consideration of factors arising from the need to address the underlying causes of young peoples' offending (s 208(fa)).

Both V and M had a 'negatively described' background and family history, including domestic violence, alcohol and drug use, and transience. Other background factors included bereavement and learning difficulties.

Both have committed other offences while awaiting finalisation of this case. A likely starting point for sentencing if young people were convicted and transferred to the District Court would be 6 to 7 years imprisonment.

Possibility of a combined 30 month sentence available including maximum terms of supervision with residence, followed by supervision, and mentoring. Court believed that the justice system needs to ensure all reasonable means are available to re-orientate the thinking of boys like M and V. Court described this sentencing as a last resort for these two young men.

Result:

Orders for supervision with residence for 6 months, Supervision for 12 months, and mentoring for as much time as each will have left under the jurisdiction of the Youth Court.

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R v RW-T YC Hamilton CRI-2011-219-000197, 1 December 2011

File number: CRI-2011-219-000197
Court: Youth Court, Hamilton
Date: 1 December 2011
Judge: Judge Cocurullo
Key title: Remand at large (s 238(1)(a)), Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261).

The child appeared before the court. She had been arrested with a warrant issued the day before. The Judge deemed that the only realistic option was to transfer her to some type of residential facility. Before the warrant was issued, she had been placed in the Chief Executive's detained custody under s 238(1)(d). The Family Court had a custody order for her under s 101.

The Judge accepted a submission from the Chief Executive that the only option available was to remand the child at large pursuant to s 238(1)(a). He accepted that the child would not be accepted into a care and protection residence by being remanded under ss 238(1)(b) (bail) or (c) (into the custody of parents/guardians/approved persons). He also noted that there has to date been no decision by the Chief Executive allowing the placement of a child in a youth justice residence.

The Judge noted the need for this to be resolved and a clear decision to be made by the Chief Executive about whether or not children could be admitted to youth justice residences. He noted that remanding at large on such a serious charge was risky, and posed real difficulty in terms of being able to progress Youth Court matters.

The Chief Executive made a commitment to deliver the young person to a care and protection residence on the same day that the order to remand her at large was made.

Result:

Remand at large under s 238(1)(a). Transfer to care and protection residence.

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R v RH YC Manukau CRI-2010-257-000033, 11 August 2011

File number: CRI 2010-257-000033
Court: Youth Court, Manukau (acting as District Court)
Date: 11 August 2011
Judge: Judge Malosi
Key titles: Sentencing in the adult courts: Serious assault (including GBH).

R for sentence in District Court for a group attack described by the Court as vicious, cowardly and disgraceful. R remorseful. Good attendance on trade course and achieved high standards. Voluntary work resulted in offer of employment. Active engagement with parenting and mentoring course. No problems with drugs or alcohol. First conviction, low risk of reoffending.

Result:

12 months intensive supervision. Judicial monitoring by report only.

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R v RMW YC Gisborne CRI-2010-016-000157, 27 May 2011

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File number: CRI-2010-016-000157
Court: Youth Court, Gisborne
Date: 27 May 2011
Judge: Judge Taumaunu
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - type: Reparation - s 283(f).

RMW, aged 14 , together with two co-offenders aged 15, approached a man resting in a park at about 1am. After being offered cigarettes by the man, one of the co-offenders kicked the man in the head. All of the offenders then robbed him of his cellphone, iPod Nano, charger and cigarettes. The co-offenders continued to kick and punch his head and body. The victim suffered fractured ribs, facial fractures, and a serious head injury.

While on remand, RMW committed other offences and was remanded in custody.

Result:

Six months supervision with activity, to be followed by three months supervision, reparation against RMW's mother for $83.33. Back to contents

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2011 Appellate decisions

Churchward v R [2011] NZCA 531, (2011) 25 CRNZ 446

Court of Appeal
File number: CA610/2010
Date: 19 October 2011
Judge: Glazebrook, Ellen France and Harrison JJ
Charge: Murder
Key title: Sentencing in the adult courts: Murder/manslaughter, Reports: Psychological, Reports: Psychiatric.

Ms Churchward (17 years old) and her 14 year old cousin were convicted of the murder of a 78 year old man. Multiple submissions were made on both conviction and sentence.

Appeal on Conviction

A key defence submission was that the trial Judge erred by not directing on the relevance of youth to the question of intent. The Court noted that as a general rule, it is preferable for judges to draw the jury's attention to an accused's youth and the effect this may have had on intent (which happened here).

Appeal of Sentence

Two new reports from a clinical psychologist and a psychiatrist referenced Ms Churchward's traumatic history (problems with parents, anorexia, depression, alleged abuse by a relative, suicidal thoughts, an abusive relationship, and involvement with serious drugs) and the impact of this on her sense of identity, self esteem and coping mechanisms. The clinical psychologist stated that intervention and treatment in prison were essential.

The psychiatrist summarised leading literature on adolescent brain development. He noted several key characteristics of adolescence recognised by developmental psychology research, such as diminished decision making ability, greater vulnerability to external coercion, a tendency to discount risks and the formation of personal identity.

The core submission on sentencing was that the presumption of a 17 year minimum period of imprisonment should have been displaced because Ms Churchward's age and personal circumstances meant the 'manifestly unjust' threshold in s 104 of the Sentencing Act was met. With regards to youth, the Court accepted that there is no automatic displacement of a 17 year minimum period of imprisonment on the basis of youth alone, but that age can be a mitigating factor and falls into the 'manifestly unjust' test. The Court traversed New Zealand, commonwealth and United States jurisprudence to consider ways in which youth has been found relevant to sentencing. These considerations can be found at [77] - [92]. The Court also noted the particularly adverse effects that long sentences can have on young people in light of s 8(h) of the Sentencing Act, and the importance of considering young people's rehabilitative prospects.

The Court responded to the Crown's submission that a discount was not warranted because Ms Churchward's age was 'towards the end of the spectrum as regards youth' by noting that, though Ms Churchward was almost past being a child as defined in the United Nations Convention on the Rights of the Child, youth is seen as a larger concept than childhood and extends past 18 years of age.

Considering these factors and Ms Churchward's mental health, the court found a serious risk that the period could have a 'crushing effect' on Ms Churchward. When considering her rehabilitative prospects, the Court noted several examples of success in her life that suggest she may fit into what one of the psychologists called 'Adolescents Limited' (those who commit crime in adolescence only) rather than 'Life-Course-Persistent Offenders.'

Decision

Sentence manifestly unjust, minimum period of imprisonment reduced to 13 years.

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CT and BS v AG and DC at Christchurch HC Christchurch CIV-2011-409-000845, CIV-2011-409-000846, 26 July 2011

File number: CIV-2011-409-000845, CIV-2011-409-000846
Court: High Court, Christchurch
Date: 26 July 2011
Judge: Chisholm J
Key titles: Appeals to the High Court/Court of Appeal: Jurisdiction, Delay (s 322), Media reporting (s 438).

Judicial review of decision in *R v CT and BS* DC Christchurch CRI-2010-008-008489, 7 February 2011. Crown accepted that delay of 6 years 2 months between the time of the alleged offence and the scheduled trial was unduly protracted. Therefore only question for review is whether judge erred in the exercise of his discretion.

Court noted strong parallels between this case and *Turner* decision. Decision in District Court case was made 'contrary to all precedents' and when the delay was weighed against the principle in s 5(f) of the CYPFA it was difficult to see how it was not enough to overwhelm the other countering considerations.

Court held that the DC judge erred in the exercise of his discretion not to dismiss for delay.

Result:

Permanent stay of charge granted. Permanent name suppression also granted.

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Geros v R [2011] NZCA 122

Court of Appeal
File number: CA321/2010
Date: 31 March 2011

Judges: Chambers, Chisholm and Venning JJ
Key titles: Appeal to the High Court/Court of Appeal: jurisdiction.

17 year old appealing sentence. Whether Youth Court history can be taken into account.

Held that while YC history cannot be taken into account under s 9(1)(j) of the Sentencing Act 2002, it does not mean that it is irrelevant.

Held that sentencing Courts may 'off set' a person's Youth Court history against a discount that would otherwise be available to them due to their age.

Result:

Appeal dismissed.

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H v R [2011] NZCA 227

Court of Appeal
File number: CA828/2010
Date: 26 May 2011
Judges: Wild, Venning and Courtney JJ
Key titles: Sentencing in the adult courts: Sexual violation by unlawful sexual connection

Appeal from High Court sentence of 10 years imprisonment, with a minimum term of imprisonment of five years, on charges of serious sexual offending with threats of violence. The offending occurred over two years against three relatives aged between four and eight years. At the time of the offending H was aged between 14 and 16 years old.

In arriving at the sentence the High Court accepted a starting point of 16 years. The term was reduced by two years to reflect the appellant's age, by a further two years to reflect the his intellectual disability, and by 20% to reflect his guilty plea.

The sentence was appealed on the grounds that the High Court gave insufficient credit for age and intellectual disability and that a calculating error had occurred in respect of the guilty plea discount. In examining the two year discount for youth, the Court of Appeal considered *R v Mahoni* (1998) 15 CRNZ 428 (CA) at 436-437 and *Pouwhare v R* [2010] NZCA 268 at [83]. It considered that there were few factors relating to age that might justify a discount. Specifically, the offending could not be characterised as youthful indiscretion or a single impulsive act. Indeed the use of a knife to threaten suggested premeditation. Consequently a significant reduction for age was not indicated. Two years was held to be a fair discount.

In considering the two year discount for H's intellectual disability the Court of Appeal considered *E v R* [2010] NZCA 13. It accepted that it was highly likely that H's intellectual disability contributed to the offending to some extent. However it also accepted that the intellectual disability also contributed to a heightened risk of re-offending. It held that the two year discount was within the range available to the High Court Judge.

The Court of Appeal accepted that the 20% discount for a guilty plea had been miscalculated. However, the resulting difference of 3% was not sufficient to justify appellant intervention where the end sentence is otherwise within the available range.

Result:

Appeal dismissed.

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L v R [2011] NZCA 405

Court of Appeal
File number: CA123/2010
Date: 25 August 2011
Judges: Glazebrook, Ellen France, Harrison JJ
Key titles: Sentencing in the adult courts: Murder/manslaughter. Reports: Psychiatric.

L (14 years old at the time of the offending) and a co-offender were originally convicted of murder following the beating of an elderly neighbour in his home.

Appeal grounded, in part, on the lack of special measures taken to ensure a fair trial based on L's age, and the effect of L's psychiatric state.

L used marijuana and self-harmed from the age of 12. She also made three suicide attempts, and had problems with eating, hallucinations, depression, and PTSD.

During the well-known trial of 8 youths for the murder of pizza delivery worker Michael Choy, special measures were put in place to take account of the young ages of the accused. In February 2000, the UK‟s Lord Chief Justice issued a practice direction dealing with special arrangements for trials involving young defendants, in the wake of a European Court of Human Rights decision regarding the trial of the two 10-year old killers of James Bulger.

The Court of Appeal accepted that special measures should have been taken to accommodate L's youth at her trial, despite the fact that she was represented by an experienced youth advocate, and is articulate and intelligent.

A psychiatric report prepared for this trial advised that L would have struggled significantly with coping with, and participating meaningfully in, the court process. The Court accepted that L's psychiatric state may have impacted on her ability to make appropriate decisions about her defence. No psychiatric report was done for L at her original trial.

Due to other circumstances related to her legal advice, L also had no opportunity to properly consider her options about a defence in court, about giving evidence or about a plea.

Result:

Appeal allowed. Retrial ordered.

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M v Police HC Wellington CRI-2011-485-000072, 21 September 2011

File number: CRI-2011-485-000072
Court: High Court, Wellington
Date: 21 September 2011
Judge: Mallon J
Key titles: Sentencing in the adult courts: Sexual violation by unlawful sexual connection

Appeal against 3 year sentence for offences which came to light 8 years after they were committed by M as a young person on a younger family member. M admitted offending when it came to light. Since the original offending, M had gained steady employment and was in a stable and supportive relationship. M regretful and remorseful when he realised the seriousness of his offending.

District Court sentencing adopted starting point of 8 years, reduced by 40% for youth and 33% for remorse and guilty pleas.

High Court agreed that the guideline judgment in *R v AM* [2010] NZCA 114 does apply to young offenders, and that M‟s offending fell at the bottom of band 2 of that judgment.

Court agreed that prison sentences for adolescents can do more harm than good to young boys with good prospects, and this would have been a relevant consideration if M had been sentenced when he was 15 (at the time of the offence). Since then, M had been a reformed character with no comparable offences, and this can be taken into account as a mitigating factor in sentencing. M's good behaviour since the original offending shows that any sentence does not need to address aspects of individual deterrence.

Final sentence in line with other comparable cases.

Result

Appeal successful. Original sentence quashed. As replacement, starting point of 8 years imprisonment was reduced to 3 years for factors relating to M‟s youth, and reduced further to 2 years for guilty plea and remorse. Consideration of home detention not necessary as M had already served nearly a year of his sentence, which means a release date was imminent.

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R v M [2011] NZCA 673, [2012] NZAR 137

Court of Appeal
File number: CA689/11
Date: 17 November 2011
Judges: O'Regan P, Wild and Heath JJ

Key titles: Appeal to the High Court/Court of Appeal: jurisdiction, Delay (s 322), Principles of Youth Justice (s 208).

The Court of Appeal had to determine whether or not s 322, and relevant youth justice principles, could apply in relation to a young person who has been committed to the High Court or District Court for trial. In this case, the accused wanted to rely on s 322 when applying for a discharge under s 347 of the Crimes Act 1961.

Application of s 322 to the District or High Court

The Court held that s 322 did not apply. It noted that s 322 is a power given to Youth Court judges only, it applies to 'information' (which does not encompass an indictment) and that s 2(2) and s 2(3) (which extends s 322 to the District Court if a young person has turned 18 between the time of the alleged offence and the time when the information is laid) would be superfluous if s 322 were found to apply. The Court found that s 347 and the inherent power of the Court to stay proceedings to prevent an abuse of process provided adequate remedies without the need for recourse to s 322.

The Court also commented that the meaning of 'hearing' in s 322 was unclear (i.e. whether it means the date of the hearing of the charges (as in *Attorney-General v Youth Court at Manukau* [2007] NZFLR 103 (HC)) or the hearing of the s 322 application itself. The Court did not conclude on this, but raised for consideration whether a statutory amendment clarifying the position may be appropriate.

Relevance of youth justice principles to application for discharge under s 347

The Court considered *Pouwhare v R* and held that youth justice principles are not generally applicable. However, it was noted that youth is nonetheless a relevant factor when considering delay, and in particular the requirement to apply UNCROC and s 25(i) of the Bill of Rights Act 1990 mean that it is an important consideration for a discharge under s 347.

Was the Judge correct to exercise the discretion to discharge under s 347?

The Court followed the test in *Williams v R* [2009] 2 NZLR 750, considering whether the fair trial rights of the accused person were affected by the delay and whether the delay was of such a degree to amount to undue delay for the purposes of s 25(b) of the Bill of Rights. The Court found that a delay of 16 months was not enough to justify a discharge, and noted the fact that a trial date was set down for January to assure no further delays.

Result:

Section 322 and youth justice principles do not apply on committal to District or High Court.

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R v RTW HC Hamilton CRI-2010-019-005681, 30 September 2011

File number: CRI-2010-019-005681
Court: High Court, Hamilton
Date: 30 September 2011
Judge: Keane J
Key titles: Sentencing in the adult courts: Murder/manslaughter.

Three defendants (R, 14 years old, murder) (P, 15 years old, manslaughter) (I 17 years old, manslaughter) beat and left for dead a 74 year old man in order to steal his car.

R's early life 'increasingly fractured', expelled from school at 12, care and protection history, drug use, gangs, parents were gang affiliated. P, father of 2 year old, large family, no father, gang influences, frequent drug use. I, foster homes, conduct disorder, excluded from schools, recent sentence for robbery with violence, emotionally detached.

R's age did not make life imprisonment manifestly unjust, but was the most important factor (5 year reduction to 17 year minimum term), no credit for remorse, 12 months credit for guilty plea (not at the earliest opportunity).

P, starting point 8 years, for being present and not intervening to stop the beating or to help the victim. 18 months discount for age, 12 months discount for plea.

I, starting point of 8 years, increased by 6 months for recent previous offending, 12 months discount for age, 2 years discount for assistance to authorities, 18 months discount for early plea.

Result:

R, life imprisonment with a minimum term of 11 years. P, 5 and a half years imprisonment, with MPI of 2 years 9 months. I, 4 years imprisonment, with MPI of 2 years.

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R v UGT HC Rotorua CRI-2011-263-000073, 21 July 2011

File number: CRI-2011-263-000073
Court: High Court, Rotorua
Date: 21 July 2011
Judge: Whata J
Key titles: Media reporting (s 438)

Application for permanent name suppression. In tragic circumstances U (15 years old) stabbed his close friend in the leg, who later died. U's mother encouraged the consumption of alcohol prior to the incident. U remorseful. Strong prospects of rehabilitation and reincorporation into his community.

Court considered that, despite the principles in s 140 of the Criminal Justice Act 1985 and the Court's commitment to open justice, the Court should also have regard to UNCROC, and in

particular, treat the young person's best interests as a primary consideration. *R v Rawiri* HC Auckland 3 July 2002 per Fisher J cited as compelling.

Court found that publication of UGT's name could be highly detrimental to his reintegration.

Result:

Permanent name suppression granted.

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CEO of CYFS and MSD v GTT YC Dunedin CRI-2010-212-000053, 24 November 2010

File number : CRI-2010-212-000053
Court: Youth Court, Dunedin
Date: 24 November 2010
Judge: Judge O'Driscoll
Key titles: Orders - enforcement of, breach and review of (ss 296A-296F): General Principles, Orders - enforcement of, breach and review of (ss 296A-296F): Supervision.

The question before the Court was whether a breach application in respect of a Youth Court order made before the Children, Young Persons and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 came into force, should be dealt with under the new legislation or the repealed legislation.

GT was subject to a custody order in favour of the Chief Executive for three months, followed by a supervision order in favour of the Chief Executive for six months. It is alleged that GT breached the supervision order prior to 1 October 2010.

The Chief Executive filed an application on 3 November 2010 for a declaration that the young person has failed to comply with a condition of the supervision order.

GT's lawyer opposed the application on the basis that it should have been made under s 296B of the new legislation, instead of under s 309 of the old legislation.

The Court discussed the transition provisions in s 496A of the new legislation, together with sections 17-19 of the Interpretation Act 1999 in respect of repeals.

The Court held that the relevant enforcement powers for orders made before 1 October 2010 was the powers in the repealed s 309.

Result:

The application was brought under the correct section.

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EW v Police YC Manukau CRI-2010-229-000007, 20 December 2010

File number: CRI 2010-229-000007
Court: Youth Court, Manukau
Date: 20 December 2010

Judge: Judge Malosi
Key titles: Delay (s 322)

Application for delay. EW charged with various sexual offences dating back to when he was 14 and 15 years old. Aged 17 years, 10 months at the time of hearing. EW also recently committed for trial in DC for rape. Other evidence of sexual offences also.

Legal approach outlined in well known cases (*BGDT v Youth Court at Rotorua and Police* HC Rotorua M119/99, 15 March 2000; *AG v Youth Court at Manukau* per Winkelman J; *Martin v District Court at Tauranga* [1995] 2 NZLR 419). Seriousness of offending recognised as a relevant factor.

Court estimated that time from last alleged offending to probable hearing in Youth Court would be approximately 3 years. Court found that the delay involved was significant, but could not have been reasonably avoided by Police, or that they could have been blamed for causing it.

Accepted that EW has suffered prejudice due to YC sentencing options not being available because of is age, but no prejudice in terms of mounting a defence. In fact, the delay is likely to be beneficial for EW, given the young ages of the complainants.

Held that delays were not unnecessary or undue, but would not have exercised discretion to dismiss charges anyway. Offending too serious, both accused and complainants deserve their day in court, and „considerable public interest in charges proceeding.

Result:

Application for delay dismissed.

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HIC and Others v Police YC Pukekohe CRI-2010-257-000030, 20 August 2010

File number: CRI-2010-257-000030, CRI-2010-257-000031, CRI-2010-257-000037, CRI-2010-256-000038
Court: Youth Court, Pukekohe
Date: 20 August 2010
Judge: Judge Malosi
Key titles: Evidence (not including admissibility of statements to police/police questioning), Youth Court procedure.

Applications for oral evidence orders for some of a number of young people charged with wounding with intent to cause grievous bodily harm. All parties accept that there is sufficient evidence to commit for trial, but oral evidence is required in the interests of justice (s 180(1) of the Summary Proceedings Amendment Act (No2) 2008 (SPA)).

Court held that there is no guarantee that oral testimony at this stage would clarify the evidence.

Court held that the principle in s 208(h) of the CYPFA (young people due special protection during investigation) does not apply to trial and pre-trial processes. Defendants are also not formally within the jurisdiction of the Youth Court.

Granting applications will also delay proceedings for other defendants as well as the complainant.

Granting oral evidence orders to young people to better prepare them and their case for trial, or to clarify evidence would run directly contrary to the purpose and principles underlying the amendments to the SPA.

Result:

Applications dismissed.

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MSD v HB YC Taupo CRI-2010-269-000034, 5 November 2010

File number: CRI-2010-269-000034
Court: Youth Court, Taupo
Date: 5 November 2010
Judge: Judge Munro
Key titles: Secure care (ss 367-383A).

Application for secure care. H opposed the application on the basis that the grounds in s 368 were not made out – particularly that it was not necessary for her to be detained in secure care to prevent her from behaving in a manner likely to cause physical harm to herself or to any other person.

H was in the youth justice residence on a supervision with residence order. She had been put into secure care on three prior occasions. The latest period in secure care arose from an incident where H allegedly threw a punch at a staff member and was verbally abusive. The Court heard different accounts of this event from H and the staff members.

The Court held that the grounds in s 368 were not made out because

- the majority of H's previous violent offending occurred while under the influence of alcohol which was not a factor in the residence;
- while her verbal abuse and threats in the residence was difficult to manage, it was not of itself relevant to her risk of causing physical harm;
- while H behaved badly in the latest incident she had felt pushed to some extent and that behaviour may not have occurred if staff had chosen to respond differently.

The Judge expressed strong disappointment that despite ordering that a condition of the supervision with residence order was that H engage in an alcohol and drug education programme and an anger management programme while in residence, no such programme had been provided in the month since the order was made.

Result:

Approval not granted for continued detention in secure care.

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MSD v MNT-M YC Palmerston North CRI-2010-254-000155, 6 October 2010

File number: CRI-2010-254-000155
Court: Youth Court, Palmerston North
Date: 6 October 2010
Judge: Judge Fraser
Key titles: Secure care (ss 367-383A), Reports: Psychological.

Application for secure care. M was on remand under s 238(1)(d) in a youth justice residence after being charged with aggravated robbery, threatening to kill or to do grievous bodily harm and wilful damage. M had a history of displaying serious violence in a residential setting, including recently at the current residence. A significant and substantial plan for integration in the open unit had been prepared and followed through when the latest incident was alleged to have occurred.

M has had intensive programming on conflict resolution, anger management and controlling impulsive behaviours. He continued to exhibit low tolerance, inability to cope with frustration and a real risk to others.

Psychological reports described M as:

- at a significant risk of offending;
- showing signs of Foetal Alcohol Effects;
- having psychological attachment issues,
- a history of depression and suicidal ideation; and
- having been self-harming.

He had been diagnosed as having post-traumatic stress disorder with a conduct disorder manifest by a disorder of ideation and mood.

The Court held that M cannot be currently cared for in the open unit. The complexity of his disorder required a staff to young person ration of at least one-to-one and sometimes one-to-two. In the open unit the ratio is one-to-four.

The Court held that the condition in s 368(1)(b) was met in that a secure care order was necessary to prevent M behaving in a manner likely to cause physical harm to himself or any other person.

Result:

Approval granted authorising continued detention in secure care.

MSD v TK YC Rotorua CRI-2010-216-000101, 15 November 2010

File number: CRI-2010-216-000101
Court: Youth Court, Rotorua
Date: 15 November 2010
Judge: Judge Munro
Key titles: Secure care (ss 367-383A)

Application for continued detention in secure care (s 371). T became abusive and physically aggressive towards youth justice residence staff after being asked to hand over a journal he had been writing in. After being initially taken to the residence's secure unit, T kicked his door and smashed windows in his room. T had one previous period in secure care for physically assaulting another young person.

Grounds under s 368 considered. T at risk of causing further physical harm.

Result:

Secure care extended for further 14 days.

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Police v BP YC Manukau CRI-2010-292-000263, 11 November 2010

File number: CRI-2010-292-000263
Court: Youth Court, Manukau
Date: 11 November 2010
Judge: Judge Malosi
Key titles: Orders - type: Supervision with residence - s 283(n), Orders - type: Supervision - s 283(k), Orders - type: mentoring programme - s 283(jb), Orders - type: Parenting education programme - s 283(ja), Orders - split.

BP faced sentencing on four charges the most serious of which was assault with intent to rob. BP, together with some associates went into a liquor store, swung a metal pipe which broke some glass, and left without taking anything.

The Court ordered supervision with residence for three months under the new amended legislation. Early release would be considered by the Court when a period of two-thirds of that period has elapsed.

The Court decided not to split the sentence. It imposed a period of supervision for nine months, with conditions including that the social worker can determine where BP should live if the relationship with his mother breaks down.

The Court also made a parenting order in respect of BP's parents for 12 weeks, and a mentoring order for BP for nine months.

The Court ordered the supervision and mentoring orders to begin on the date at which two-thirds of the residence orders had elapsed, but would revisit that order if it does not order early release.

Result:

Residence for three months, followed by supervision for 9 months and mentoring for 9 months. Parenting education orders were also made in respect of BP's parents.

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Police v BP YC Manukau CRI-2010-292-000199, CRI-2010-292-000263, 21 December 2010

File number: CRI-2010-292-000199, CRI-2010-292-000263
Court: Youth Court, Manukau,
Date: 21 December 2010
Judge: Judge Malosi
Key titles: Orders - type: Supervision with residence - s 283(n): Early release, Orders - type: Mentoring programme - s 283(jb)

Since October 2010 a residence order under s 311 includes a presumption of early release after two-thirds of the residence term if the conditions in s 314(1) of the CYPFA are met.

In this case BP was serving a three month residence order (to be followed by nine months supervision, nine months mentoring, and a parenting programme for his parents) for assault with intent to rob, escaping, unlawfully taking and unlawfully being in an enclosed yard.

The Court was satisfied that the conditions in s 314(1) had all been met and made an order for re-lease on the two-thirds date, conditional upon continued compliance with the conditions in s 314(1).

Result:

Early release order was made, conditional upon continued compliance with s 314(1). Post-release supervision and mentoring orders had already been made.

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Police v CB YC Manukau CRI-2010-292-000037, 6 May 2010.

File number: CRI-2010-292-000037
Court: Youth Court, Manukau
Date: 6 May 2010
Judge: Judge Malosi

Key titles: Orders - type: Disqualification from driving - s 283(i), Orders - type: Community Work - s 283(l).

C was driving outside the terms of his learners licence, on a state highway, with his father in the car behind. C's car hit the car immediately in front (after it stopped to turn right) and pushed it into the path of an oncoming motorbike. The rider of the motorbike suffered serious injuries, and the baby travelling in the car in front died as a result of the accident.

'Absolute mayhem' caused to bike rider and his family. Family of dead baby was traumatised.

C was an intelligent, gifted, high achieving young man, despite periods of serious domestic violence and other abuse. C deeply regretful.

No reparation order made, but time given for reparation report and, alternatively, for C's whanau to find money for a donation/koha. Social Worker plan approved.

Result:

200 hours community service. 12 months disqualification (deferred).

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Police v CGN YC Manukau CRI-2010-257-000082, 16 December 2010

File number: CRI-2010-257-000082
Court: Youth Court, Manukau
Date: 16 December 2010
Judge: Judge Malosi
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH), Orders - type: Supervision with activity - s 283(m).

Charge of wounding with intent to cause grievous bodily harm, arising from a fight between C, his brother and father, and the victim. Victim received cut, bruises and eventually lost his left eye after what the Court described as a “frenzied attack”. C‟s father started the fight and urged C to get involved by punching the victim until he fell down.

Factors in sentencing included:

- Involvement of father,
- Indication of desire to plead guilty at early stage,
- Availability of longer orders following 2010 Amendment Act,
- Seriousness of offending,
- First time in Youth Court,
- Remorse,
- General respectfulness and willingness to engage with professionals, and
- No breaches of bail.

Result:

Maximum term of supervision with activity (6 months activity plus 6 months supervision).

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Police v CP and Others YC Pukekohe CRN 10257000040, 17 September 2010

File number: CRN 10257000040-41,CRN 1025000043-48
Court: Youth Court, Pukekohe
Date: 17 September 2010
Judge: Judge Malosi
Key titles: Jurisdiction of the Youth Court: s 275 offer/election.

Decision of the Court whether to offer Youth Court jurisdiction.

Eight young people were charged, together with five others, with wounding with intent to cause grievous bodily harm.

The young people were alleged to have viciously attacked an off-duty police officer who tried to defuse an attack on a young girl who had been carrying a red bag in a blue part of town. The police officer's injuries included a fractured skull, sprained ankle, dislocated knee, a collapsed lung, broken teeth and multiple fractures to facial bones.

These eight young people had no Youth Court history. Four of the eight were 14 at the date of the alleged offending.

The Court suggested that if the case was ultimately proved as the Crown alleged, and the young people were to find themselves in the adult Court for sentencing, they were likely to face a starting point of five to ten years imprisonment.

The Judge considered the objects and principles of the CYPFA and listed the other factors relevant when exercising the s 275 discretion.

She considered the considerable length of time that would be required for a jury trial in the District Court should jurisdiction be declined and all 13 accused elect trial by jury. She discussed the ability in that context for the young people to participate in their hearing in a meaningful way, and compared that to a hearing in the Youth Court. She also considered the prospect, if jurisdiction were offered, of the complainant and 20 young witnesses giving evidence twice, and that the longer sentences available after 1 October 2010 would be possible for all but the eldest of the young people.

The Judge agreed with the view of Judge Thorburn in *Police v H* [2004] DCR 97 that more weight was put on the implied principles and protective factors of the Act when exercising the discretion under s 275, and that the jurisdiction election should be offered unless there was some good reason not to offer it.

Result:

Youth Court jurisdiction was offered.

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Police v DAH YC Nelson CRI-2010-242-000031, 7 July 2010

File number: CRI-2010-242-000031
Court: Youth Court, Nelson
Date: 7 July 2010
Judge: Judge Zohrab
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other.

DAH had been in custody for 14 months when he appeared for sentence. The threatening charges arose from comments made at a mental health unit. The Judge noted that while such threats, would not normally be taken seriously, DAH's history had made people very concerned that he might carry out the threats.

DAH was 17 years and one month at the time of sentencing. (Note that DAH was sentenced prior to the CYPF (Youth Courts Jurisdiction and Orders) Amendment Act 2010 so any Youth Court orders would expire when DAH turned 17 and a half).

DAH had no previous Youth Court history, but the Court expressed significant concerns for public safety.

In ordering a conviction and transfer to the District Court for sentencing, the Court considered -

- The nature of the offending; and
- That DAH had demonstrated an ability to carry out his threats; and
- The timeframe available for Youth Court or-ders is manifestly inappropriate for any as-sessment and treatment; and
- Due to the special circumstances of the of-fending, a non-custodial order would be clearly inadequate.

Result:

Conviction and transfer to the District Court for sentencing.

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Police v DES YC Dunedin CRI-2010-045-000249, 5 May 2010

File number: CRI-2010-045-000249
Court: Youth Court, Dunedin
Date: 5 May 2010
Judge: Judge O'Driscoll
Key titles: Media reporting (s 438), Access to reports (s 191)

D charged with murder in Oamaru. Victim's family concerned that s 438 prevented newspaper publication of an obituary for the victim. D does not oppose the publication of the victim's name.

Court held that obituary is not a report of proceedings under s 438, but any obituary should not be a report of the proceedings, and should not include any identifying details, such as the name of the young person accused or the name of their school.

The Court also commented that an obituary should not be prejudicial or say anything that might hinder a fair trial.

It was the Judge's view that discussion of the proceedings or the names of the young person or the victim on social networking websites is 'publication' and may breach s 438.

Result:

No reason not to publish obituary for the victim.

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Police v ERW YC Nelson CRI-2009-242-000087, CRI-2010-042-002899, 27 October 2010

File number: CRI-2009-242-000087, CRI-2010-042-002899
Court: Youth Court, Nelson
Date: 27 October 2010
Judge: Judge Russell
Key titles: Orders - type: Supervision with residence - s 283(n), Orders - type: Reparation - s 283(f), Orders - type: Come up if called upon - s 283(c). Media reporting (s 438)

The young person appeared for sentence on charges of using a document for pecuniary advantage, unlawfully taking a motor vehicle (2), making a false statement, burglary (2), theft, and doing an act which endangered the lives of others.

Those charges were previously dealt with by the Youth Court and were the subject of a community work order. While serving that sentence the young person offended further. That further offending resulted in charges in the District Court.

The Youth Court cancelled the community work order. This decision makes a substitute Youth Court order on the original offending and imposes a District Court sentence on the subsequent offending.
The young person agreed to a Youth Court order of supervision with residence for six months.

The District Court charges were dealt with by an order to come up for sentence if called upon in 12 months, and a reparation order in the sums of $7275.89 and $2069.51. The Court also ordered name suppression on these charges.

Result:

In the Youth court, a supervision with residence order (s 283 (n), s311) for six months, with supervision conditions to be set at the date after two-thirds of the order has elapsed.

In the District Court an order to come up for sentence if called upon in 12 months, and a reparation order in the sums of $7275.89 and $2069.51.

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Police v HKW YC Christchurch CRI-2010-209-000400, 7 December 2010

File number: CRI-2010-209-000400
Court: Youth Court, Christchurch
Date: 7 December 2010
Judge: Judge McMeeken
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - type: Reparation - s 283(f).

H was drunk, disguised and carrying a metal crowbar. Threatened liquor store shop assistant. Co-offenders robbed store. Court found robbery planned. Victim traumatised.
No previous proven Youth Court history. Family supportive. Polite and respectful in court.

Result:

Supervision with activity for 4 months plus reparation.

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Police v HRR YC Nelson CRI-2010-242-000085, 3 December 2010

File number: CRI 2010-242-000085
Court: Youth Court, Nelson
Date: 8 December 2010
Judge: Judge Russell
Key titles: Orders - type: Supervision with residence - s 283(n).

Drunken aggravated robbery of recently arrived Chilean tourist. H and 2 others confronted the man, hit him and stole a small pack containing laptop, passport, bank card and money.

Youth Court history of violence and aggravated robbery.

Result:

Supervision with residence (6 months).

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Police v JC YC Manukau CRI-2010-292-000272, 2 November 2010

File number: CRI-2010-292-000272
Court: Youth Court, Manukau
Date: 2 November 2010
Judge: Judge Malosi
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - enforcement of, breach and review of (ss 296A-296F)

JC faced sentencing on charges of common assault and injuring with intent to injure which were committed nine days after he was sentenced in the Youth Court to supervision for six months on other charges.
Despite the lack of application by CYF for breach of the supervision order, the Court opted to finalise matters immediately.

The Court accepted the recommendation of the social worker for the maximum term of supervision with activity order. The maximum term was appropriate due to the reoffending occurring so soon after the supervision order was made.

The supervision with activity order was to be spent on the Youth Residential Programme at Odyssey House. The Court accepted that Odyssey House was an organisation approved under s 396 of the CYPF Act, and that Odyssey House had consented to the order.

Despite the breach of the original order, the Court did not consider that it was necessary to impose judicial monitoring because JC would be carefully monitored at Odyssey House.

The Court left open the question of whether it was necessary to impose a supervision order at the end of the activity order.

Result:

The existing supervision order is revoked. JC was sentenced on the two new charges and resentenced on the nine other charges to supervision with activity for six months.

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Police v JJD DC Waitakere CRI-2009-204-000566, 7 December 2010

File number: CRI-2009-204-000566
Court: District Court, Waitakere
Date: 7 December 2010
Judge: Judge Tremewan
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s

283(o): Aggravated robbery, Orders - type: Supervision with residence - s 283(n). Family Group Conferences: Non agreement.

Nine offences in total, including wilful damage, burglary, aggravated robbery, and dangerous driving. Family Group Conference unable to agree on sentencing.

J agreed to be dealt with under the 2010 Amendment Act. Court commented that otherwise, it would have ordered conviction and transfer to the District Court (DC) for sentencing.

Sentencing factors included:

- Time spent and good behaviour in residence on remand,
- Offending persistent and escalating,
- Aggravated robbery committed while on bail for earlier aggravated robbery,
- Good attitude when sober,
- Family shocked but supportive,
- Difficult upbringing with absent and violent father,
- "Care and protection‟ history.

Court recognised the need to address underlying causes of offending (s 208(fa) of CYPFA), but stressed the need for a supervision plan different from previous ones. Supervision order to be made closer to time of release from residence.

Legal principles and DC alternatives discussed.

Result:

Supervision with residence (6 months).

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Police v JR YC Lower Hutt CRI-2010-232-000053, 13 October 2010

File number: CRI-2010-232-000053
Court: Youth Court, Lower Hutt
Date: 13 October 2010
Judge: Judge Walker
Key titles: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court), Orders - type: Supervision with residence - s 283(n).

JR was charged with arson after setting fire to a disused classroom block. He had been offered Youth Court jurisdiction and had accepted it. The Court found that there were not the aggravating features as there sometimes was, of arson committed as act of revenge, or insurance fraud, or to cover evidence of offending. However, while on bail JR had got involved in an organised fight to which he had taken a machete, although it had not been used.

The offending occurred before the Children, Young Persons and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010, but JR had consented to being dealt with under that Act. The Judge indicated the Youth Court's sentencing options available before the Amendment Act may have been considered inadequate, so conviction and transfer to the District Court for sentencing may have been considered if JR were not dealt with under the Amendment Act.

The Judge considered a starting point of six months is appropriate due to the rehabilitative needs of the young person.

He reduced that by one month to account for the two months spent on remand at a youth justice residence. He remanded JR to a later date to consider early release and the supervision part of the sentence. He determined that a reparation order was not possible because JR did not have the means to pay and his mother did to contribute to the offending so she should not suffer a consequence.

Result:

Supervision with residence for five months. Remanded to 26 January 2011 to consider early release and the supervision part of the order.

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Police v KR YC Invercargill, CRI-2009-252-000163, 27 May 2010

File number: CRI-2009-252-000163
Court: Youth Court, Invercargill
Date: 27 May 2010
Judge: Judge Phillips
Key titles: Orders - type: Discharge - s 282, Family Group Conferences: Convened/Held

KR faced sentencing on three matters. In respect of the first charge he had barged into a room uninvited, yelled abuse and punched the victim several times. In respect of the second and third charges he had, together with an associate, punched and kicked two different victims in separate incidents outside a Night 'n Day store.

Two family group conferences had been held. Each established plans and interventions to address the offending, and had recommended that the Youth Court determine the final disposition. Initially KR had not engaged in the required community work and education parts of the plan. However, after appearing again in the Youth Court, he had completed all aspects of the plans apart from reparation, and had availed himself of everything that was offered to him.

The Court considered the seriousness of the offending, but considered that KR should be rewarded for what he had done.

Result:

A s 282 discharge was granted on all three charges. The Judge commented that KR was being given a major chance.

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Police v KWH YC Manukau CRI-2010-255-000051, 11 November 2010

File number: CRI-2010-255-000051
Court: Youth Court, Manukau
Date: 11 November 2010
Judge: Judge Malosi
Key titles: Orders - type: Supervision with activity - s 283(m), Orders - deferred.

KH used a knife to injure a man that he thought was responsible for taking a box of crayfish from him. KH was 16 years and four months at the time of the offending.

The Court discussed KH's personal circumstances including:

- that he was the eldest of five children;
- that his father was not around;
- that there was a neighbourhood programme operating where he lives; and
- that he was attending alternative education.

The Court accepted that he was sorry. The Court held that the maximum term of supervision with activity was appropriate because the offending was so serious.

Result:

Six months supervision with activity. The supervision order was deferred for four months.

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Police v LSA YC Upper Hutt CRI-2010-278-000027, 15 November 2010

File number: CRI-2010-278-000027
Court: Youth Court, Upper Hutt
Date: 15 November 2010
Judge: Judge Mill
Key titles: Delay (s 322)

Application for delay. L (14 years, 2 months) identified on CCTV footage after breaking into a mall and stealing drinks. L's file not received by Youth Aid officer for 6 weeks. Family Group Conference (FGC) convened 2 months later. L charged with burglary.

Police say L did not turn up for an appointment during first period of delay. During that period, L was in Youth Court regularly on other charges, and even attended a FGC, which had a plan approved.

Court found that the delay between commission of offence and hearing was unnecessarily protracted, and L has suffered from some perceived prejudice. However, public interest exists in seeing L prosecuted, so discretion to dismiss not exercised.

Result:

Information not dismissed.

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Police and MSD v KLP YC Rotorua CRI-2010-263-000174, 22 October 2010

File number: CRI-2010-263-000174
Court: Youth Court, Rotorua
Date: 22 October 2010
Judge: Judge MacKenzie
Key titles: Secure care (ss 367-383A).

Application for secure care. The Court described K as a vulnerable young person with clearly-identified high complex needs. He had a significant number of health issues impacting on all aspects of his life, including autism, intellectual delay, severe conduct disorder, a cardiac problem, and a possible obstructive sleep apnoea.

Section 368(1)(b) required a predictive assessment, requiring the Court to assess the future risk based on past behaviour.

The Court held that the requirements of s 368(1)(b) are overwhelmingly met. In coming to this conclusion the Court considered:

- the nature of the charges faced by K;
- the s 333 psychiatric report;
- K's recent behaviour in the youth justice residence and another residence;
- K's vulnerability due to his significant health issues; and
- K's intellectual functions which caused a lack of ability for emotional regulation.

The Judge commended the careful way in which CYF was managing K's situation, but expressed reservation about the appropriateness of K's detention in secure care in a youth justice residence due to his high complex health needs. She asked that urgent consideration be given to an appropriate alternative placement.

Result:

Approval granted authorising continued detention in secure care for a period of seven days.

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Police v M and A YC Invercargill CRN 09225000582, 22 March 2010

File number: CRN 09225000582
Court: Youth Court, Invercargill
Date: 22 March 2010
Judge: Judge Callaghan
Key titles: Jurisdiction of the Youth Court: Charge type

Young people charged with aggravated burglary and wounding with intent to cause grievous bodily harm. Three adult co-accused to face trial in the High Court. Both indicated a desire to plead guilty.

Victim subject to deliberate beating with a claw hammer and an axe, suffered numerous cuts and underwent surgery.

Victim also suffered from genetic disorder which meant he functioned at 11-12 years of age. Victim had recently decided to live independently.

M (15) handed himself into Police and admitted his part in the incident. He displayed remorse and had a supportive family and was a first offender.

A (15) initially denied involvement, but later admitted punching the victim. A was part of the Conservation Corps and was the only one to graduate from his year in 2008. His family background included gang associations and violence, although his mother is supportive. A had Youth Court history but had completed plans without any difficulties. He was remorseful.

The Court was content to rely on summary of considerations [principles of sentencing] in *Police v JT* YC Christchurch CRI-2009-209-000500, 22 September 2009. Court also recognised that sentencing of co-offenders should be done together, however the connection between the young persons and their adult co-accused was less important because the young persons had indicated a desire to plead guilty, while the adults were continuing to defend their involvement.

The Court recognised that this issue required a balancing exercise taking into account the young persons' personal situations.

The Court assessed the seriousness of the offending at the top of band 3 from *R v Taueki* [2005] 3 NZLR 372 (CA) with starting points between 9 and 11 years imprisonment if the young people were treated as adults at sentencing. This case was "so serious that it would be wrong to retain it in the Youth Court". Judge considered imprisonment or home detention was "obvious" and therefore could not "see what specific advantages there are in a matter staying in this Court with a view to transfer out for sentence".

Result:

Youth Court jurisdiction not offered.

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Police v MNTM YC Wellington CRI-2010-285-000046, 12 October 2010

File number: CRI-2010-285-000046
Court: Youth Court, Wellington
Date: 12 October 2010
Judge: Judge Mill
Key titles: Orders - type Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Secure care (ss 367-383A).

M (17 at the time of sentencing) admitted to planning, robbing and hitting a bus driver using a metal bar. M had a significant youth justice and care and protection history, as well as a recent compulsory treatment order and multiple conduct disorder and psychotic diagnoses. M had been disruptive while in secure residential care and the subject of many secure care applications. He remained at a high risk of reoffending. Social worker recommended District Court sentence despite M agreeing to be dealt with under 1 Oct 2010 Amendment Act. Protection of the public also a factor, as M invariably slipped back into violent behaviour, even after a period of positive intervention.

Result:

Convicted and transferred to the District Court for sentence.

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Police v MT YC Waitakere CRI-2010-290-000316, 21 December 2010

File number: CRI-2010-290-000316
Court: Youth Court, Waitakere
Date: 21 December 2010
Judge: Judge Tremewan
Key titles: Jurisdiction of the Youth Court: s 275 offer/election, Jurisdiction of the Youth Court: Charge type.

Various methamphetamine charges (jointly with a 25 year old adult). MT had just turned 16 at the time of the offending. Charges denied, but consented to being dealt with under 2010 Amendment Act.

Court referred to *Police v PB* YC Manukau CRI-2008-292-000119, 4 July 2008 per Judge Malosi re similar circumstances and factors to be considered.

Factors considered: MT had no criminal history, unlike co-accused, only police officers as witnesses, a single trial for both defendants is desirable but MT has other summary charges

which would need to be heard in the Youth Court (YC) so there is an argument for a YC hearing for all charges, no victim impacts, a defended hearing in the YC could be held sooner than in the District Court (DC), still enough time to complete orders in the YC, the limit of 5 years imprisonment would be ample penalty if YC jurisdiction granted but later convicted and transferred to the DC, public interest in speedy disposal and seriousness of offending.

Result:

Youth Court jurisdiction offered.

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Police v TH and Others YC Masterton CRI-2010-235-000006, 20 May 2010

File number: CRI-2010-235-000006, CRI-2010-235-000007, CRI-2010-235-000008
Court: Youth Court, Masterton
Date: 20 May 2010
Judge: Judge A P Walsh
Key titles: Arrest without warrant (s 214)

Three defendants charged with burglary of a hot water cylinder. Police called and given description of 2 boys in school uniform. Constable later spoke to 3 boys near the property and observed 2 of them had wet shoes, despite the weather being fine and the ground dry. Decision made to arrest boys, take them to police station in a patrol car, and seize the shoes. Constable said he arrested boys to preserve evidence and that he did take s 214(1)(b) of the CYPFA (no arrest where young person could be proceeded against by summons) into account.

Boys admitted the burglary, were given their shoes back and sent back to school. All boys believed they were only placed under arrest once in the patrol car.

Court found no ground to arrest boys to prevent further offending, but there were grounds to arrest to prevent loss or destruction of evidence (s 214(1)(a)(iii)) in relation to the wet shoes. Constable's decision making cannot be criticised. Arrest complied with s 214 of the CYPFA.

Result:

Charges not dismissed.

Police v TM YC Taupo CRI-2010-263-000026, 7 April 2010

Filed under:

Police v TM

File number: CRI-2010-263-000026
Court: Youth Court, Taupo
Date: 7 April 2010

Judge: Judge Munro
Key titles: Orders - type: Supervision with residence - s 283(n).

Previous supervision with residence sentence. Application for declaration of non-compliance with supervision component. Further charges arising while waiting for defended declaration hearing. Non agreement at Family Group Conference (FGC) with family proposing MAC camp as part of new supervision with residence sentence, while police recommend conviction and transfer to District Court for sentence (s 283(o)).

Court commented that conviction and transfer would have been only option if MAC camp had not been available. TM reasonably intelligent with some prospects for the future. MAC programme designed to address issues of discipline, clear direction, structure, focus, responsibility and pride. Probably the last opportunity to make changes and to get assistance before being to the adult court.

Result:

Supervision with residence.

Police v TS YC Manukau CRI-2009-292-000593, 20 September 2010

Filed under:

Police v TS

File number: CRI-2009-292-000593
Court: Youth Court, Manukau
Date: 20 September 2010
Judge: Judge Hikaka
Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: mentally impaired/unfit to stand trial.

Decision as to fitness to stand trial under s14 Criminal Procedure (Mentally Impaired Persons) Act 2003.

The Court had previously found that on the balance of probabilities, T had caused the act that formed the basis of the offence with which he was charged, namely aggravated robbery.

Initially, two health assessors disagreed as to whether T was mentally impaired and therefore unfit to stand trial. They agreed, however on the following points:

- T had grown up in a deprived situation witnessing domestic violence and had showed behaviour problems and language delay from a young age;
- he has an alcohol abuse and cannabis abuse disorder;
- he does not fit the criteria for intellectual disability in s 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;
- he has significant difficulty communicated in both English and his first language Cook Island Maori; and

- he does not currently reach the diagnostic criteria for conduct disorder, nor for mental retardation.

A third health assessor found that T showed sufficient competency through the help of an interpreter to be likely to be found fit to stand trial. She noted that T had a degree of cognitive impairment impacting on his expressive and receptive language but not amounting to a deficit within the intellectual disability range. “T was good with concepts, apprehension and comprehension, but slack on vocabulary”.

The Court noted that the lack of an intellectual disability does not necessarily mean that T is not mentally impaired. It held that T has cognitive deficits but is fit to stand trial because with proper explanations in a manner and language that can be understood by him, he will be able to conduct a defence, instruct counsel, plead, adequately understand the nature or purpose or possible consequences of the proceedings, and communicate adequately with counsel for the purposes of conducting a defence.

Result:

T was fit to stand trial.

Police v WA YC Rotorua CRI-2010-263-000178, 21 December 2010

Filed under:

Police v WA

File number: CRI-2010-263-000178
Court: Youth Court, Rotorua
Date: 21 December 2010
Judge: Judge Munro
Key title: Orders - type: Supervision with residence - s 283(n)

Appearance following breach of supervision order. WA warned on original charges that any breach would result in a custodial sentence. FGC following breach recommended 4 month supervision with residence order.
If 4 month residence ordered including attendance at MAC camp, early release provisions would see WA returned to court part way through camp.

Result:

Order for supervision with residence with 6 month residence component to allow for attendance at MAC camp.

R v RJTB DC Invercargill CRI-2009-206-000072, 11 March 2010

Filed under:

R v RJTB

File number: CRI-2009-206-000072
Court: District Court, Invercargill
Date: 11 March 2010
Judge: Judge Phillips
Key titles: Sentencing in the adult courts: Aggravated robbery, Sentencing in the adult courts: Serious assault (including GBH)

R (14 years old at the time of the offending) charged with 2 charges of aggravated robbery and one charge of wounding with intent. Court initially declined to offer R Youth Court jurisdiction. Guilty pleas. Victims were intellectually or mentally impaired. R had a difficult family history and a disrupted education, however had done well while on remand.

Aggravating factors:

- violence,
- multiple attackers,
- victims' vulnerability, and
- victims' injuries.

Mitigating factors:

- age,
- admitting of responsibility,
- no prior convictions.

The Court arrived at a starting point of 4 years 3 months, which was equal to R's two adult co-offenders. Discounts for guilty plea and age brought the sentence down to 19 months imprisonment.

The Court commented that "...right above your head for the next period of months is a 'sword'. You breach the boundaries of home detention and it comes down and you go to prison."

Result:

Eight months home detention

R v BMS DC Whangarei CRI-2010-288-000001, 29 September 2010

Filed under:

R v BMS

File number: CRI-2010-288-000001
Court: District Court, Whangarei
Date: 29 September 2010
Judge: Judge Druce

Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial.

Decision as to fitness to stand trial under s14 Criminal Procedure (Mentally Impaired Persons) Act 2003.

B was aged 15 years and 10 months when she was charged with the murder of her sister. The cause of death was a stab wound to a lung. B made a statement to Police that she had stabbed her sister with a knife and added "I did not mean to stab her, she had been hitting me and calling me names..".

Two health assessors agreed that B had mild mental retardation with significantly impaired adaptive function; that she came within the criteria for "intellectual disability" under s 7 Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; that she was unfit to stand trial in terms of s4 Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act); that she suffered from Foetal Alcohol Spectrum Disorder; and that she suffered from childhood exposure to domestic violence, especially to her "concept of relationships, how feelings can be communicated, and her overall brain structure and function".

The Crown conceded that B suffered from mild mental retardation but argued that she was nonetheless fit to stand trial.

The Court discussed the meaning of "adequately" in relation to communication and understanding in the definition of "unfit to stand trial" in s 4(1) of the CPMIP Act. It held that the degree of rationality required with respect to the relevant capacities has to be sufficient for the various tasks involved, but it need be only barely sufficient.

The Court discussed the nature and degree of B's mental impairment including evidence that B's mental impairment arises from both intellectual disability and from neurological damage caused by her antenatal foetal exposure to alcohol; B's demonstrated irritability and tendency to be quick to anger; her extreme level of emotional liability that is likely to stem from her underlying brain damage magnified by her being raised in a stressful and sometimes dangerous home environment; and her impaired language and comprehension capacities.

The Court also discussed B's fitness to plead. A structured guide, the Juvenile Adjudicative Competency Interview was used to assess fitness to plead. That interview provided evidence including that B knew that she faced a charge of murder and that it was serious, but she was unable to compare its seriousness with other offences; B had little, if any understanding of the function of the various roles in a trial process; B could not comprehend the distinction between being found guilty or not guilty and between entering a plea of guilty or not guilty; B had some understanding of the consequences of going to jail, but no comprehension whatsoever of the rational processes involved in admitting responsibility for the offence; B would not be able to follow evidence given in Court or be able to contradict or point out errors to her counsel.

The Court held that B does not have even a bare minimum of an adequate capacity to plead, to understand the nature or purpose of the proceedings, or to communicate with counsel for the purposes of conducting a defence. There is however, evidence that she has a simple and arguably adequate understanding of the possible consequences of the proceedings, but that is excluded from the finding that she is unfit to stand trial.

Result:

The Court held that B suffered from a mental impairment and was unfit to stand trial. It issued a direction that enquiries be made to determine the most suitable method of dealing with B, including a needs assessment under Part 3 IDCCR Act 2003.

R v RL YC Manukau CRI-2009-292-000584, 12 August 2010

Filed under:

R v RL

File number: CRI-2009-292-000584
Court: Youth Court, Manukau
Date: 12 August 2010
Judge: Judge Malosi
Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial.

Decision as to fitness to stand trial under s14 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

The Court had previously found that on the balance of probabilities, R had caused the act that formed the basis of the offence with which he was charged, namely doing an indecent act on a child under the age of 12 years.

Two health assessors agreed that R was mentally impaired due to an intellectual disability and was unfit to stand trial. He has a full scale IQ of between 62 and 75.

The Court noted that although 'mental impairment' was not defined in the Criminal Procedure (Mentally Impaired Persons) Act 2003 or the Intellectual Disability (Compulsory Care & Rehabilitation) Act 2003, more often than not an intellectual disability in the legal sense equates to a finding of mental impairment, but doesn't automatically mean that the individual will be unfit to stand trial.

The Court found that T was intellectually disabled, and on the balance of probabilities he met the legal definition for intellectual disability. At a superficial level R was able to discern the difference between right and wrong, had some understanding of concepts like guilty and not guilty, and of the Youth Court processes, but he was suggestible and unlikely to challenge authority or to question any advice given to him by his Youth Advocate.

The Court noted the seriousness of the charge faced by R.

The Court held that, on the balance of probabilities, R could not conduct a defence, nor could he properly and fairly instruct his Counsel to do so, or adequately understand the possible consequences or outcome of making a plea.

Result:

R was unfit to stand trial.

R v Tatana DC Wellington CRI-2009-031-000755, 4 May 2010

Filed under:

R v Tatana

File number: CRI-2009-031-000755
Court: District Court, Wellington
Date: 4 May 2010
Judge: Judge Behrens QC
Key titles: Delay (s 322).

Alleged assault by T and others. Information laid against T (16 at the time of the alleged offending) more than 2 years after alleged offending, due to loss of police files and police only becoming aware of T‟s involvement during interview with co-accused. Information laid indictably in District Court. T turned 18 eight months before being charged.

Court held that s 322 of the CYPFA (delay) applied due to s 2(2)(d) of the CYPFA, but ceased to apply once defendant was committed for trial.

Court held that, in general, prosecutorial delay not sufficient to dismiss for delay, and also no prejudice to defendant in this case.

Result:

Application to dismiss for delay dismissed.

R v TP YC Manukau CRI-2009-255-000084, 1 April 2010

Filed under:

R v TP

File number: CRI-2009-255-000084
Court: Youth Court, Manukau
Date: 1 April 2010
Judge: Judge Malosi
Key titles: Jurisdiction of the Youth Court: s 276 offer/election.

T 14 years 8 months at the time of offending. Indicated a desire to plead guilty. Offending against his cousin. Uncle allowed T to smoke cannabis and drink alcohol during period of offending.

Offending very serious. No mental health issues. T‟s first time before the Youth Court. T would need long term intervention (e.g. in 18 month SAFE programme). Difficult to deliver SAFE programme in prison. No obvious family support.

Held that non-jury-warranted District Court judge can sentence young person denied Youth Court jurisdiction to imprisonment up to a maximum of 5 years. Longest available

combination of sentences available to Youth Court (at that time) was 9 months. A care and protection declaration would not provide criminogenic solutions. Prison sentence a high possibility if not offered Youth Court jurisdiction, but a community sentence was not ruled out.

Ultimately, offending too serious, and risk factors too great. District Court had greater range of sentences available. Crown indicates they will not seek more than 5 years imprisonment so Youth Court judge can sentence in District Court.

Cases applied: *Police v D* (per Judge Inglis); *Police v S and M* (1993) 11 FRNZ 322; *Police v James* (1991) 8 FRNZ 628.

Result:

Youth Court jurisdiction not offered.

Appellate decisions 2010

ABC v Police HC Christchurch CRI-2010-409-000060, 13 May 2010

Filed under:

ABC v Police

File number: CRI-2010-409-000060
Court: High Court, Christchurch
Date: 13 May 2010
Judge: Chisholm J
Key titles: Appeals to High Court/Court of Appeal: Jurisdiction, Appeals to High Court/Court of Appeal: Timing, Media reporting (s 438).

Originally an appeal of Youth Court decision. Heard instead as an application for judicial review following concerns over jurisdiction for an appeal.

NZ Herald reported that a 16 year old had appeared in Court, as well as the nature of the charge, the circumstances of his arrest, other facts and a comment from the Police. No leave was granted under s 438 for this report. A objected.

Youth Court (YC) decided to allow publication of the fact of the appearance, the request for a psychologist's report, and the final disposition of the case. This decision was embargoed for 24 hours, in which time A appealed. YC Judge subsequently disclosed that he had known about the report in the Herald before making the abovementioned ruling.

Court found that all matters of concern to A were before the YC Judge and were presumed to have been taken into account.

Court also held that the YC decision did not bind any future YC Judge dealing with the matter but 'common-sense might suggest that the horse has bolted'.

Result:

Application for judicial review dismissed.

Fonua v Police HC Auckland CRI-2009-404-000341, 22 February 2010

Filed under:

Fonua v Police

File number: CRI-2009-404-000341
Court: High Court, Auckland
Date: 22 February 2010
Judge: Allan J
Key titles: Sentencing in the adults courts: Aggravated robbery, Sentencing - General Principles (e.g. Parity/Jurisdiction)

Appeal from sentence of 2.5 years imprisonment. Charges arose after events of one evening when TF (16 years old) and others stole 2 cars and left the owners of these cars with injuries. One of the stolen cars was crashed into a police car, and later abandoned. TF was apprehended 2 weeks later driving another stolen car with a high blood alcohol level.

Convicted in Youth Court and transferred to District Court.

Initially plead not guilty, but changed plea just before trial, and as a result of the prosecution reducing the charge for stealing one of the cars from aggravated robbery (purely indictable) to robbery (not purely indictable). Starting point of 3.5 years for one count of aggravated robbery, increased by 12 months for second robbery. 10% discount for late guilty plea plus 30% for youth and other personal mitigating factors.

The Court held that the sentencing Judge was wrong to uplift the starting point in relation to the robbery charge, as robbery is not purely indictable. Section 18 of the Sentencing Act 2002 precludes sentences of imprisonment being imposed on young people aged under 17 years if the charge is not purely indictable.

The Court agreed that this case was broadly comparable to *Police v Siafa* HC Auckland 12 October 2006 per Randerson J.

The Court declined to interfere with the 45% overall discount given by the sentencing Judge, and declined to accept that TF had a limited role in the offending.

The Court returned to the original starting point and the original discount, ending in a sentence of 2 years imprisonment.

The Court also considered the disparity between TF's sentence and that of two of his co-accused, who received combinations of intensive supervision, community detention and community work. TF had already served 5 months of his prison sentence at the time of the appeal, and had his family home assessed as a suitable venue for home detention.

Result:

Original sentence quashed. 6 months home detention substituted.

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Harris v R HC Tauranga CRI-2009-470-000031, 24 March 2010

File number: CRI-2009-470-000031
Court: High Court, Tauranga
Date: 24 March 2010
Judge: White J
Key titles: Sentencing in the adult courts: Arson

H appealed from sentence of 2 years imprisonment (starting point of 5 years), after being convicted and transferred to District Court, following a guilty plea in the Youth Court.

H (first offender, aged 15) lit fires at Te Puke High School and destroyed classrooms and property worth $5 million. H appealed on the grounds that he did not intend to burn down the whole building, intensive supervision was not considered by the Court, and he had successfully been on restrictive bail for 11 months. H relied on similar cases *R v Torstonson and Ham* DC Hamilton CRI-2006-219-000233, 24 November 2006, and *Police v SR* DC Tauranga CRI-2009-270-000075, 6 November 2009.

Court not persuaded that starting point was incorrect due to difficulties with accepting that H did not intend to burn the whole of the school building.

Court held that there must be real doubt whether a sentence of intensive supervision was considered by the sentencing Court, and that principles in the Sentencing Act 2002 and in s 208 of the CYPFA mean that intensive supervision with appropriate conditions should be considered. The Court also referred to *R v Cuckow* CA 312/91, 17 December 1991.

Result:

Appeal allowed. Two years imprisonment quashed. Two years intensive supervision with community detention and 400 hours community work substituted.

L v R [2010] NZCA 131

Court of Appeal
File number: CA533/2009, CA792/2009
Date: 30 June 2010,
Judges: Glazebrook, Winkelmann and Venning JJ
Key titles: Sentencing in the adults courts: Sexual violation by rape, Evidence (not including admissibility of statements to police/police questioning), Youth Court Procedure.

Appeal of conviction for rape. Issue whether defence counsel at trial should have agreed to admit portions of police video interview of L (14 years old at the time of the offence) into evidence. Also whether trial judge should have given a direction to the jury to disregard the interviewing officer's opinions that L was lying.

Obiter that the police officer was, in effect, cross examining L during the interview (in contravention of the Chief Justice's Practice Note), and that his interviewing style was confrontational, overbearing, and gave L no opportunity to answer the allegations. The CA said this was entirely inappropriate in any circumstances, but particularly where the person interviewed was a 14 year old suspected of serious sexual offending.

Result:

Appeal allowed. Conviction quashed. Retrial ordered.

MRW v Police HC Auckland CRI-2010-404-000058, 11 May 2010

Filed under:

MRW v Police

File number: CRI-2010-404-000058
Court: High Court, Auckland
Date: 11 May 2010
Judge: Venning J,
Key titles: Appeals to the High Court/Court of Appeal: Jurisdiction, Orders - type: Reparation - s 283(f).

This is an appeal decision from the High Court in relation to Youth Court orders for reparation (s283(f)) in response to two burglaries committed by MRW. The Youth Court Judge had ordered one payment of $250, one payment of $500 (both payable immediately), and $4250 to be paid at the rate of $20 per week.

MRW challenged the reparation orders on the grounds that—

1. first, the Judge applied principles relevant to Sentencing Act, rather than relevant to the Children, Young Persons and Their Families Act (CYPF Act);
2. second, the Judge breached the least restrictive outcome principle;
3. third, the Judge breached the principle that reparation orders that cannot possibly be met are to be avoided; and
4. fourth, the Judge erred in not considering the undue hardship that the reparation order would place on the appellant's mother and sister.

On the first ground, the Court held that reparation was the appropriate outcome because it was consistent with the objects and principles of the CYPF Act and because community work and supervision orders were not open to the Youth Court, MRW having already attained the age of 17 years and six months (s 296).

On the second ground, the Court held that there was little difference between the imposed order of $20 per week over five years, and an order requiring $5000 to be paid in full in five years time. It considered that the Youth Court had considered the need for the least restrictive outcome.

On the third ground, the Court held that despite MRW being a full-time student with a substantial student loan, and the fact that the instalments will cause some difficulty and hardship, that does not mean that the reparation payment cannot be met. The Court referred to the possibility that MRW obtain part-time employment.

On the fourth ground, the Court held that the reparation orders were not made against the mother or sister. It noted that the Youth Court Judge had referred to the need for MRW to acknowledge responsibility for his actions.

Result

The appeal was dismissed on all grounds.

Police v NJ HC Auckland CRI-2010-404-000309, 22 September 2010

Filed under:

Police v NJ

File number: CRI-2010-404-000309
Court: High Court, Auckland
Date: 22 September 2010
Judge: Ellis J
Key titles: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial, Criminal Procedure (Mentally Impaired Persons) Act 2003: disposition if unfit.

This was an opinion of the High Court after Judge Fitzgerald of the Youth Court stated a case under s 78 of the Summary Proceedings Act 1957 asking two questions:

1. First, when the Court makes findings as to mental impairment and unfitness to stand trial at a disability hearing, should it also make a finding as to intellectual disability if there is evidence from the health assessors about that?
2. Second, if yes, and the person is then assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act) pursuant to s 23(5) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act), is it open to the compulsory care coordinator to have a specialist assessor reassess the person as to intellectual disability?

It has been the Ministry of Health's practice to reassess the finding as to intellectual disability at the second step (the needs assessment under Part 3 IDCCR Act). If that second diagnosis contradicts the earlier finding of the Court as to intellectual disability, it potentially calls into question the determination of unfitness to plead and curtails the disposition options available to the Court. The Court may then have no choice but to discharge the offender into the community.

The High Court held that a finding of intellectual disability may be made at the earlier s 14 stage. Such a finding is reviewable. Diagnostic involvement at the Part 3 stage is inconsistent with the statutory scheme. Any practical problems can be resolved by ensuring that where intellectual disability is the central issue at the s14 stage, one or both of the health assessors is a specialist assessor under the IDCCR Act.

Result:

The Court's opinion is 'yes' to the first question and 'no' to the second question.

Pouwhare v R [2010] NZCA 268

Filed under:

Pouwhare v R [2010] NZCA 268

Court of Appeal
File number: CA227/2010
Date: 2 July 2010
Judge: William Young P, Chisholm and Keane JJ
Key titles: Appeals to the High Court/Court of Appeal: Jurisdiction, Sentencing in the adult courts: Application of Youth Justice Principles, Sentencing - General Principles (e.g. Parity/Jurisdiction).

Appeal from the decision in *Pouwhare v R* HC Wanganui CRI-2010-483-000011, 16 April 2010

Appeal on the question whether youth justice principles provided for in the CYPFA are required to be taken into account when sentencing a young person transferred to the District Court or the High Court, by the Youth Court:

'Section 283(o) is to be taken literally. Once a young person is transferred for sentence to the District Court, or the High Court for that matter, the Sentencing Act [2002] will apply. The plain implication has to be that Sentencing Act purposes, principles and aggravating and mitigating factors will then effectively displace the s 208 principles that would have applied but for transfer. We consider, moreover, that unless that were so, the analysis that the Sentencing Act then calls for, would be rendered incoherent.'

The Court held that whenever a young person is sentenced, in whichever court, the sentencing judge exercises a discretion. In the Youth Court the primary focus in the balance to be struck between the offence and the offender, is the young person. By contrast, in the District or High Courts under the Sentencing Act by contrast, the Judge is obliged to begin with the offence in its objective seriousness, and only then to look to the offender.

Under the Sentencing Act, a Judge must always weigh the young person's age and the reason why he or she offended, against the seriousness of his or her offending and prospects of rehabilitation. Sometimes the young person's age will be a mitigating factor of high, perhaps decisive, significance not to be circumscribed by any fixed outer percentage. Equally, it cannot be said that youth of itself, must always prevail as the paramount value on sentence, or that youth alone can justify radically reducing the sentence which would otherwise be proper.

When a young person is sentenced in the District Court or High Court, having been transferred for sentence by the Youth Court, the sentencing Judge is not required to take into account the youth justice principles provided for in the CYPF Act.

Result:

Appeal dismissed

R v Boyes-Warren HC Christchurch CRI-2008-009-019959, 10 March 2010

Filed under:

R v Boyes-Warren

File number: CRI-2008-009-019959
Court: High Court, Christchurch
Date: 10 March 2010
Judge: French J
Key titles: Sentencing in the adult courts: Murder/manslaughter

High profile murder of Christchurch taxi driver, in which BW used a knife to inflict a number of wounds, including the fatal one, on the victim. Pathologist's description was of an on-going and determined assault.

BW pleaded not guilty initially, then indicated a desire to plead guilty and accept blame as principal offender.

BW (16 years old at time of the offending) had an unhappy childhood, left school at a very early age, but was in fulltime employment at the time of the attack. Numerous previous history in the Youth Court, including violence. BW reported being drunk at the time of the offending. He later expressed remorse and wrote an impressive letter to the victim's family.

Court held statutory minimum non-parole period of 17 years would be manifestly unjust, and that a discount for age and guilty plea would attract a discount.

Result:

Life imprisonment with minimum non-parole of 15 and a half years.

R v Greaves HC Auckland CRI-2009-204-000507, 18 May 2010

Filed under:

R v Greaves

File number: CRI-2009-204-000507
Court: High Court, Auckland
Date: 18 May 2010
Judge: Harrison J
Key titles: Sentencing in the adult courts: Serious assault (including GBH), Sentencing in the adult courts: Aggravated burglary,.

Home invasion with three others. Attacked occupiers with golf clubs and metal bars. Serious injuries to victims. Tariff band 3. On Youth Court bail at the time. Offending worst of its kind. Starting point of 14 years imprisonment.

Mitigating factors:

- guilty plea,
- co-operation,

- age (16 yrs 7 months).

55% discount.

Result:

Six and a half years imprisonment.

R v Martin HC New Plymouth CRI-2009-043-004845, 29 April 2010

Filed under:

R v Martin

File number: CRI-2009-043-004845
Court: High Court, New Plymouth
Date: 29 April 2010
Judge: Asher J
Key titles: Sentencing in the adult courts: Murder/manslaughter.

M had pleaded guilty to manslaughter caused by dangerous driving. M and others, including the victim, had taken his caregiver's car without permission. M held a learner's licence. M drove the car erratically at speeds of 100kph in town and 180kph on the open road. The passengers were yelling at M to slow down and stop. M finally lost control of the car, which slid then crashed head on with a dirt bank. All occupants of the car suffered major injuries. The passenger who died was not wearing a seatbelt. M suffered severe head and leg injuries and was found to be more than twice the legal blood alcohol limit.

In assessing culpability and aggravating factors, the Court referred to *R v Skerrett* CA 236/86, 9 December 1986. The Court found that M's driving and the injuries suffered by the passengers were more serious than in *R v MacSwain* CA 37/05, 26 May 2005. Consequently the starting point was fixed at 7 and a half years imprisonment.

Consideration of personal mitigating factors resulted in:

- no extra credit for remorse beyond guilty plea,
- no credit for good character,
- 20% discount for youth,
- plus 2 months discount for injuries arising from the accident.

M pleaded guilty at the first opportunity after his case was transferred to the High Court. The Court held that anything less than the full one third discount would be unfair.

Result:

Three years 10 months imprisonment, and disqualified from driving for 5 years.

R v Walker and Others HC Wellington CRI-2009-485-000086, 10 February 2010

Filed under:

R v Walker and Others

File number: CRI-2009-485-000086
Court: High Court, Wellington
Date: 10 February 2010
Judge: Wild J
Key titles: Sentencing in the adult courts: Murder/manslaughter

W (15 years 4 months) and two others chased and attacked the victim with kicks and stomps to the head. The Judge described the attack as vicious, gratuitous and cowardly violence.

W was a first offender, with a good upbringing, who had gone off the rails. W had serious problems with alcohol and drugs.

W was remorseful and motivated to change. The Court made allowances for these factors.

Result:

Life imprisonment with minimum non-parole term of 11 years.

S v Police HC Oamaru CRI-2010-476-000009, 10 June 2010

Filed under:

S v Police

File number: CRI-2010-476-000009
Court: High Court, Oamaru
Date: 10 June 2010
Judge: French J
Key titles: Bail (s 238(1)(b))

Appeal of DC decision not to grant electronic bail. S, 16 years old, charged with murder. History of 42 charges in Youth Court, including violence, dishonesty, arson, driving and drugs. History of 19 offences committed while on bail. Police believed S's offending had escalated.

Parents (S's proposed bail address) had struggled to manage his behaviour and stop him from offending. Parents attitude not good, and S also violent while in the custody of CYF. S diagnosed with severe form of ODD at age 9, which remained unmanaged. S likely to be supplied with alcohol and drugs by friends while at proposed bail address.

Court agreed with DC decision that there was a real and substantial risk of further offending, despite positive effectiveness report.

Result:

Appeal dismissed.

WH v Police HC Whangarei CRI-2009-488-000048, 24 March 2010

Filed under:

WH v Police

File number: CRI-2009-488-000048
Court: High Court, Whangarei
Date: 24 March 2010
Judge: Gendall J
Key titles: Appeals to the High Court/Court of Appeal: Jurisdiction, Appeals to the High Court/Court of Appeal: Timing, Family Group Conferences: Timeframes/limits: Court-ordered

Appeal (brought substantially out of time) against conviction and sentence for five offences including burglary, conversion, escaping, and intentional damage. Appeal on the basis that Family Group Conference (FGC) time limits were not met. Court considered that this was a challenge to the procedure and should better have been brought as judicial review.

FGC not held because Christmas holidays intervened, delaying notice that needed to be given to W‟s mother and solicitor. Original appeal in District Court rejected with the view that s 249 of the CYPFA timeframes are not mandatory, and that delays were caused by W defending various charges, and that the delay was relatively limited.

Court agreed with reasoning in *Police v V and L* [2006] NZFLR 1057 (HC) and other authorities that say timeframes are not mandatory depending on the circumstances. Court also considered that delay might also be dealt with under s 440 of the CYPFA.

Court held that a technical breach of time requirements arising out of W's remand in custody were minimal and of little consequence. Court also held that a delay in completion of FGCs of 2.6 months (compared to that contemplated by statute of 1 month) was not inordinate or unreasonable in the circumstances. Delay here not the result of serious systemic failure. The consequences of the delay do not outweigh the entry of convictions, and do not enable the appellant to claim disadvantage.

Result:

Appeal dismissed.

2009

Police v AK YC Auckland CRI-2007-004-000438, 23 November 2009

Filed under:

Police v AK

File number: CRI-2007-004-000438
Court: Youth Court, Auckland
Date: 23 November 2009
Judge: Judge Fitzgerald
Key title: Sentencing – Intensive Monitoring Group, s 282, s 283(a).

More than two years previously, AK was accepted into the Intensive Monitoring Group of the Auckland Youth Court after being charged with sexual violation, kidnapping, indecent assault, and threatening to do grievous bodily harm.

This sentencing note records AK's successful completion of his family group conference plan. For more than two years AK's progress has been monitored by regular appearances before the Court (fortnightly for the first year, and monthly after that).

AK successfully completed the SAFE programme for sexual offenders. At the start he was assessed as at high risk of reoffending. He applied himself to the programme which was not easy, and was subsequently assessed as a moderate to low risk of reoffending. AK regularly put aside money to pay reparation, did not reoffended in any way, did not breach his bail conditions, increasingly demonstrated a mature and responsible attitude, and was soon due to finish his apprenticeship.

AK's effort was recognised by the Police's agreement to a section 282 discharge in relation to two charges, instead of a section 283(a) discharge.

Result:

The Court ordered a section 283(a) discharge on the sexual violation and kidnapping charges, and a section 282 discharge on the indecent assault and threatening to do grievous bodily harm charges.

Police v UBT YC Christchurch CRI-2009-209-000569, 22 December 2009

Filed under:

Police v UBT

File number: CRI-2009-209-000569
Court: Youth Court, Christchurch
Date: 22 December 2009

Judge: Judge N Walsh
Key titles: Orders - type: Supervision - s 283(k), Orders - type: Community Work - s 283(l).

Co-offender with 17 year old sister. Robbery of cash and cigarettes from a shop. Sister was sentenced in District Court to 2 years imprisonment.

U had disrupted home and school life, but had recently reconnected with his Maori culture.

Result:

Six months supervision plus 200 hours community work.

Police v TK YC Waitakere CRI-2009-290-000198, 1 October 2009

Filed under:

Police v TK

File number: CRI-2009-290-000198
Court: Youth Court, Waitakere
Date: 1 October 2009
Judge: Judge Fitzgerald
Key titles: Arrest without warrant (s 214).

T charged with theft of a car. The car was stopped by Police who arrested T because he was the driver. Police constable's evidence was that he arrested T in exactly the same way as if he were an adult. The arrest was not to prevent T from turning up in Court, or to avoid the destruction of evidence, and the constable also did not consider issuing a summons instead of arrest. T was cooperative with Police. At the time the Police stopped the car, the front seat passenger admitted that he had stolen it and was just getting T to drive it.

Court held that the reasons given for the arrest fell outside the four specific grounds mentioned in s 214 of the CYPFA.

Result:

Charges dismissed.

Police v T DC Waitakere CRI-2009-290-000257, 15 September 2009

Filed under:

Police v T

File number: CRI-2009-290-000257
Court: District Court, Waitakere
Date: 15 September 2009
Judge: Judge Taumaunu

Key titles: Sentencing in the adult courts: Aggravated robbery, Sentencing in the adult courts: Serious assault (including GBH)

T appeared on 3 charges of aggravated robbery, and one of wounding with intent. The offending involved demanding money from service station attendants, then taking cash and cigarettes. Two of the victims were hit with weapons. T was serving a Youth Court sentence of supervision on other charges when offending occurred.

Court held that a starting point of 5 years imprisonment should be reserved for more serious cases, and adopted a starting point of 4 years. 50% discount for guilty plea and inherent remorse.

Result:

2 years imprisonment with leave to apply for home detention.

Police v SR DC Tauranga CRI-2009-270-000075, CRI-2009-270-000241, 6 November 2009

Filed under:

Police v SR

File number: CRI-2009-270-000075, CRI-2009-270-000241
Court: District Court, Tauranga
Date: 6 November 2009
Judge: Judge Rollo
Key titles: Sentencing in the adult courts: Arson.

SR was 14 at the time of the offending. Youth Court jurisdiction was previously declined (see *Police v SR* YC Tauranga CRI-2009-270-000075,18 August 2009). $700,000 damage was done to a primary school after grass was combined with accelerants in a rubbish bin and set alight.

Presentence report advised against home detention.

Psychological report referred to, amongst other things, drug and alcohol issues, a fascination with lighting fires, the need for grief counselling after the death of a sibling, and assertiveness training.

Court held that community work can be ordered as a punitive element in place of a sentence of imprisonment, and that imprisonment plus release conditions would be likely to be inadequate to achieve the primary social goals in this case.

Result:

Two years intensive supervision plus 250 hours community work.

Police v SN DC Manukau CRI-2009-255-000032, 23 July 2009

Filed under:

Police v SN

File number: CRI-2009-255-000032
Court: District Court, Manukau
Date: 23 July 2009
Judge: Judge Malosi
File number: Sentencing in the adult courts: Aggravated robbery.

Aggravated robbery by S (16 at the time of the offending) of a dairy, using a 10kg metal chain on the 60 year old victim, who was a customer in the shop.

The Court distinguished *R v Mako* [2000] 2 NZLR 170 (CA) and held that the starting point should be 4 years imprisonment. Factors include:

- no planning,
- no disguise,
- no others involved,
- no gang involvement, and
- no other associated offending.

Other factors contributing to a further discount were: early guilty plea, remorse, personal care and protection history, commitment to being a good father, good attitude while on remand.

Result:

Two years intensive supervision with special conditions, 3 months community detention, 100 hours community work, and judicial monitoring.

Police v SE (No 2) YC Auckland CRI-2008-204-000446, 11 June 2009

Filed under:

Police v SE (No 2)

File number: CRI-2008-204-000446
Court: Youth Court, Auckland
Date: 11 June 2009
Judge: Judge Fitzgerald
Key titles: Orders - type: Supervision with residence - s 283(n), Orders - type: Reparation - s 283(f)

SE committed 2 more burglaries 2 days after previous sentencing (see *Police v SE (No 1)* YC Auckland CRI-2008-204-000446, 30 March 2009 above).

Court held that when s 290(1)(b) refers to imprisonment being required, it must mean more than just required by statute.

Under this section, 'imprisonment' (or home detention) is what a Court would consider to be an appropriate and effective end point for an adult.

SE cannot be sentenced to imprisonment in District Court under s18 of the Sentencing Act 2002. Court expressed concern that appropriate youth programmes not able to be offered by probation service to young people given long District Court sentences, e.g. intensive supervision.

Result:

3 months supervision with residence, followed by 6 months supervision. Reparation order against mother.

Police v SC (No 2) YC Nelson CRI-2009-242-000037, 31 August 2009

Filed under:

Police v SC

File number: CRI-2009-242-000037
Court: Youth Court, Nelson
Date: 31 August 2009
Judge: Judge Russell
Key titles: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court), Custody (s 238): Chief Executive (s 238(1)(d)).

Young person currently subject to FGC plan, which was not completed. Arrested on four further charges. Most recent bail breach warning reported above (*Police v SC (No 1)* YC Nelson CRI-2009-242-000037, 18 August 2009). S's mother is supportive but has little control over him. Court told young person this was the 'end of the line'. Court satisfied that S would be likely to abscond and commit further offences.

Result:

Remand in custody.

Police v SC (No 1) YC Nelson CRI-2009-242-000037, 18 August 2009

Filed under:

Police v SC

File number: CRI 2009-242-37
Court: Youth Court, Nelson
Date: 18 August 2009

Judge: Judge Zohrab
Key titles: Bail, s 329

Young person arrested for latest of 15 breaches of bail, including numerous warnings from police and Courts. Most recent breach contravening non-association condition. Despite further offending (not linked to non-association), and the frustration of the Court, latest breach cannot be linked to requirements in s239 for detention in custody.

Result:

Bail granted.

Police v RH YC Gisborne CRI-2008-216-000200, 11 December 2009

Filed under:

Police v RH

File number: CRI-2008-216-000200
Court: Youth Court, Gisborne
Date: 11 December 2009
Judge: Judge Taumaunu
Key titles: Orders - type: Discharge - s 282, Family Group Conferences: Agreement

RH for sentence on 7 burglary charges. Agreement at Family Group Conference (FGC) on s 283(a) discharge.

Factors affecting Court's decision not to grant s 283(a) discharge include:

- proper performance of FGC plan,
- went further than plan required,
- earned money to pay victims, and
- no new offending.

RH had turned his life around and wished to join the army.

Court commented that s 282 discharge might result in a lesser stand down period before being accepted into the military.

Result:

Section 282 discharge on all charges.

Police v PK YC Christchurch CRI-2008-209-000641, 3 February 2009

Filed under:

Police v PK

File number: CRI-2008-209-000641
Court: YC Christchurch
Date: 3 February 2009
Judge: Judge N Walsh
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH)

PK poured petrol over a wooden garden shed at an unoccupied address and ignited it, causing $8,200 worth of damage. Five days later PK, together with two associates all armed and with bandanas covering their faces, broke into a flat, demanded property and money, and inflicted injuries requiring urgent medical attention.

PK appeared before the court charged with intentional damage, injuring with intent to cause grievous bodily harm, wounding with intent to cause grievous bodily harm, robbery, intentional damage, assault with a weapon, drink driving.

Court acknowledged that prison would be a poor deterrent. Most of PK's immediate family are either in prison, facing charges or serving sentences. PK is currently in CYFS residence, and reportedly has a lack of empathy and remorse, but is making some positive changes. The consultant psychiatrist suspects a significant conduct disorder.

The reasons for conviction and transfer to the District Court are – PK was 15 years and one month at time of offending, the circumstances of the offending cannot be appropriately dealt with in the Youth Court (notwithstanding the absence of significant previous convictions), PK was under the influence of drugs and alcohol at time of violent offending, the offending was premeditated and occurred whilst on bail. There are serious public safety concerns and a need for accountability.

Result:

Conviction entered on all charges. Transfer to District Court for sentencing ordered.

Police v NP YC Nelson CRI-2009-242-000011, 30 January 2009

Filed under:

Police v NP

File number: CRI-2009-242-000011
Court: Youth Court, Nelson
Date: 30 January 2009
Judge: Judge Russell
Key titles: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court), Custody (s 238): CYFS

Application for bail. NP has appeared in Court twice for breach of bail since original offences were laid. He now appears for two new charges of theft. NP has come to Police attention 46

times from 2006 to 2009 and been identified as the offender 31 times. His parents have difficulty controlling him.

The Court considered there was a risk of further offending and further bail breaches if bail continued in present terms or if a 24 hour curfew were imposed.

Electronic monitoring seems appropriate as it would reinforce to NP that he is to remain in the care of his parents, and provides them with an additional mechanism to help control him.

Result:

NP to be remanded in CYFS custody. Further charges are remanded without plea. NP invited to apply for electronically monitored bail.

Police v MOV YC Porirua CRI-2008-287-000077, 28 May 2009

Filed under:

Police v MOV

File number: CRI-2008-287-000077
Court: Youth Court, Porirua
Date: 28 May 2009
Judge: Judge Walker
Key titles: Jurisdiction of the Youth Court: Age, Jurisdiction of the Youth Court: Charge type.

MOV 14 at the time of offending, so not eligible to be convicted and transferred to the District Court. No agreement from FGC as to jurisdiction. Likely sentence in adult court would be 8—10 years minus time for age. Public interest and views of the victim are relevant factors. The offending is too serious for the Youth Court.

Result:

Jurisdiction not offered.

Police v JRKJ YC Hamilton CRI-2009-019-000343, CRI-2009-273-000006, 23 September 2009

Police v JRKJ

File number: CRI-2009-019-000343, CRI-2009-273-000006
Court: Youth Court, Hamilton
Date: 23 September 2009
Judge: Judge Cocurullo
Key titles: Bail, s 239, Assault

Application for bail. Young person charged with assaulting girlfriend. 11 previous charges in Youth Court, including theft and violence. Court in no doubt that young person would commit further offences if released on bail.

Result:

Application not granted.

Police v GB YC Auckland CRI-2009-204-000262, 7 September 2009

Filed under:

Police v GB

File number: CRI-2009-204-000262
Court: Youth Court, Auckland
Date: 7 September 2009
Judge: Judge Fitzgerald
Key titles: Arrest without warrant (s 214), Rights.

GB was charged with possessing an offensive weapon in a public place, and possessing 8 spray cans capable of being used to commit an offence.

Police spoke to G and others late at night in central Auckland.

Police searched a nearby vehicle, in which they discovered a machete and spray cans. G admitted that he owned a baseball bat in the vehicle but gave a false name and age to the Police. After other enquiries, the Police told G he was under arrest. After G told the Police he had lied about his name and age, he was given his Bill of Rights rights and taken to Auckland Central Police station. Police evidence that arrest was maintained to confirm G's correct identity.

The Court found that none of the prerequisites needed to lawfully arrest a young person were present at the Police station. Held that the arrest was not valid. The Court rejected argument that s 440 of the CYPFA can be used to remedy a substantive matter such as unlawful arrest, which goes 'to the heart of some of the key objects and principles of the [CYPF] Act'.

Result:

Information dismissed.

Police v BJT YC Dunedin CRI-2009-212-000037, 5 October 2009

Filed under:

Police v BJT

File number: CRI-2009-212-000037
Court: Youth Court, Dunedin

Date: 5 October 2009
Judge: Judge O'Driscoll
Key titles: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Sexual violation by unlawful sexual connection.

Two representative charges of sexual violation against the victim when the victim was aged 8 and 11 years old.

Offending was admitted by B and Youth Court jurisdiction was offered and accepted.

B was diagnosed with ADHD and was a habitual cannabis user. Previous Youth Court charges of indecent assault proved after defended hearing. B has refused to engage with any psychological therapy. If convicted and transferred to adult court, B would be too young or not qualify for therapeutic sex-offender programmes.

The Court outlined the relevant legislation, principles and relevant and similar cases. Court also considered specialist reports, and recognised that there would be no way to compel B to stick with the long term STOP (which could be ordered if B stayed in the YC) programme beyond the age of 17 and a half.

Result:

Convicted and transferred to District Court for sentence. STOP assessment ordered.

Police v BHT YC Hamilton CRI-2011-219-000342, 15 September 2009

Filed under:

Police v BHT

File number: CRI-2011-219-000342
Court: Youth Court, Hamilton
Date: 15 September 2009
Judge: Judge Cocurullo
Key titles: Bail (s 238(1)(b), Custody (s 238): Police (s 238(1)(e))

Young person appeared on new charge of assault, with two current charges of aggravated robbery. Assault occurred while young person electronic bail. No youth justice residence bed available.

Result:

Remanded under s 238(1)(e) into the custody of police.

A v Police HC Invercargill CRI-2009-025-000995, 4 December 2009

Filed under:

A v Police

File number: CRI-2009-025-000995
Court: High Court, Invercargill
Date: 4 December 2009
Judge: Fogarty J
Key title: Orders – Supervision with Residence, s 283(n), s 290, assault

The appellant and her friend punched the victim, another young girl, who they thought had narked to staff at the YMCA. The victim's caregiver told the social worker that the victim recovered very quickly from the assault and appeared to suffer no ill effects from it.

The Youth Court judge received a social worker report pursuant to section 334 which contained the recommendation that A receive a supervision order rather than a supervision with residence order. However, the Youth Court Judge imposed a supervision with residence order.

On appeal the appellant argued that the Judge failed to give proper weight to the social worker report, that he failed to follow the principle of the statute that requires the least restrictive outcome, that he overstated the impact of the assault on the victim, that he applied the test in section 290 in a way which was inconsistent with the terms of the section.

The Youth Court Judge gave two sets of reasons. The first was on the template form for ordering uncontested supervision with residence orders. The form is used because section 340 requires reasons at the time the order is made. The second set of reasons were the oral remarks made at the time, typed up and provided later.

The High Court made the following points:

- It noted that the template form addresses the criteria in section 290 before dealing with the criteria in section 284, but that the judicial determinations need to be made in the other order. In this case, the Youth Court Judge went first to section 290(1)(c), then took into account the section 284 matters. This is an error of law.
- It also noted that the template form simplified the criteria in section 290 and in doing so, mis-stated the test. The purpose of the form was to provide information comprehensible to young people, but it would be wrong to use the simplified language as the actual test. In this case, the Youth Court Judge used the language of the template form as the test, rather than the language of the statute.
- It stated that where a Judge rejects a recommendation for a non-custodial report by a competent person (as occurred in the social worker's report), section 290(c) required that the Judge explain why such an order would be clearly inadequate. In this case, the Youth Court Judge did not discuss that he is differing from the social worker or why.

> In this way, he had not demonstrated satisfaction with the threshold requirement in section 290, as he was required to do when making a supervision with residence order.

There appeared to be no basis for the Judge's assessment of the impact of the assault on the victim, which differed from the assessment in the section 344 report.

Result:

Appeal allowed. Custodial order quashed. A supervision order substituted.

R v King [2009] NZCA 194

Filed under:

R v King [2009] NZCA 194

Court of Appeal
File number: CA17/09
Date: 10 August 2009
Judge: Ellen France, Priestley and Miller JJ
Key title: Sentencing in the adult courts: Aggravated robbery

Summary

Crown appeal. Sentenced to 18 months imprisonment on historic charges of assault with intent to rob (now called 'aggravated robbery') after DNA evidence linked King to 1996 offending. King was 16 at the time, and would have been a first offender if charged. Subsequent convictions for burglary, theft, assault and possession of a firearm.

In 1996, King living on the streets after parents moved to Australia.

Late guilty plea. Sentenced as first offender. Aggravating features including planning, use of a weapon and effect on victims. Starting point by sentencing judge 3 years imprisonment, reduced by 12 months for age and circumstances, and 6 months for guilty plea.

The Court reviewed the tariff case of *R v Mako* [2000] 2 NZLR 170 (CA), which held that youth need not be a mitigating factor, but may be appropriate where a youth is a first offender and appears genuinely motivated to reform.

The Court recognised that, as well as the rehabilitative potential of young offenders, age also mitigates because young people may be considered less culpable, with the younger the offender, the more important the recognition of reduced culpability.

Decision

Appeal dismissed.

R v Alletson [2009] NZCA 21

Filed under:

R v Alletson [2009] NZCA 21

Court of Appeal
File number: CA63/09
Date: 19 February 2009
Judge: Ellen France J
Key title: Bail (s 238(1)(b))

Summary:

Appeal against refusal of bail pending appeal against conviction and sentence for unlawful sexual connection, indecent assault, and inducing a girl under 12 to perform an indecent act. Ground of appeal that the applicant was a young person at the time of offending.

Applicant aged 20 years 10 months at the time of sentence. Appeal relies, amongst other things, on UNCROC Article 37(b) providing that imprisonment should only be used as a measure of last resort.

Decision:

Appellant's youth alone is not sufficient to warrant bail. Application for bail declined.

R v Broughton HC Rotorua CRI-2008-269-000062, 26 March 2009

Filed under:

R v Broughton

File number: CRI-2008-269-000062
Court: High Court, Rotorua
Date: 26 March 2009
Judge: Lang J
Key title: Sentencing in the adult courts: Murder/Manslaughter

Summary:

JB, 14 and a half years old, had been drinking vodka. Grabbed a woman, who resisted, then bashed her with a rock until she became unconscious. Twelve days later at 2.00am seen on security camera smashing windows at a local high school, followed 27 year old Scottish traveller and beat her with baseball bat, pulled off her underpants and took her bag. Victim died an hour later at hospital.

Factors taken into account for sentencing on murder charge, all principles in Sentencing Act 2002, effect on victims, effects on New Zealand as seen internationally. Aggravating factors influencing decision on minimum period of imprisonment include, innocent vulnerable defenceless victim, basball bat as lethal weapon, significant degree of force, some degree of premeditation, robbery, sexual element, leaving the scene without assisting the victim.

Discussed *R v Rapira* [2003] 3 NZLR 794 (CA); *R v Piilua* HC Christchurch CRI-2005-009-011878, 1 September 2006 and *R v Abraham* CA 139/03, CA 330/03 28 October 2003. Found that this case fell outside usual range enough to increase minimum period of imprisonment beyond 10 years. 9 years imprisonment on wounding charge considered realistic, ending up around 5-6 years when guilty plea and age taken into account, with 4 years minimum non parole. Uplift of 3 years in minimum period of imprisonment to take into account wounding charge.

Only limited recognition can be taken of age as a mitigating factor when charge is serious (*Rapira*), 1 year reduction in minimum period of imprisonment. Further reduction of 2.5 years for early guilty plea.

Decision:

Life imprisonment for murder with minimum term of imprisonment of 12.5 years. 6 years imprisonment for wounding with intent, concurrent.

R v Putt [2009] NZCA 38

Filed under:

R v Putt [2009] NZCA 38

Court of Appeal
File number: CA651/08
Date: 26 February 2009
Judge: Ellen France, Harrison, Cooper JJ
Key title: Sentencing in the adult courts: Serious assault (including GBH)

Summary:

Charges: wounding with intent to cause gbh. Appeal against sentence. of 5.5 yrs imprisonment. Father hit P over the head with a stereo after an argument, rendering him unconscious. Both intoxicated. P later stabbed father four times in response.

Guilty plea. Reconciliation. Original sentence starting point uplifted by 2 years to reflect Youth Court history (notings of operating a motor vehicle recklessly, possession of an offensive weapon in 2005, kidnapping, dangerous driving, possession of an offensive weapon in 2006), resulting in starting point of 8 years, but credit was given for age, guilty plea, and remorse.

Found starting point of 8 years too high. YC history relevant factor *Kohere v Police* (1994) 11 CRNZ 442 (HC) at 444. However no violence and not extensive, so should only have been used to "offset" discount for youth but not completely negate it. Provocation should also have

been taken into account. Starting point should have been 5.5 years with discount of 35% for remorse, restorative justice processes and guilty plea.

Decision:

Appeal allowed. Sentence of 3.5 yrs imprisonment. No minimum period.

R v Te Wini HC Rotorua, CRI-2008-270-000361, 18 December 2009

Filed under:

R v Te Wini

File number: CRI-2008-270-000361
Court: High Court, Rotorua
Date: 18 December 2009
Judge: Venning J
Key titles: Sentencing in the adult courts: Murder/manslaughter

High profile murder of elderly gentleman in his home. TW and co-accused plead not guilty.

TW was 14 at the time of the offending. She lived a transient lifestyle, smoked cannabis, had relationships with gang affiliates and suffered from post-traumatic stress disorder.

The Judge described each girl as a victim in their own right, who was failed by their families and those who were meant to be responsible for them. The Judge also described as a tragedy that they would receive more chance of an education and learning life skills in prison than had been provided to them so far by those meant to be responsible for their upbringing.

Factors counting towards a minimum non-parole term of 17 years included:

- the home invasion nature of the offending,
- murder committed in the course of a robbery,
- the high level of brutality, and
- the vulnerability of the victim.

The Court held that, but for the youth of the defendants, minimum terms of 19 or 20 years could be appropriate.

The Court distinguished *R v Slade* [2005] 2 NZLR 526 (CA) and *R v Trevithick* HC Auckland CRI-2007-244-000009, 19 June 2007 due to TW's encouragement of her co-offender and her lack of a guilty plea and subsequent remorse. Statutory minimum period of imprisonment imposed despite TW's young age due to Parliament deliberately choosing not to make an exception for youth.

Result:

Life imprisonment with MPI of 17 years.

R v V HC Hamilton CRI-2007-219-000335, 5 March 2009

Filed under:

R v V

File number: CRI-2007-219-000335
Court: High Court, Hamilton
Date: 5 March 2009
Judge: Cooper J.
Key title: Sentencing in the adult courts: Murder/manslaughter

Summary:

V (16 at the time of the offence) pleaded guilty to killing a sleeping man by hitting him on the head with brick tiles.

Pre-sentence report noted previous Youth Court history, alcohol use, little motivation to change and high risk of reoffending. Other aggravating factors included gratuitous nature of assault, incident occurred while V on bail, V's abandonment of victim after assault. Court commented on widespread community concern about serious violence by strong young men. Starting point 4.5 years. Six month deduction for age and time spent in youth justice residence. Further sixteen month deduction for early guilty plea.

Decision:

2 years, 8 months imprisonment.

Ranginui v Police HC Wellington CRI-2009-483-000039, 23 October 2009

Filed under:

Ranginui v Police

File number: CRI-2009-483-000039
Court: High Court, Wellington
Date: 23 October 2009
Judge: Judge Dobson
Key title: Sentencing in the adult court, aggravated robbery, aggravated wounding.

R and a male co-offender forced their way into the victim's house at night. R was aged 15, the male co-offender was 19. The co-offender was armed with a machete with which he gashed the victim's head, causing profuse bleeding. The co-offender continued to assault the victim. They left, taking an EFTPOS card, its PIN, a wallet, a cheque book and $1300 cash.

R had earlier pleaded guilty in the Youth Court to aggravated robbery and aggravated wounding and had been sentenced in the District Court to four years six months imprisonment, a reduction on the starting point of nine years. Subsequent to her sentencing, R

was re-interviewed by Police. That further information and her preparedness to give evidence were instrumental in the co-offender electing not to dispute the facts of his offending.

Appeal (out of time) on two grounds: first that regard should be had to the post-sentencing assistance provided by R, and second that a lower starting point for sentence was warranted because a greater disparity ought to have been recognised between R and her co-offender. Subsequent to R's sentencing, the starting point for the co-offender's sentencing was set at 12 years.

The Police conceded that the first ground had merit and a further 10 percent discount from the starting point was warranted. The Court agreed and noted that this was consistent with the recent guideline decision on discounts for guilty pleas in *R v Hessell* [2009] NZCA 450.

The Court found that age and naiveté were relevant in assessing mitigating factors, not the starting point. The three year difference between the starting point for R and her co-offender was characterised as generous. Accordingly there was no error in the starting point.

Result:

Leave for the appeal (out of time) was granted. The appeal was allowed on the first ground. Consequently a 60 percent reduction on the starting point of nine years was granted. The original term of imprisonment of four years and six months was substituted with a term of three years and seven months.

2008

Police v Z and X [2008] NZCA 27

Filed under:

Police v Z and X [2008] NZCA 27

Court of Appeal
File number: CA400/07 CA504/07
Date: 26 February 2008
Judge: O'Regan, Robertson and Ellen France JJ
Key title: Orders - type: Reparation - s 283(f)

Case Summary:

Issues:

1. Are parental fault, and a causative link between parental fault and young person's offending, preconditions for making a reparation order against parents?
2. Was the original HC dismissal of the Youth Court reparation order of $10,000 still allowable?

X and Z are parents of J (a young person). J is a persistent offender, responsible for damages and losses to victims in excess of $100,000. J committed a number of burglaries while on bail and living at his parents' house in 2005. J was sentenced to supervision with residence, and the Youth Court subsequently granted an application by a victim of the burglaries for reparation against the parents. The Youth Court Judge said that J's father should have been more proactive in telling Police when he knew J was in breach of his bail by being out with friends, and being in possession of stolen firearms.

The High Court overturned the reparation order after the parents appealed. Mallon J held that parents could only be liable for reparation if they were at fault, and if there was a causative link between that fault and the offending of their child.

CA has now held that, while fault will always be a relevant consideration in deciding whether or not to make a parental reparation order, the purpose of a reparation order is compensation, not punishment. The Court argues that there can be no necessary link between parental fault and a reparation order against parents, if the purpose of reparations is compensation and not punishment. The Court further held that the Bail Act does not impose such a high standard of responsibility on parents, and the statutory scheme of Children, Young Persons and Their Families Act 1989 (CYPFA) does not make parental fault a precondition for a reparation order.

In response to submissions from counsel for the parents, the Court said there was still nothing hindering the ability of the Youth Court to sanction reparation orders against parents where parents have consented to those orders.

Decision:

Parental fault, and a causative link between that fault and a young person's offending are not necessary preconditions for the making of a reparation order against parents under s283(f) of the CYPFA. However Mallon J's quashing of original order in the HC is untouched, as her reasoning was based on an assessment of the total circumstances of the case, not simply the issues of causation and fault. The judge in the original YC case put too much emphasis on the fault of the parents, as they had no obligation to proactively contact Police.

Police v GC YC Manukau CRN 07292000771-000988, 13 February 2008

Filed under:

Police v GC

File number: CRN 07292000771-000988
Court: Youth Court, Manukau
Date: 13 February 2008
Judge: Judge Harvey
Key title: Evidence (not including admissiblity of statements to police/police questioning)

Case Summary:

GC faces two charges of stealing a handbag, and assisting another to avoid conviction.

Whether two associated defendants, who are being dealt with separately, can be compelled as witnesses for the prosecution in terms of s 73 of the Evidence Act 2006. The two associated defendants have followed Youth Court procedure, insofar as they have 'not denied' the allegations against them, have been to a family group conference, have completed plans devised by those conferences, and have had their matters concluded. The issue is whether the two associated defendants have plead guilty, or been found guilty, or, having been found guilty of the offence, have been sentenced or otherwise dealt with for that offence in terms of s 73? The concept of pleading guilty is generally not used in Youth Court procedure.

Crown argued that the Youth Court's use of proof by admission is essentially the same as a plea of guilty.

Judge Harvey refers to *C v Police* [2000] NZFLR 769 (HC), in which Hammond J suggests that not denying, or admitting a charge could not support a conviction in terms of s 283(o) of the CYPFA. The Judge compares that ruling with *Police v M* (2001) 20 FRNZ 199, in which Judge Harding takes the Court's notation of 'PAFGC' as providing for sufficient 'intent and legal consequences' and being equivalent in the summary jurisdiction of proof at defended hearing or proof by pleading guilty. PAFGC stands for 'proved by admission at a family group conference', and is a notation made by the Court on the information following a family group conference at which a young person has admitted a charge which has previously been not denied.

In finding for the Crown, Judge Harvey focuses on the concept of proof, and equates proof following a defended hearing in the Youth Court, with proof following an admission by an accused young person. He distinguishes *C v Police* by explaining that a plea of "not denied" is not about an acknowledgement of criminal responsibility, but simply allows a Court to order a family group conference.

Also discussion of whether one the co-defendants was compellable if proceedings were found not to be 'determined' for the purposes of the Evidence Act because that young person had gone through the Youth Court process, and subsequently been discharged under s 282(1) of the CYPFA. Crown argued that s 282 discharges are legal fictions, and therefore a young person discharged under this section should be considered as a simple eye witness, and not a co-defendant. The Court cited *Police v JL* (2006) DCR 404 (YC), and held that a discharge under s 282(1) is a determination in a proceeding, defining determination a dispositive act in a proceeding.

Decision:

For the purposes of s 73(3)(c) of the Evidence Act 2006, proof by admission in Youth Court has the same legal effect as a plea of guilty. A discharge under s 282(1) of the CYPFA 1989 is a determination for the purposes of s 73(2)(b).

EM v Police YC Manukau CRN 07292001132, CRI-2008-292-000017, 4 February 2008

Filed under:

EM v Police

File number: CRN 07292001132, CRI-2008-292-000017
Court: Youth Court, Manukau
Date: 4 February 2008
Judge: Judge Malosi
Key title: Family Group Conferences: Held/Convened

Case Summary:

Successful application by EM, a Young Person for dismissal of a charge of wounding with intent to cause GBH.

EM applied on the grounds that s 245(1) had not been complied with.

The Police unsuccessfully opposed the application and unsuccessfully sought leave to withdraw the charge and start again if the Court found that it had no jurisdiction to hear the charge.

Facts

EM was involved in offending in 2007 and was sentenced to supervision with residence on 14 December 2007. On 14 September 2007, EM escaped from the custody of the Chief Executive and was apprehended on 18 September and remained in custody from that date. On 20 September two people were interviewed in respect of a wounding charge. Both named EM as a participant. A Family Group Conference (FGC) was held on 1 October in relation to EM's earlier offending. The wounding charge was not discussed as the Police did not interview EM until 17 October 2007. The Police charged EM following the interview and on 19 October 2007 an information was laid in the Youth Court (YC). EM was summonsed to

appear on 23 October, the same date that he was to appear on the earlier charges (which were the subject of the FGC on 1 October). The Detective's affidavit acknowledged, amongst other things, that a FGC was not arranged in respect of the wounding charge and that he was not advised by anyone that he should speak to a Youth Justice Coordinator about convening an FGC.

Counsel for EM submitted that s 245(1) is mandatory and cited *Pomare v Police* HC Whangarei AP8/02, 12 March 2002, in which compliance with the three cumulative steps in s 245(1) was said to be 'an essential prerequisite to laying a lawful information'.

Counsel for the Police submitted that the Court apply the purposive principles of the CYPFA and cited *RSR v Police* HC Tauranga CRI-2007-470-000027, 20 October 2007; *Police v L* (1991) 8 FRNZ 123 and *Police v V and L* [2006] NZFLR 1057 (HC) where the Judge reasoned that the focus on cases where failure to comply with statutory obligations is in issue, should be on the cause, nature and consequences of non-compliance and then the implications of non-compliance could be addressed on the facts of each case and charges dismissed if warranted. Counsel argued on the basis of s 248(3) of the CYPFA, which provides there is no requirement to convene a FGC if a FGC has been held within the preceding 6 weeks.

Decision

Dismissing the charge.

1. The gateway through which all young people must pass to the YC must be 'vigilantly guarded'.
2. The reasoning in *Police v V and L* (above) could not have intended to apply to something so elementary as the processes be to followed in order to summons a Young Person to the YC. 'The intention to charge process that must occur prior to charges being laid in Court (unless there has been an arrest or s 248(3) applies) is much more fundamental than that.'
3. The importance of s 245(1) is imbedded in the s 208 youth justice principles.
4. There was no justifiable reason for circumventing the s 245(1) procedures, and unless caught by s 248(3), those steps are mandatory.
5. Section 245(1) had been breached in every respect. The Police had fallen 'short of the mark in a monumental way'. While the complainant would be left without recourse through the YC, that was completely avoidable and hopefully 'a mistake the Police will not repeat'.

R v IM HC Auckland CRI-2007-292-000359, 5 February 2008

Filed under:

R v IM

File number: CRI 2007-292-359
Court: High Court, Auckland
Date: 5 February 2008
Judge: Heath J
Key title: Sentencing in the adult courts: Aggravated robbery

Summary

IM appeared in the Youth Court, following offending that occurred in May 2007, when IM was aged 14 years 7 months. Indicated that charges were not denied, but application for Youth Court jurisdiction denied by Youth Court Judge, primarily on public interest grounds and well publicised increase in serious youth offending. IM was transferred to High Court due to age, and entered guilty pleas to both charges.

Heath J commented on the seriousness of the charges, and reminded IM of the maximum sentences of imprisonment available for the offences (14 years, and 10 years respectively).

Robbery involved a plan to snatch a handbag from a suitable victim, aided by older brother (18 years old) and his partner (24 years old), who both waited in the car. Victim was pushed to the ground and suffered minor injuries.

Second plan was made to rob a superette. IM and brother entered superette with bandanas over their faces and carrying an empty wine bottle, and a fence paling, respectively. Brother's partner waited outside as getaway driver. Shop assistant struck in the head by brother after struggle. Some cigarettes were taken.

Court comments that IM was "impressionable and easily led", and had been given methamphetamine before embarking on the offending. Though youth justice principles applying in the Youth Court are more rehabilitative in nature, age can be given considerable weight as a mitigating factor in sentencing in the adult courts. Refers to *X v Police* (2005) 22 CRNZ 58 (HC) and *R v Patea-Glendinning* (2006) 22 CRNZ 959 (HC), but takes the view that the Court is:

"…entitled to apply youth justice principles in sentencing in a case such as this. Application of those principles recognises the immaturity which someone of your young age will have and the impressionability and likelihood that they will succumb to the influences of older people."

Both counsel agreed that imprisonment would not be justified for "a 14 year old who has no prior history of offending and who has acted under dark influences of an elder brother". Court recognised twin demands for sentencing that denounces the wrong and forces the young person to be accountable for their actions, as well as providing an opportunity for rehabilitation. Heath J welcomed new Sentencing Act options including intensive supervision, and combination sentences. Reports indicate that IM has had a significant change in attitude while on remand.

Decision

100 hours community work on both charges (concurrent), 20% of which can be converted by a probation officer into basic work and living skills training. Two years intensive supervision on both charges (concurrent) with special conditions. A "…first and last chance".

Police v HSP and Others YC Tauranga CRI-2008-270-000073, 25 February 2008

Filed under:

Police v HSP and Others

File number: CRI-2007-270-000073
Court: Youth Court, Tauranga
Date: 25 February 2008
Judge: Judge Harding
Key title: Delay, Objects/Principles of the CYPFA (ss 4 and 5)

Case Summary:

Application to adjourn preliminary hearing. HSP a young person, so matter called in Youth Court. Preliminary hearing scheduled, in line with practice note of 1 March 1998, which recommends depositions to be held no more than 12 weeks after the defendant is first charged, as well as s5(f) CYPFA.

Police first sought an adjournment by letter to the Court, which was also copied to all other counsel (each defendant was separately represented). Court described this letter as an informal and ex parte application. The application was declined due to it not being made in the presence of all counsel, and relying on matters that were known to police when depositions first scheduled.

Police applied again by letter, again informally, and again ex parte. This application was also declined. The Court commented '[such] informal ex parte applications are not appropriate'.

Police applied a third time, this time formally, together with a memorandum signed by all counsel, and a supporting affidavit.

Decision:

Application granted.

Police v TS YC Waitakere CRI-2008-290-000073, 19 December 2008

Filed under:

Police v TS

File number: CRI-2008-290-000073
Court: Youth Court, Waitakere
Date: 19 December 2008
Judge: Judge Taumaunu
Key title: Arrest without warrant (s 214)

Summary:

TS with a group of others spoken to by Police at night on the street. Police gave evidence that TS said words to Police as they were leaving the group. TS arrested and taken to Police station for using insulting language likely to cause violence. Constable admitted not turning her mind to whether she could have issued a summons instead. *Pomare v Police* HC

Whangarei AP8/02, 12 March 2002 authority for what constitutes a lawful arrest under s 214 of the CYPFA, and that non-compliance with s 214 renders the information invalid and gives the court no jurisdiction to determine the information.

Court found that arrest was not made in the midst of rising crowd hostility. Also found that the urgency of the case did not require the police not to consider issuing a summons.

Decision:

Arrest unlawful. Information invalid and dismissed.

Queen v L DC Hamilton CRI-2006-0698-000514, 4 March 2008

Filed under:

Queen v L

File number: CRI-2006-0698-000514
Court: District Court, Hamilton
Date: 4 March 2008
Judge: Judge RLB Spear
Key title: Evidence (not including admissibility of statement to police/police questioning)

Case Summary:

Defence objects that evidence obtained from L's son J during investigation of drug charges was obtained unfairly under s 30(5)(c) of the Evidence Act 2006.

J (15 years old at the relevant time) was found at school by Police Youth Aid (PYA) with cannabis tinnies. J was arrested pursuant to powers under s 214(1) CYPFA. J was taken to the police station and questioned by another officer. The PYA officer decided not to contact J's father L, as he suspected that L might be involved in further offending. J's mother was also not contacted despite J asking for his mother to be present.

J confirmed that he did not want a solicitor, and was then provided with a list of adults who could attend, assist, and support him during the interview. J selected a local 'Youth pastor" H. H was provided with a document setting out the responsibilities of a nominated person. H was present at the interview with J and co-signed his statement. H did not speak during J's interview with Police as he considered that J did not need any assistance to understand the Police questions. The Court found that H seemed to take his responsibilities seriously, and that the 10 text messages he sent during J's 3 hour interview did not interfere with his responsibilities to J.

During the interview J identified the source of the cannabis as a shed near his father's house. A search warrant was issued and cannabis was located in the garage of L's house.

J was never charged. Counsel for L submitted that J's rights as a young person were abused by the police and that it would be unfair for the police to rely upon J's statement. By extension, the Crown should not be permitted to lead evidence of the cannabis found in the search.

The question was whether the evidence was admissible pursuant to s 344A of the Crimes Act 1961.

The Court found that Police acted impeccably as far as J was concerned. There was a difficulty in respect of informing J's parents that he had been arrested, but it would have been quite impractical to do so, given that the police were not sure as to whether J had a stash or more cannabis at his home, and whether that home was with his mother or father. The police did not act contrary to the responsibilities imposed under the CYPFA in respect of J.

Decision:

The evidence of the search and the cannabis found on L's property was admissible.

Police v LMY YC Tauranga CRI-2008-070-000015, 10 March 2008

Filed under:

Police v LMY

File number: CRI-2008-070-000015
Court: Youth Court, Tauranga
Date: 10 March 2008
Judge: Judge Rollo
Key title: Bail (s 238(1)(b)), Family Group Conferences: Agreement, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH)

Case Summary:

Sentencing. FGC had recommended conviction and transfer to District Court. Judge agreed, and called for home detention, and community detention additions to pre-sentence report.

Application to vary conditions to provide some more time away from home. Previous bail conditions included 24 hour curfew. Not long to go now until hearing. Police opposed as charges very serious. Young Person lucky to be on bail at all. Judge referred to public expectation that L be supervised at all times.

Decision:

Application to vary bail denied. Order for conviction and transfer to District Court for sentencing.

Police v T YC Tauranga CRI-2007-270-000125, 31 March 2008

Filed under:

Police v T

File number: CRI-2007-270-000125
Court: Youth Court, Tauranga
Date: 31 March 2008
Judge: Judge Bidois
Key title: Jurisdiction of the Youth Court: s 276 offer/election

Case Summary:

Should T be offered Youth Court jurisdiction?

T and co-offender both young people, absconded from Youth Court ordered course, broke into a property in possession of a firearm. T later presented firearm at Police and discharged weapon at pursuing police car. T charged with attempted murder following events connected with this offending. T acquitted of attempted murder in High Court, but co-accused found guilty of other charges relating to the incident and to be sentenced shortly in High Court.

T entered non-denials to all current charges in Youth Court. High Court has already heard all evidence relating to offending, so sentencing both young people in High Court is consistent. The offending is serious and a starting point of 3 and a half to 4 years is likely. T's early guilty plea will be recognised by the High Court.

Decision:

Remanded to High Court for sentence.

Police v Thompson DC Tauranga CRI-2008-270-000016, 19 March 2008

Filed under:

Police v Thompson

File number: CRI-2008-270-000016
Court: District Court, Tauranga
Date: 19 March 2008
Judge: Judge Rollo
Key title: Sentencing in the adult courts: Arson, Sentencing in the adult courts: Other

Case Summary:

Sentencing of T in the District Court, following conviction and transfer from the Youth Court. T (now 17 years of age) was 16 at the time of the offending. T was charged with arson, escaping from CYFS, intentional damage, burglary, unlawful taking of a motor vehicle and assault. This was the third time that T had been transferred from the Youth Court to the District Court. Aggravating features:

- Prior convictions in the Youth Court, including appearances for dishonesty, unlawful taking of a motor vehicle, car theft, aggravated assault and escaping

- Convictions in the District Court for burglary, theft and unlawfully being in a motor vehicle

At the time of the current offending T was on a community work and supervision sentence.

Judge Rollo warned T that if he continued to offend, there would only be one penalty imposed next time, a substantial sentence of imprisonment.

Sections 15(b) and 18 of the Sentencing Act 2002 prevented imposing any sentence other than a community-based sentence.

Decision:

Orders

- Current sentence of supervision cancelled.
- T convicted and a sentence of 400 hours community work imposed, to be concurrent with 230 hours presently serving.
- Authorisation of conversion of hours to training, given Ts age and circumstances,
- Supervision for 9 months, with special conditions that T undertake assessments, counselling and programmes as directed by the Probation Officer.

Reparation (sought at $11,000) not imposed as T not in a position to pay.

R v F HC Auckland CRI-2006-204-000748, 2 April 2008

Filed under:

R v F

File number: CRI-2006-204-000748
Court: High Court, Auckland
Date: 2 April 2008
Judge: Allan J
Key title: Evidence (not including admissibility of statements to police/police questioning), Reports: Psychiatric

Case Summary:

Application pursuant to s 344A of the Crimes Act 1961 for order that evidence of a child and adolescent psychiatrist is admissible at trial.

F (16 at the time of the alleged offending) and associates drank wine then went by car to a event at a local high school. The event was crowded, and there was not enough space for many of those who wanted to attend. Large numbers of young people ended up on the school grounds and on the road outside. Crown allege F threatened five people with a knife, stabbing two of them, one of whom died at the scene. The victims were apparently innocent and chosen randomly, and the attacks were unprovoked.

The court accepted that the psychiatrist was qualified to speak as an expert. Psychiatrist presented brief in two parts: First part concluded that F was within the normal range on a number of cognitive tests and did not meet the tests for mental disorder or mental retardation. Second part gave general information and recent research findings about adolescent brain development, including the opinion that adolescents are biologically inclined to act impulsively and instinctively when confronted with stressful or emotional decisions without understanding the consequences of their actions.

Counsel for F submitted that the psychiatrist's evidence will be useful to a jury asked to decide, under s 167(b) of the Crimes Act 1961, whether or not F actually appreciated that death was a likely consequence of his action, and that he was willing to run that risk, see *R v Dixon* [1979] 1 NZLR 641 (CA) at 647. The jury would be warned against assuming that the conscious appreciation of risk expected of a mature adult will not necessarily be found in someone of F's age.

The Court held that the psychiatrist's evidence, that F was a completely normal adolescent, would be of no help to the jury, and therefore not admissible under s 25 of the Evidence Act 2006. It also commented that the psychiatrist made no attempt to link evidence about adolescent brain development in general to the facts of this case.

The Court's view was that the psychiatrist's evidence can only be admissible if it was associated with and tended to support a recognised defence to murder. No recognised defence was identified to the satisfaction of the Court. Allan J referred to the Court of Appeal in *R v Makoare* [2001] 1 NZLR 318 (CA) at 323, in which it warned against letting a jury hear expert evidence on so-called "murderous intent". Allan J distinguished instances of evidence relating to mental abnormality, and battered woman's syndrome, which would be beyond the experience and knowledge of jurors.

The Court commented that admitting evidence such as this would '… tend to support the creation of a de facto common law defence, based on the proposition that adolescents were less able than older offenders to form the necessary murderous intent. There is no warrant for the creation of such a precedent.'

The Court did, however, accept that the psychiatrist's evidence may be admissible and helpful in mitigation at sentencing if F was found guilty on one or more of the counts.

Decision:

Application refused.

Police v BH YC Lower Hutt CRI-2008-232-000018, 18 June 2008

Filed under:

Police v BH

File number: CRI-2008-232-000018
Court: Youth Court, Lower Hutt
Date: 18 June 2008

Judge: Judge John Walker
Key title: Youth Court Procedure

Case Summary:

Application for leave to change plea.

In first appearance, BH indicated charges were not denied. Charges also admitted at Family Group Conference (FGC). Court pointed out that 'not denied' is not a plea in Youth Court, but merely a record of the jurisdiction to order an FGC.

Held:

Recording of not denied is not tantamount to a plea of guilty; indication that charges are admitted by young person at FGC cannot be regarded as a formal guilty plea; proved means something more than admission at a FGC and requires a formal admission in Court.

Court noted that it is convention for a charge to only be proved once admission at FGC is noted by, and confirmed in Court. In this case, no admission had been recorded previously in Court.

Decision:

Leave not required. Denial of charges entered subject to election of Youth Court jurisdiction.

Police v MM YC Napier CRI-2007-241-000106, 27 June 2008

Filed under:

Police v MM

File number: CRI-2007-241-000106
Court: Youth Court, Napier
Date: 27 June 2008
Judge: Judge von Dadelszen
Key title: Orders – type: Conviction and transfer to District Court for sentencing - s 283(o): Other, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Indecent assault/indecent act.

Summary

Minute dealing with police application to transfer MM to District Court for sentence under s 283(o), so that he can undergo intensive supervision beyond the period of six months after his 17th birthday. Need to satisfy s 290(1)(c) of the CYPF Act – that any order of a non-custodial nature would be clearly inadequate, before ordering conviction and transfer to the District Court.

Police acknowledge that a term of imprisonment is not what MM needs. They seek a period of intensive supervision to enable MM to undergo a programme to address the causes of his

offending. Such a programme will take much longer than the time that is available for MM in the Youth Court, partly due to his age. MM is already 17 years old.

The Court is not satisfied that a non-custodial order would be clearly inadequate. Also, if MM had been an adult at the time of the offending, he would not have received a custodial sentence in the District Court. No jurisdiction to transfer.

Case considered:

Wilson v Police HC Timaru CRI 2006-476-000021, 9 February 2007 per Fogarty J

Decision

Application to transfer to District Court for sentence is declined.

Police v IDK YC Blenheim CRI-2008-206-000028, 27 June 2008

Filed under:

Police v IDK

File number: CRI-2008-206-000028
Court: Youth Court, Blenheim
Date: 27 June 2008
Judge: Judge Grace
Key title: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court), Custody (s 238): Police (s 238(1)(e))

Case Summary:

IDK, a young person, entered non-denials in the Youth Court to two charges of unlawfully taking a motor vehicle, and driving whilst forbidden. Bail was granted. Two other charges of burglary were also pending.

IDK breached a non-association with co-offenders condition of bail. The police advised that IDK had been trying to contact a co-offender via a Bebo site. This would also constitute a breach of bail. There were no available beds with the CYFS, and IDK would be seventh on a waiting list.

Decision:

Due to the strong risk of IDK continuing to offend, the only proper course was to remand him in police custody pursuant to s 238(1)(e) of the CYPFA. This placement is to be discussed at the FGC. If positive firm arrangements are agreed upon the matter could be revisited, otherwise IDK was to remain in either police or CYFS custody.

The Judge commented to IDK that he only had himself to blame as he had broken his word to the Court.

Queen v CH YC Waitakere CRI-2007-204-000758, 10 June 2008

Filed under:

Queen v CH

File number: CRI-2007-204-000758
Court: Youth Court, Waitakere
Date: 10 June 2008
Judge: Judge Recordon
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Orders - type: Supervision with residence - s 283(n)

Case Summary:

Charges that CH (aged 15 years at the time of the offence) and associate broke into a service station with metal bar, produced a gun, and committed a robbery, gun was an air pistol. Victim handed over cash. Cigarettes also stolen. Victim suffered psychologically. Offending occurred while CH on bail. FGC held but no agreement as to transfer. No history of offending.

Whether or not to convict and transfer to District Court? CH has already made progress despite no remorse at first, and Crown admits that CH has potential. Family argues to stay in Youth Court despite CH being known to CYF since age 3. Family generally supportive.

Crown submits that all wrap around services available in Youth Court also available in District Court through probation officers, and that transfer to District Court does not automatically result in prison sentences these days, due to new sentencing options in District Court. Mentions *R v IM* HC Auckland CRI-2007-292-000359, 5 February 2008 where Heath J gave 50% discount for an early guilty plea by the young person. This Court does not share Crown's faith in probation service, as they are not social workers.

Decision:

Supervision with residence ordered.

R v Fa'avae HC Auckland CRI-2006-204-000748, 10 July 2008

Filed under:

Case summary provided by Brookers

R v Fa'avae

File number: CRI-2006-204-000748
Court: High Court, Auckland
Date: 10 July 2008

Judge: Allan J
Key title: Sentencing in the adult courts: Murder/manslaughter, Sentencing in the adult courts: Serious assault (including GBH)

Case Summary

Sentencing of F (16 years old at the time of the offence) for murder, wounding with intent to cause grievous bodily harm, and on two counts of assault with weapon; F and associates were socialising and drinking; F received text invitation to large scale social function sponsored by church group at local college; many young people unable to get into event were milling about around entrance to college and some were gathered in nearby streets; F and associates arrived in vicinity of college; F went on rampage with switch blade knife with blade release button and 10 cm blade; he approached two young men, who escaped F's unprovoked lunging knife attacks; he then stabbed 14 year-old in chest and caused his death; following fatal attack he chased 16 year-old into school grounds and stabbed him in forearm before running away and challenging another; F and associates finally made retreat to car pursued by dozens of young people and were later apprehended by police.

Decision

Sentence of life imprisonment imposed; factors justifying minimum term of imprisonment of 17 years not present; aggravating and mitigating factors warranting 11 years minimum non-parole were

a. random and unprovoked character of attack,
b. fact that murderous assault was only one of number of violent attacks,
c. premeditation inherent in possession of deadly weapon,
d. lack of previous convictions, and
e. young age at time of attack;

Final sentence of life imprisonment with 11 years minimum non-parole together with concurrent sentences of six years' imprisonment for wounding with intent and six months' imprisonment for assaults with weapon; orders accordingly.

Police v AT YC Gisborne CRI-2008-216-000042, 11 July 2008

Filed under:

Police v AT

File number: CRI-2008-216-000042
Court: Youth Court, Gisborne
Date: 11 July 2008
Judge: Judge Taumaunu
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other

Case Summary:

Sentencing. AT (15 at the time of the offence) and 2 associates punched and kicked the victim, then stole some personal items, after drinking and smoking cannabis together in a local park. Almost a month later, AT and one other associate attacked the victim's twin brother, referring to him as a nark as they were assaulting him, and later admitting that they were attempting to send a message top the victim not to proceed with a robbery complaint. AT later admitted that he had mistaken the victims brother for the original victim. The victim's brother later committed suicide.

Charges against AT were proved by admission at a family group conference, but the FGC could not agree on jurisdiction and outcome. Police applied for conviction and transfer to the District Court, supported by the victims whanau. AT opposed the application.

In deciding whether to convict and transfer AT, the Judge mentioned that AT had played a principle role in the offending, that the offending was serious, that the assault against the victims brother was done while on bail. The Judge placed great weight on the harm done to the victim and his whanau as a result of this offending. Another factor in favour of conviction and transfer was the public interest in denunciation and deterrence of this type of offence. If convicted and transferred, the District Court has the ability to impose longer sentences of supervision and judicial monitoring than are available in the Youth Court, and, if a sentence of imprisonment is not imposed, the District Court can also make a non association order.

The Judge also described ATs personal history, and the attitude of his whanau, which is in favour of Youth Court jurisdiction and a community based sentence. AT's whanau have expressed willingness to engage in restorative justice processes with the victims whanau. The social workers report recommended supervision with residence, despite the seriousness of the offending, and a full programme of rehabilitation and counselling after release from residence.

The Judge reviewed a number of relevant authorities for both sides, but decided that the offending was too serious to remain in the Youth Court, despite the real possibility that a sentence of imprisonment could be imposed in the District Court.

Decision:

AT convicted and transferred to the District Court for sentence.

Police v JT YC Kaikohe CRI-2008-027-000048, 11 July 2008

Filed under:

Police v JT

File number: CRI-2008-027-000048
Court: Youth Court, Kaikohe
Date: 11 July 2008
Judge: Judge Druce
Key title: Arrest without warrant (s 214)

Case Summary:

Arrest. J (aged 15) was charged with fighting in a public place. J was still fighting another young person when 2 police constables arrived at the scene. The police stepped between the two who were fighting, and one of the constables held J by the arms. J continued to use threatening language, was agitated, and tried to break free from the constable's grip. That constable decided to arrest J to prevent him continuing to fight. The constable gave J a Bill of Rights caution as if he were an adult, acknowledging that he did not consider whether J was a young person, or whether CYPFA, s 214(1) applied. The other young person was also arrested and a youth justice explanation of his rights was given pursuant to CYPFA, s 215.

The Judge noted *Police v HG* [2004] DCR 685 (YC) regarding onus of proof on police to prove elements of s 214 to beyond a reasonable doubt, and the lack of a provision allowing reasonable compliance.

Does s 214(1) require the arresting officer to establish the age of the person being arrested? Comments of Judge Harvey in *Police v G* YC Henderson CRN 020005035, 30 July 1990 mentioned, but Court preferred reasoning of Judge Moss in *Police v JC* [2006] DCR 465, who held that an officer only needs to satisfy himself on reasonable grounds that an arrest is necessary to prevent further offending. However, Court advises police faced with youths who might be young persons to satisfy themselves of the persons age, as the law requires strict compliance with s 214(1).

Police case did not rely on any statement made by J after arrest.

Decision:

Constable had reasonable grounds on which to satisfy himself that arrest was necessary to stop further fighting, and that his intended and subsequent use of Court bail (as opposed to summons) to prevent further fighting was reasonable.

Arrest was lawful, despite constable not ascertaining J's age, or responding to him as a young person. Constable subjectively satisfied himself of the two requirements under s 214(1).

Charge proved.

R v CS HC Auckland CRI-2006-244-000075, 25 July 2008

Filed under:

R v CS

File number: CRI-2006-244-000075
Court: High Court, Auckland
Date: 25 July 2008
Judge: Venning J
Key title: Sentencing in the adult courts: Sexual violation by unlawful sexual connection, Sentencing in the adult courts: Application of Youth Justice Principles.

Case Summary:

CS 14 at the time of the offending (2006). Victim was aged 10. When first questioned, the facts were accepted by CS, and guilty pleas have subsequently been entered in the HC. Jurisdiction was declined in the Youth Court. CS received counselling, and had saved more than $2,000 during recent employment.

CS attended a SAFE programme, with positive reports by probation and counsellors, resulting in an assessment that CS was of low risk of further sexual offending. Counsellors submit that a custodial sentence would not be in CSs best interests.

Court noted devastating effect on victim, and the general consequences of sexual offending by older family members. Court also considered sentencing principles, including those expressed in *R v N* [1998] 2 NZLR 272 (CA). Court also commented on the seriousness of the offending in terms of planning and frequency.

Youth justice principles

The Court cited *R v Cuckow* CA312/91, 17 December 1991, saying that, strictly speaking, the principles of the CYPF Act cease to apply in the adult court. However, the Court went on to say that the proper approach is that the principles which underlie the CYPF Act should underlie sentencing of young offenders. *R v Uili* CA148/06, 20 October 2006 was also cited in support of the principle that rehabuilitation and reintegration are central to the sentencing of youth offenders under the Sentencing Act 2002.

In setting the starting point of four years, the Court considered a number of relevant authorities. Factors in mitigation included: youth, guilty pleas, no previous convictions, remorse, offer of $2,000 to the victim, and CS's positive response to counselling.

The Court reviewed the principles applicable to sentencing for home detention following a decision to discount the original sentence by 50%. Home detention was considered appropriate by the Court, but subject to doubts raised about the suitability of the proposed residence, given the criminal history of one of the occupants (brother-in-law).

Decision:

Sentence of two years imprisonment, with leave to apply for cancellation of the sentence and apply instead for home detention if a suitable residence becomes available.

Police v PM YC Manukau CRI-2008-292-000004, 4 July 2008

Filed under:

Police v PM

File number:CRI-2008-292-000004
Court: Youth Court, Manukau
Date: 4 July 2008
Judge: Judge Malosi

Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: disposition if unfit, Adjournment

Case Summary:

For disposition under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)). Previously found that PM was unfit to stand trial on two sexual violation charges. A report was provided to the Court pursuant to s 23 of the CP(MIP). The grounds were not made out that PM be detained in either a hospital or secure facility.

Mr W, a compulsory care coordinator from Access Ability (a national organisation that provides RIDCA services) asked the court to consider:

1. Making PM a care recipient under the Intellectual Disability(Compulsory Care and Rehabilitation Act) (ID(CCR)) pursuant to s25(1)(b) of the CP (MIP).
2. Making an order pursuant to s26(2) of the CP(MIP) that PM not be made subject to a secure care order, but be held in a supervised facility.
3. The length of time, no longer than three years in the first instance, that the compulsory care order should be for.

Mr W expressed concern about PM being placed within an adult-based service. The Youth Court Judge acknowledged that this was not a new issue and noted that the Ministry of Health and the Principal Family Court Judge are attempting to resolve this completely unsatisfactory situation.

Decision:

The YCJ adjourned the matter with bail to continue, so that a suitable facility to be found for PM.

Police v AR YC Auckland CRI-2008-204-000151, 7 July 2008

Filed under:

Police v AR

File number: CRI-2008-204-151
Court: Youth Court, Auckland
Date: 7 July 2008
Judge: Judge Fitzgerald
Key title: Orders - type: Supervision with residence - s 283(n)

Summary

Whether to convict and transfer.

AR and associates held a knife to the victim's throat, hit him, took his wallet, keys and car. AR well known to the Youth Court and Family Court. AR has attended 17 different schools. Police seek conviction and transfer to District Court (CYPFA, s 283(o)). Taking into account time already spent in custody, total time likely to be served in a residence would be the same

whether AR was sentenced in the Youth Court or the District Court. Public interest in trying to turn around offending behaviour. Comprehensive supervision plans submitted to Court.

Decision

Not convicted and transferred to District Court. Dealt with in Youth Court. Supervision with residence, followed by 6 months supervision.

Police v PB YC Manukau CRI-2008-292-000119, 4 July 2008

Filed under:

Police v PB

File number: CRI-2008-292-000119
Court: Youth Court, Manukau
Date: 4 July 2008
Judge: Judge Malosi
Key title: Jurisdiction of the Youth Court: s 275 offer/election, Jointly charged with adult (s 277)

Case Summary:

Youth Court jurisdiction. Adult co-accused. Aggravated robbery.

P (16 yrs 4 months at the time of the alleged offence) is charged with aggravated robbery. Following a depositions hearing in the Youth Court, 3 other co-accused, all adults, conceded a prima facie case existed, pleaded not guilty, and were committed to the High Court for trial. The Judge commented that these trials were likely to be middle-banded to the District Court. Evidence for a prima facie case against PB also found.

Court cited *Police v H (a young person)* [2004] DCR 97 (YC) where Judge Thorburn considered the discretion to offer Youth Court jurisdiction under s 275 of the CYPF Act, and said "The election [to forego a jury trial and remain in the Youth Court] should be offered to young persons unless there was some good reason not to offer it".

The Court discussed the relevant factors for consideration in exercising the discretion under s 275. The Court judged the alleged assault to be at the more serious end of the scale. The Court also expressed concern that PB would not have the emotional capacity to cope with the stress of a jury trial in an adult court, and that PBs ability to appropriately instruct counsel might be impaired. It was noted that PB has had no family support in Court, and, as a result, has been remanded in custody since arrest. PB also has a 9-month old baby which she has only seen once since her arrest. The Court commented that downstream effects for PB and her child could be colossal if permanent estrangement were to occur. Court also considered the stress and inconvenience to the complainant of having to appear at two trials, given that he had left the country, although noted the fall back position of giving evidence by video link.

PB has signalled that her statement to Police will be challenged pursuant to s 215 CYPF Act, and the Judge commented that the Youth Court would be best placed to determine that issue, and the speedier resolution timetable available in the Youth Court (especially given the

separation of mother and child, and the lack of a suitable bail address). The Court also stressed that the need for a timely resolution if PB became subject to orders in the Youth Court, or even in the event of an eventual conviction and transfer to the District Court for sentence.

Decision:

PB offered the chance to forego the right to a jury trial, and to have her case determined in the Youth Court.

Police v PM YC Napier CRI-2008-241-000039, 8 July 2008

Filed under:

Police v PM

File number: CRI-2008-241-000039
Court: Youth Court, Napier
Date: 8 July 2008
Judge: Judge von Dadelszen
Key title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Indecent assault/indecent act, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Sexual violation by unlawful sexual connection

Case Summary:

P sentenced to 6 months supervision on charges of theft, committing indecent acts on a child under 5, and unlawful sexual connection with a child under 5. Subsequent charge of indecent act on child aged 7. Consent to cancel original sentence.

Application by Ministry for Social Development for order to convict and transfer P to the District Court (CYPFA, s 283(o)). Jurisdiction available, as one or more of the charges is indictable. Application opposed by P.

P will 'age out' of Youth Court jurisdiction on March 2009, but Court acknowledges that help will be needed well beyond this date. Court would prefer to impose a sentence of 2 years supervision within Youth Court jurisdiction.

Decision:

Order to convict and transfer to DC for sentence with probation report.

Police v QW YC Napier CRI-2008-041-000060, 8 July 2008

Filed under:

Police v QW

File number: CRI-2008-041-000060
Court: Youth Court, Napier
Date: 8 July 2008
Judge: Judge von Dadelszen
Key title: Sentencing - General Principles (e.g. parity/jurisdiction), Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Reports: Social worker

Case Summary:

2 charges of aggravated robbery. Social workers report recommends supervision with residence (s 283(n)). Q would turn 17 and a half during residence order, so supervision component would be unavailable. Qs adult co-offender sentenced to home detention in District Court. Court highlights parity issue if Q sent to residence.

Court notes Q's preference to be convicted and transferred to District Court.

Decision:

Q convicted and transferred to District Court with probation report.

Police v HM YC Manukau CRI-2007-292-000762, 4 July 2008

Filed under:

Police v HM

File number: CRI-2007-292-000762
Court: Youth Court, Manukau
Date: 4 July 2008
Judge: Judge Malosi
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial, Reports: Medical, Reports: Psychological, Reports: Psychiatric

Reasons why disability hearing not required:

Reports obtained pursuant to s 14 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 persuaded the Youth Court Judge that a disability hearing was no longer necessary.

Section 333 reports stated that H met the criteria for mild mental retardation. This was consistent with all of the information presently before the court. H's IQ was assessed at 61, and was found to have deficits in adaptive functioning and living skills, academic skills and community skills, thus meeting the definition of intellectual disability in terms of s 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act. The report writers concluded that H was still able to plead, understand the purpose and consequences of sentencing and to instruct counsel.

None of the report writers would confirm their current position on fitness to plead, hypothesising that if H were facing more serious charges, or before the adult Court their conclusions may have been different. Bail was going well.

Decision

On basis of reports and the fact that no party sought determination under the CP(MIP) Act, a disability hearing was not required.

On the remaining charges (not-denied) a FGC was directed along with a Social Workers report and plan. H remanded on bail.

Bail variation changing 24 hour curfew so that H could go out at night time with his mother.

Police v KF YC Manukau CRI-2008-292-000196, CRI-2008-255-000036, 3 July 2008

Filed under:

Police v KF

File number: CRI-2008-292-000196, CRI-2008-255-000036
Court: Youth Court, Manukau
Date: 3 July 2008
Judge: Judge Malosi
Key title: Sentencing in the adult courts: Aggravated robbery, Sentencing in the adult courts: Other

Case Summary:

This case involved the sentencing of KF following conviction and transfer to the District Court pursuant to s 283(o) of the CYPFA.

KF (16 years and 5 months of age) was charged with aggravated robbery (a purely indictable charge) and other charges including theft, dishonestly getting into a motor vehicle and escaping. KF offended only ten days after being sentenced to 18 months intensive supervision, 6 months community detention and 100 hours community work on previous charges.

Judge Malosi agreed with the probation officers assessment that KF was at very high risk of re-offending and that his ability to comply with a community-based sentence was extremely doubtful. KF had association with a youth gang and had admitted to cannabis and methamphetamine use.

Section 18 of the Sentencing Act 2002 prevented the Judge from sentencing KF to prison on the summary charges (due to KF being under 17 years of age). On the aggravated robbery charge a sentence of imprisonment was available. Penalty for aggravated robbery is 14 years, but under s 283(o) CYPFA maximum term of imprisonment available is 5 years.

Aggravating features: a level of premeditation, KF showed little regard for victims safety as he pulled him from his car in broad daylight.

Mitigating features: None, although account taken of relatively early guilty plea and KFs age.

On basis of *R v Mako* [2000] 2 NZLR 170 (CA), the offending fell into category of street robbery, attracting starting point of 18 months to three years. Starting point of 2 years adopted and reduced to 18 months for young age and guilty plea.

Decision:

All of sentences imposed on May 1 2008 cancelled.

On the aggravated robbery charge KF was sentenced to 18 months imprisonment.

On the burglary, theft, being a party to an attempted theft, dishonestly getting into a motor vehicle and escaping KF was convicted and discharged.

Police v T YC Opotiki CRI-2007-287-000077, 3 July 2008

Filed under:

Police v T

File number: CRI 2007-287-000077
Court: Youth Court, Opotiki
Date: 3 July 2008
Judge: Judge Harding
Key title: Adjournment, Presence at hearing (s 329).

Case Summary:

T (14 years old at the time of the offence) was charged with two offences of sexual violation by rape and unlawful sexual connection, both purely indictable charges. The victim (aged 16) was a member of T's whanau.

Decision on jurisdiction to be made.

Either: to retain in the Youth Court and have Youth Court supervise a plan for 2 years; or decline jurisdiction and require T's matter to be dealt within the adult Court.

The family proposal: T has been accepted into a High School, the SAFE programme confirmed its availability to T, CYFS would remain involved.

Decision

For the family proposal to have serious consideration it will need to be much more detailed than was submitted today. The family is to provide a detailed plan addressing both rehabilitative aspects, the SAFE programme, and the accountability aspects.

Matter adjourned.

Police v CA YC Manukau CRI-2008-292-000034, 3 July 2008

Filed under:

Police v CA

File number: CRI-2008-292-000034
Court: Youth Court, Manukau
Date: 3 July 2008
Judge: Judge Malosi
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery

Case Summary:

CA had previously been offered Youth Court jurisdiction under s 276 of the CYPF Act. The charges were not denied. Police submitted s 283(o) conviction and transfer to District Court appropriate. Social worker's report recommends s 283(n) supervision with residence.

CA grew up in large family, supported only by his mother, but Court comments that his challenges have been nothing particularly remarkable. CA expresses remorse, and accepted, at a family group conference, that conviction and transfer was appropriate.

Charges all in relation to superette robberies, and involving a wrench or a knife as weapons. Court commented that vulnerable superette employees should be able to go about their business without fear, and singling them out for premeditated attacks is unacceptable.

The Court considered that there was enough time left until CA turned 17 and a half to let a sentence of supervision with residence run its course, but that such a sentence would not be commensurate with the number, nature or seriousness of the charges. The Court also notes that a previously completed FGC plan will be taken into account by the sentencing court.

Decision:

CA convicted and transferred to the District Court for sentence. Full pre-sentence report ordered including home detention appendix, which should not be taken as a sentencing indication, but to obviate the need for any further remands.

Police v PB YC Manukau CRI-2008-292-000119, 8 August 2008

Filed under:

Police v PB

File number: CRI-2008-292-000119
Court: Youth Court, Manukau
Date: 8 August 2008
Judge: Judge Harvey
Key title: Admissibility of statements to police/police questioning (ss 215-222): Explanation of rights, Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance, Rights.

Case Summary:

Application to determine the admissibility of an interview recorded at the Manukau Police Station. The admissibility of the interview was challenged on the grounds of a breach of s 215 of the CYPFA. Before and after the interview, PM was not under arrest therefore the rights pursuant to the CYPFA, s 215 were applicable.

At the time of the interview there was some difficulty locating PM's family and therefore a nominated person from a list of volunteers was present. The detective set the scene for the interview, explained the allegation of robbery. He read her rights to her and explained her entitlement to consult a lawyer/and or any adult person nominated by her. He also explained that her right to consult a lawyer could be exercised for free under the Police Detention Legal Assistance Scheme.

After review of the video recorded interview, the Youth Court Judge considered that the interview was carried out in a fair and balanced manner. However, PM was not informed of her right pursuant to s 215(1)(b) that she was not obliged to accompany the police officer to any place for questioning, and that if she consented to doing so, she may withdraw her consent at any time. That section does not apply where a young person is under arrest.

PM was not under arrest. She was therefore unlawfully detained.

Issues

Whether or not the absence of being informed about that statement, rendered the statement inadmissible? Whether the statement in its entirety was admissible? Whether or not part of the interview should be admitted because there was a clear indication that the interview process should have been stopped because the young person was withdrawing her consent to proceeding further with the interview process. Whether the breach could be cured by the reasonable compliance section (s224)? If yes, then under the CA decision *R v Z* [2008] NZCA 246, there must be an inquiry as to whether or not there was some kind of serious interference with the principles set out in s 208(h) of the CYPFA. That section provides that children and young people are entitled to special protection during an investigation due to their vulnerability. Whether or not the statement could be rendered admissible pursuant to s 30 of the Evidence Act 2006?

Decision

Holding the statement to be inadmissible, the right provided for in s 215(1)(b) is fundamental to the liberty of the subject absent arrest (s 215(2)). It is a fundamental right that any citizen has, under this legislation and under s18 of the Bill of Rights Act 1990, not to have their freedom of movement interfered with by the authorities.

The failure to advise of that right could not be cured by reasonable compliance. Judge Harvey commented, in obiter, that had he held that the matter could have been cured by reasonable compliance, the statement would have been admissible.

R v MTV HC Auckland CRI-2008-292-000179, 27 August 2008

Filed under:

R v MTV

File number: CRI-2008-292-000179
Court: High Court, Auckland
Date: 27 August 2008
Judge: Priestly J
Key title: Sentencing in the adult courts: Aggravated robbery, Sentencing in the adult courts: Application of Youth Justice Principles

Case Summary

Sentencing of MTV (a young person) in the HC following a guilty plea and conviction on charges of aggravated robbery, a purely indictable offence.

If MTV was not a young person, he would be sent to jail. *R v Mako* [2000] 2 NZLR 170 (CA) applied. The appropriate starting point would have been about four and a half years applying R v Taueki [2005] 3 NZLR 372. When discounted for the guilty plea and youth the result would have been a reduction to two years three months to two and a half years, with an additional discount to two years.

However, Priestly Js decision was not to send MTV to jail. The two adult co-offenders were sentenced to two and a half years imprisonment and the three young people were sentenced to 12 months home detention. For reasons of parity, commonsense, MTVs youth and a last ditch attempt at rehabilitation and reintegration, a sentence of home detention was appropriate.

Priestly J considered as highly relevant the youth justice principles set out in s 208 of the CYPFA, in particular s208(d) and(f). The divergent views regarding the applicability of youth justice principles were considered.

Case law

Priestly J preferred the reasoning of Miller J in *X v Police* (2005) 22 CRNZ 58 (HC) to that in *R v Patea-Glendinning* [2006] DCR 505 (HC). He considered the Court of Appeal's observations in *R v Cuckow* CA312/91, 17 December 1991 and *R v C* CA332/95, 28 September 1995 to be correct. In those decisions it was noted that when the Youth Court declines jurisdiction and a High Court is sentencing, strictly speaking the provisions of the CYPFA cease to be applicable. Further, that the principles underlying the sections should underlie consideration of any sentence in respect of a young offender.

Priestly J considered that the sentencing higher courts should not be blind to the fact that a young person remains a young person and that each case started in a Youth Court (which is bound by s 208 principles). From a strict jurisdictional standpoint, youth justice principles may not be applicable, however, there is no sound reason why a sentencing court should not continue to have regard to those principles.

Decision

On the charge of aggravated robbery, MTV was sentenced to 12 months home detention.

Special conditions pursuant to s 80C(1)(b) of the Sentencing Act 2002.

Police v RA YC Manukau CRI-2007-292-000753, 6 August 2008

Filed under:

Police v RA

File number: CRI-2007-292-000753
Court: Youth Court, Manukau
Date: 6 August 2008
Judge: Judge Malosi
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: Disposition if unfit.

Case Summary:

At the hearing pursuant to the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)A) it was found on the balance of probabilities that:

- The evidence against RA was sufficient to establish the actus reus of the offence (s9).
- RA was mentally impaired.
- RA was unfit to stand trial.

Accordingly a report was called for under s 23(1) and (5) of the CP(MIP)A to determine the most suitable method of dealing with RA. She was remanded to a CYF care and protection unit pursuant to s 23(2)(b) pending a dispositions hearing.

Determining the sufficiency of the evidence as set out in s 9 of the CP(MIP)A.

The court must be satisfied on the balance of probabilities that the evidence is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence charged. As the offence was purely indictable, the normal course would have been to proceed to a preliminary hearing under Part 5 of the Summary Proceedings Act 1957, unless RA had indicated a desire to plead guilty. Section 11(2) of the CP(MIP)A allows the Court to hold a special hearing to determine RAs involvement in the offence. Pursuant to s 11(4), that hearing (by consent) replaced the preliminary hearing under Part 5.

Determining the mental impairment/Determining fitness to stand trial.

These steps are contained in s 14 of the CP(MIP)A. The term mentally impaired is not specifically defined. Judge Malosi commented that the more flexibility the Court has in relation to making a finding of mental impairment, the wider the net to catch those people who fall through the cracks in our system.

Even when a person is found to have an intellectual disability as defined in s 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, they might still be found fit to stand trial. Conversely, a person who does not meet the s 7 definition might be considered unfit to stand trial. Unfit to stand trial is defined in s 4 of the CP(MIP)A.

Step 1: RAs involvement.

The evidence established that in October 2007, RA had been sniffing petrol at a relatives home. She went out into a caravan after arguing with her grandmother. She then called out to her 3 year old cousin. She placed a plastic bag over his head, struck him several times on the back with a hammer, punched his head and face and placed him in a cupboard, believing he was dead. The victim was found and taken to hospital. He sustained heavy bruising to his spine and buttocks. When interviewed by Police, RA was open about what she had done, but could not offer any rational explanation. Judge Malosi was satisfied on the balance of probabilities as to RAs involvement in the actus reus of the offence.

Step 2 and 3: Mental impairment and fitness to stand trial

Two health assessor reports (under s14(1) of the CP(MIP)A) and a s333 of the CYPFA) were provided. RA had been raped twice when she was 12 years, old, her parents were alcoholics and substance abusers, and RA may have been sexually exploited through prostitution. RA was a glue-sniffer and has a history of fire setting. Tests to determine RAs intellectual functioning assessed her at having a mild mental retardation. That report accepted that the findings were suggestive of intellectual disability, but that a more definitive response might be forthcoming following enquiries under s23 of CP(MIP)A. The report was clear that mild mental retardation could constitute a mental impairment under s 23 CP(MIP)A. One report writer, a Clinical Psychologist agreed that RA did fulfil all of the requirements under s7 of the ID(CCR) Act.

Having regard to the specialist reports, Judge Malosi concurred that RA was intellectually disabled as defined in s7 of the ID(CCR) Act.

All report writers also agreed that, due to her mental impairment, RA was unfit to stand trial. Any ability she had to understand the proceedings and instruct counsel was rudimentary at best. RA was assessed as being at a such a distinct disadvantage as to be repugnant to justice.

Comments

Judge Malosi commented that it appeared that the CP(MIP)A and ID(CCR) Act were passed without thought being given to how services would be delivered to young people who were processed through the Youth Court. All secure residential facilities under the ID(CCR) Act appear to be geared towards adults, and males at that.

RA did not fall into either category and she needed the highest level of care and protection that either the CP(MIP)A or the ID(CCR) Act could provide.

Police v T YC Opotiki CRI-2007-287-000077, 14 August 2008

Filed under:

Police v T

File number: CRI 2007-287-000077
Court: Youth Court, Opotiki
Date: 14 August 2008
Judge: Judge Harding
Key title: Jurisdiction of the Youth Court: s 276 offer/election, Youth Court procedure

Case Summary:

T (14 years old at the time of the offence) was charged with two offences of sexual violation by rape and unlawful sexual connection, both purely indictable charges. The victim (aged 16) was a member of T's whanau. T indicated a desire to plead guilty pursuant to s 276 of the CYPFA. A detailed FGC plan was agreed upon by the whanau of both T and the victim (essentially the same group).

Whether to offer YC jurisdiction

Unless YC jurisdiction was offered, the Youth Court (YC) would only be involved at depositions. If there was not an indication of a desire to plead guilty following depositions, the matters, as middle-banded matters, would be sent to the High Court where a middle banding decision could be made. In most cases the matters would return to the District Court (DC) under the middle-banding process.

Alternatively T could be offered YC jurisdiction. However, due to T's age (14 at time of the offence) he could not be later convicted and transferred to the DC pursuant to s 283(o) of the CYPFA, see *D v Youth Court at Tauranga* HC Tauranga CRI-2007-470-000767, 3 October 2007 per Baragwanath J.

The Youth Court Judge considered the relevant factors in deciding whether or not to offer YC jurisdiction to T. These factors include the seriousness of the offence, Ts age, the time within which Youth Justice measures could apply, Ts offending history, the principles of accountability, the victims interests and the rehabilitative provisions of the CYPFA. Of particular importance was the response by the wider whanau, including T's victim.

Decision:

Deciding not to offer YC jurisdiction, the YC does not have within its range of sentencing options, any system which would enable a two year supervision with appropriate sanctions. The matter was remanded for depositions.

Possible outcome

The YC depositions process would continue. T need not end up in the High Court. An option for T would be to plead guilty pursuant to s 153A of the Summary Proceedings Act 1957 (SPA). If a guilty plea were then entered, there would be committal for sentence in the DC.

Section 28F of the District Courts Act 1947 enables sentence by a jury-warranted Judge in the DC. If a supervision order was made with a view to implementing the plan, and the supervision order was subsequently breached, the DC has the jurisdiction to substitute a different sentence, including imprisonment (s 54 of the Sentencing Act 2002). Section 72 of the Sentencing Act provides for cancellation of sentences of supervision and s 72(1)(b) provides that an application is to a DC provided over by a trial Judge if the sentence was passed by a District Court Judge on conviction on indictment.

Addendum

Counsel for the defendant advised that a s153A application would be filed and therefore depositions would not be required. In that event directions that the psychologists report, the plan and the Crowns submissions to be made available to Community Probation along with the YC decision.

DIA v PB YC Timaru CRI-2008-076-001217, 1 August 2008

Filed under:

DIA v PB

File number: CRI-2008-076-001217
Court: Youth Court, Timaru
Date: 1 August 2008
Judge: Judge Neave
Delay: Delay (s 322)

Summary:

PB charged under Films, Videos and Publications Classification Act 1993. Seven months between execution of search warrant and first call of the charges. PB filed application to dismiss. Court commented on difficulty of detecting and preparing cases brought for this type of offending. Permission of the Attorney-General also required before prosecution could proceed in this case.

Factors contributing to delay; time consuming procedure, care needed in preparation of case, Attorney-General's approval, parental involvement. Court considered *AG v YC at Manukau* [2007] NZFLR 103 (HC) per Winkelmann J for the tests for unnecessary delay and unnecessary protraction. Found no drawing out of the procedure, or potential for loss of remedies or prejudice if case could not be considered in the Youth Court because PB had 'aged-out' of the jurisdiction by the time the matter came to court. Found delays not as significant as if PB had been younger. Diversion still available in District Court. Public interest in pursuing prosecution strong. PB's interest in not becoming a sex offender also strong.

Decision:

Application refused.

Police v KW YC Nelson CRI-2008-242-000028, 28 August 2008

Filed under:

Police v KW

File number: CRI-2008-242-000028
Court: Youth Court, Nelson
Date: 28 August 2008

Judge: Judge Zohrab
Key title: Orders - type: Supervision with residence - s 283(n)

Case Summary:

KW was charged two offences, threatening to kill, and wounding with intent to cause GBH (a purely indictable charge). A Family Group Conference (FGC) was held to consider the issue of jurisdiction. After consideration, the initial Youth Court Judge decided to offer KW Youth Court jurisdiction. A further FGC was held where agreement was unable to be reached regarding sentencing. KW also had a drink/drive matter in the District Court. The original Youth Court Judge suggested that KW be sentenced to supervision with residence in the Youth Court. Once the sentence expires (when KW turns 17.5 years of age) he could then be subject to a sentence of supervision imposed in the District Court.

Decision:

On the two indictable offences, KW was sentenced to supervision with residence. The Youth Court Judge warned KW that if he breached his sentence, the whole process could be unwound and he could end up being transferred to the District Court and potentially be given a prison sentence.

On the drink/drive matter, KW was remanded with bail to continue. KW was to come back on that matter later for sentence. Then, provided KW had not breached on the other matter, he would be sentenced to extended supervision.

Police v MA YC Rotorua CRI-2008-204-000279, 19 August 2008

Filed under:

Police v MA

File number: CRI-2008-204-000279
Court: Youth Court, Rotorua
Date: 19 August 2008
Judge: Judge MacKenzie
Key title: Orders - type: Conviction and transfer to the DC for sentencing - s 283(o): Aggravated robbery, Orders - type: Supervision - s 293(k), Orders - type: Reparation - s 283(f), Orders - type: Community Work - s 283(l)

Case Summary:

MA (16 years and 8 months at the time of offending) travelled to Auckland with a co-offender (20 years old) and robbed a mobile restaurant. MA disguised himself with a hoodie and a bandana, and armed himself with a wooden handled tomahawk. MA approached the restaurant, produced the tomahook and demanded money from the victim. MA then struck the mobile restaurant with the tomahawk, leaving a dent in it. The co-offender produced a BB gun, pointed it at the victim and demanded money. The victim refused the demands and eventually MA and the co-accused left the scene.

The YCJ accepted that MA felt a considerable degree of victim empathy. The Family Group Conference was unable to reach agreement regarding whether the matter should remain in the Youth Court or not. Consideration of the relevant principles under ss 283(o), 290(1)(a)(b) and (c), 284, 4,5, and 208 of the CYPFA 1989. The key factors to consider were the seriousness of the offence, the circumstances surrounding the offence, MAs background and the public interest.

Aggravating factors identified:

- The use of a weapon
- The use of the weapon with force and with an intent to frighten the victim
- The use of a disguise
- That the incident occurred while the victim was working alone
- That MA had an equal role in the decision to rob the restaurant
- The effect on the victim

Mitigating factors:

- The early admission
- No actual physical violence
- No property actually stolen
- MAs considerable remorse
- MA's youth

MAs personal circumstances

- MA had a long history of suffering from ADD, with difficulties with medication dosage in respect of that disorder. He was assessed as having considerable potential academically, had excelled at sport, but had a history of being bullied at school. After being beaten at school, MA stopped taking his medication, began mixing in a bad crowd, making poor choices and he was beaten up and robbed by a stranger in May 2008.
- MA had also saved money to make a reparation payment to the victim and was prepared to meet the victim and offer an apology. MA had a job, and (depending on the outcome of the decision) an apprenticeship.
- MA had a supportive family. He had no YC history.

Police v Rangihika followed rather than *R v Mako* [2000] 2 NZLR (CA) (the tariff case for aggravated robbery in the adult jurisdiction).

The decision *R v IM* HC Auckland CRI-2007-292-000359, 5 February 2008 per Heath J was relevant to the consideration of whether Youth Court alternatives were available. In that case Youth Court jurisdiction was declined primarily on the grounds of public interest.

Decision:

Deciding not to convict and transfer MA to the District Court for sentencing, The Youth Court Judge ordered 6 months supervision (with special conditions) and 200 hours of community work. Order to pay $1000 emotional harm reparation.

Whilst the offence was serious, with aggravating features, there were also several mitigating features. This was not a situation which fell into the most serious category. In addition, the lack of prior Youth C offending and MAs personal circumstances were other relevant factors. The necessary deterrence and accountability could be adequately met by the Youth Court sentence.

Police v PM YC Manukau CRI-2008-292-000004, 9 September 2008

Filed under:

Police v PM

File number: CRI-2008-292-000119
Court: Youth Court, Manukau
Date: 9 September 2008
Judge: Judge Malosi
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: Disposition if unfit, Secure care (ss 367-383A)

Case Summary:

Hearing to determine what orders, if any should be made pursuant to ss 24 or 25 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)). If PM was made a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act (ID(CCR)), whether this order could be carried out in his family home.

The Police and the Ministry of Health agreed that the most appropriate order would be under s 25(1)(b) of the CP(MIP), deeming PM to be a care recipient and triggering processes in relation to his care and protection.

Decision

The Youth Court Judge ruled out the possibility under s 24 of CP(MIP) that PM be placed in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act, or in a secure facility as a special patient under the ID(CCR). Neither option is appropriate nor was sought.

Remaining options:

1. Make an order under s 25(1)(b) of the CP(MIP) that PM be cared for as a care recipient under ID(CCR); or
2. Order his immediate release pursuant to s 25(1)(d) of the CP(MIP).

Given the seriousness of the offending, and multiple diagnoses in respect of PM, making no order was not an option. Significant weight was placed on the fact that if there were no order under ID(CCR) there would be no possibility of RIDCA (the specialist administrator of support services for intellectually disabled) providing support and PMs family would be left to battle for support from mainstream Disability Support Services. PM needed that highest

level of care and the family would be unable to address the issues identified without clear and mandatory structure.

Any decision under the ID(CCR) must take into account PMs sense of timeframe, which was directly relevant to the need to finally deal with these matters today and in determining the length of time that any order is made for.

After considering Counsels submissions, correspondence from RIDCA, the Specialist Assessors report, the needs assessment, the cultural assessment, a letter from the Principal of PMs school and submissions from the family and Justice Action Group, the Youth Court Judge decided that PM was to be made a care recipient pursuant to s 25(1)(b) of the CP(MIP).

Meaning of facility.

Whether PM's home could be deemed to be a facility within the definition in s 9 of the ID(CCR).

Section 9(1) defines facility as a place that is used by a service for the purpose of providing care to persons who have intellectual disability (whether or not the place is also used for other purposes).

Section 9(3) Provides: A facility that is not a secure facility need not have any particular features and, accordingly, a building (such as a residential home) that is not an institution can be used as such a facility.

Counsel for the Police submitted that s 9 does not preclude the use of a family home. Counsel for the Ministry of Health rebutted that submission and his argument was accepted by the Youth Court Judge. He argued that once the Court makes an order under s 25(1)(b) of the CP(MIP), the Court then has the authority under s 26(2) only to direct whether or not PM is to be detained in a secure facility, and the term of the order pursuant to s 46 ID(CCR). The Youth Court Judge stated the situation is analogous to s 238(1)(d) of the CYPFA. The Youth Court makes an order that a young person be detained in custody and the Chief executive of the MSD determines where such detention shall be.

The Youth Court Judge accepted submissions that a care recipient subject to compulsory care with consequent powers cannot be delivered the full force of those powers if the care recipient remains in the family home. In any case, given the serious nature of the offending it would not have been appropriate for PM to carry out his care plan at home.

The Youth Court Judge commented: The next big challenge just around the corner is what do we do with young girls who are found unfit to plead, but we will save that for another day, coming to a town near us all soon.

Orders

1. Under the CP(MIP)
   - Pursuant to s 25(1)(b) PM to be cared for as a care recipient under the ID(CCR)
   - Pursuant to s 26(2)(a) PM was not to be detained in a secure facility, but to be detained in a supervised facility.
   - Pursuant to s 26(2)(b) the term of the compulsory care order shall be 2 years, in

order to be commensurate with the offending and to give full effect to the proposed rehabilitative aspects of the care and rehabilitation plan.
- The individual care and rehabilitation plan seemed to be entirely appropriate.

2. The plan will be reviewed by a specialist assessor in 5.5 months.
3. Pursuant to s 27 of the CP(MIP) the proceedings were stayed. Future reviews to take place in the Family Court.

Police v NA YC Palmerston North CRI-2005-254-000111, 30 June 2006

Filed under:

Police v NA

File number: CRI-2005-254-000111
Court: Youth Court, Palmerston North
Date: 30 June 2006
Judge: Judge Ross
Key title: Orders - type: Reparation - s 283(f).

Summary:

Burglary. NA's share of losses $11,919 (uninsured) and $47,360.86 (insured). Inability to pay taken into account.

Decision:

Order for $4,000 reparation

R v NV HC Hamilton CRI-2007-219-000335, 30 September 2008

Filed under:

R v NV

File number: CRI-2007-219-000335
Court: High Court, Hamilton
Date: 30 September 2008
Judge: Lang J
Key title: Admissibility of statements to police/police questioning (ss 215-222): Explanation of rights

Summary

Admissibility of video interview. Understanding of rights when young person had English as a second language.

Body discovered. Cause of death determined to be head injuries. Police asked NV (16 years old) and his sister K to come to the police station to talk about the discovery of the body and an earlier assault. NV not arrested, and told by police that he was not required to go to the

station. NV told of his right to nominate a person to be with him while he was being interviewed but that his sister would not be an appropriate person as she too was being interviewed. NV responded that there was no one that he trusted. Police explained that, in that case, they would nominate someone, and NV indicated that he understood this advice. NV was told of his rights under the CYPFA, including his right to talk to a lawyer, and that a video interview would not start until a nominated person was present.

A male nominated person was contacted from a list kept by the police and spoke to NV for 10 minutes before the video interview began. NV did not request to speak to a lawyer. During the interview, NV made admissions later relied on the Crown.

NV born in Tonga and came to NZ at 14 years old. English was his second language. Video interview conducted in English. Police explanation of rights would have been sufficient if NV was an adult with English as first language.

R v Z CA604/07 17 July 2008 cited. Question whether NV's rights were explained in a way that he actually understood. Discussion of factors suggesting NV had, and didn't have, sufficient ability to understand police explanation, including oral evidence of NV in court. Court also considered expert psychiatric report, written after interviewing NV in the presence of a bilingual youth worker who acted as interpreter.

Court concluded that, at the time of the interview, NV did not have the necessary language skills to enable him to readily engage in conversations concerning complex or technical concepts. Accepted expert opinion that the level of detail provided in NV's answers gave a clear indication of the extent to which he understood the police questions. Court not convinced that the role of a lawyer was explained in a way that was understood by NV. *A v R* HC Auckland CRI-2003-292-001224, 23 June 2004 at [49] per Miller J cited. *S v Police* (2006) 25 FRNZ 817 (HC) at [78], and *R v Kurariki* (2002) 22 FRNZ 319 (CA) at [36] referred to regarding the role of a nominated person.

Court concluded that there was doubt over whether NV understood the role of a lawyer, despite saying that he did not need to consult one. The right to legal advice is a fundamental requirement.

Decision

Video interview inadmissible.

CS v R HC Auckland CRI-2006-244-000075, 5 September 2008

Filed under:

CS v R

File number: CRI-2006-244-000075
Court: High Court, Auckland
Date: 5 September 2008
Judge: Venning J
Key title: Sentencing – General Principles (e.g. Parity/Jurisdiction)

Case Summary:

Earlier sentenced to two years imprisonment (see *R v CS* HC Auckland CRI-2006-244-000075, 25 July 2008). Home detention considered but proposed address not suitable as occupant had extensive criminal history and had assaulted another person who had verbally abused CS while on bail. CS had called for assistance at the time. 6 weeks spent in custody. Alternative home detention address proposed. Proximity to victim's address could be dealt with by conditions.

Decision:

Previous sentence of 2 years imprisonment cancelled. 46 weeks home detention with conditions ordered (taking into account 6 weeks already served).

Police v HT YC Wellington CRI-2008-085-006456, CRI 2008-085-005911, 2 September 2008

Filed under:

Police v HT

File number: CRI-2008-0085 -006456, CRI 2008-085-005911
Court: Youth Court, Palmerston North
Date: 9 September 2008
Judge: Judge Walker
Key title: Bail (s 238(1)(b)), Remand at large (s 238(1)(a))

Case Summary:

HT faced two sets of proceedings straddling his 17th birthday.

He faced a charge of breaching a sentence of home detention and a related application for cancellation of that sentence for breach. The sentence of home detention was imposed when he was under 17 years of age. The breach occurred when he was 17.

He also faced a charge of wounding with intent to cause GBH (purely indictable), which occurred 1 month before his 17th birthday. He was offered and accepted the opportunity of foregoing trial by jury and that matter will be heard on a defended basis in November. Bail was granted on that matter.

When HT was arrested on the wounding charge, he was subject to post-release conditions in relation to a 10 month sentence of imprisonment on a wounding with intent to injure charge. He had been convicted in the Youth Court and transferred to District Court for sentencing under s 283(o) of the CYPFA. HT was granted home detention.

HT breached the post-release conditions in respect of the wounding with intent to injure charges (above). He breached those conditions and four charges were subsequently laid in the District Court. HT was 16 at the time He pleaded guilty to those four charges and was sentenced to 8 months home detention.

Issues

- Charges laid against persons under 17 must be laid in the Youth Court. The fact that the sentence was imposed following a s 283(o) order does not confer jurisdiction on the District Court to deal with an offence committed by a young person. Breach of release conditions, an offence under the Sentencing Act 2002, is no different than any other offence committed by a young person. The District Court's jurisdiction ended with the imposition of the sentence of imprisonment and post-release conditions. An application to vary or cancel the release conditions could have been dealt with by the sentencing court, but that is not the same as an information laid alleging the commission of an offence. The charges before the DC were incorrectly laid.
- Secondly, s15B of the Sentencing Amendment Act 2007 prohibits the imposition of a sentence of home detention on any person under 17 years unless that person was facing a purely indictable charge. He was not facing a purely indictable charge.

HT now faced charges of breach of home detention by removing the ankle bracelet and absconding. He was arrested and brought before the Youth Court on that charge and for breaching bail on the Youth Court charge. HT pleaded guilty to the breach of home detention and he was convicted and remanded in custody. Counsel were asked to consider s 205 of the SPA 1957.

Decision

It would not be proper to remand in custody in prison on the current charge in the District Court when the basis for it may have been an invalid sentence. HT was remanded at large on that charge.

On the Youth Court charge (wounding with intent to cause GBH), absconding from what appeared to be an invalid sentence was not a basis for refusing bail, so that action was put to one side when reconsidering. Bail granted.

Police v KDB YC Palmerston North CRI-2008-054-003657, 26 September 2008

Filed under:

Police v KDB

File number: CRI-2008-054-003657
Court: Youth Court, Palmerston North
Date: 9 September 2008
Judge: Judge Ross
Key title: Arrest with warrant (s 214)

Case Summary:

K (16 years old at the time of the offence) denied each charge. He was arrested without warrant and now challenged the validity of the arrest pursuant to s 214(1)(a) and (b) of the CYPFA. The arresting police officer, Constable O, had conducted enquiries in relation to K

on 10 to 15 previous occasions. On those occasions K's behaviour had been aggressive and abusive towards the investigating police. Constable O's evidence was that K was a member of a group of older associates, who were known active offenders. K's behaviour in this group was anti-police and anti-authority. On his own, K's behaviour was fine.

In a previous incident in July 2008, Constable O and another police officer stopped a vehicle in the main street. K was a passenger. There were members of the public around. K got out of the vehicle, and became verbally abusive towards the police.

In July 2008 K and another had gone to a local garage to retrieve a stereo out of an impounded vehicle. The proprietor of the garage had called the police. The police found K at the rear of a carpark near the garage. Constable O's evidence was that she saw K and another male close by the garage. She asked K about the stereo and he denied knowing anything about it. Constable O told K that if she did not get the stereo back she would consider a theft charge against him. The immediate stereo incident was apparently soon resolved and the stereo was recovered.

Constable O's evidence was that she warned K about his behaviour two or three times.

From her evidence:

- She and the other police officer got back into their police car to move away.
- They had recovered the stereo.
- That K and the other two moved along, by walking away.
- But as the patrol car, on its way out of the area, caught up with the males, including K walking away, K was gesturing and yelling abuse to the police.
- Constable O and the other police officer agreed, that despite the warnings that had been given, and the abuse, gestures, anger and confrontation towards them continuing, that enough was enough.
- Constable O got out of the car, and advised K that he was under arrest. She told him that with his continued misbehaviour, she had to arrest him to prevent his further offending.

The police case was that the arrest was necessary for the purpose of preventing K from committing further offences. The defence submitted that there was no prospect of further offending once the police left, and that the arrest was really a for a miscellany of misbehaviour in the past.

Discussion

The Judge accepted the defence submissions:

- The prospect of further offending appeared to be conditional upon the police remaining at the scene, or near K and his associates.
- The charge was laid under s 3 of the Summary Proceedings Act 1981, and while the element of disorderly behaviour was arguably present, the additional element was likely in the circumstances to cause violence against persons to start was not present.
- The alternative procedure steps pursuant to s 245(1) of the CYPFA had not been taken prior to arrest. The reliance was on the validity of the arrest. These steps must be

taken before an information in respect of an offence is laid unless the young person has been properly arrested, and comprise:

a. the forming of a belief that the public interest requires that criminal proceedings should be instituted for the offence
b. Arranging for consultation about the offending between a police representative and a Youth Justice Coordinator
c. The offending has been considered by a family group conference

- Cases such as *Police v AJH* YC Masterton CRI-2006-235-000044, 24 August 2006 per Judge AP Walsh pointed to an even higher threshold of context/aggravating features than the present case and a resulting finding of unlawful arrest.
- It was not shown that even if the arrest grounds were preventing K from committing further offences, proceeding by way of a summons (s 214(1)(b)) would not achieve that purpose.
- The arrest appears to have been, in one sense, opportunistic

Decision

The clear statutory injunction is against criminal proceedings being instituted against a young person if there is an alternative means of dealing with the matter, unless the public interest requires (s 208 CYPFA). The obligation is on the police to prove beyond reasonable doubt that the grounds for arrest were met. That onus was not met in the present case.

The aggravated disorderly behaviour charge was dismissed. Resisting arrest charge dismissed.

Police v SL YC Manukau CRI-2008-092-000298, 4 September 2008

Filed under:

Police v SL

File number: CRI-2008-092-000298
Court: Youth Court, Manukau
Date: 4 September 2008
Judge: Judge Malosi
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery

Case Summary:

SL (16 years and 9 months at the time of the offending) faced charges of aggravated robbery (a purely indictable offence), receiving, and theft. On the latter charges, 6 months supervision and a community work order for 100 hours was ordered. The supervision order was cancelled on 17 June after SL absconded on 5 May. Between 24 April and 17 June 2008, SL committed 8 further offences, including aggravated robbery. At an Family Group Conference on 4 July there was no agreement on jurisdiction, and therefore a social worker report and plan were ordered.

The social worker indicated that SLs attitude had changed significantly, and asked the Youth Court Judge to consider a sentence of supervision with activity or supervision with residence. The police argued that due to the serious nature of the offending, SL should be convicted and transferred to the District Court for sentencing.

Aggravated robbery

SL and another young person drove a stolen car though a shopping centre in Auckland. They spotted the victim, an Asian woman in her 40s. SL pulled up beside the victim, the other Young Person leaned out of the passenger window, reached out and grabbed her handbag. SL then accelerated, causing the victim to fall to the ground and hit the concrete face first. She was dragged for a short time. In the bag there was $1,400 cash, 3 credit cards, 4 EFTPOS cards, a driver's licence and other items. The victim received cuts, scrapes and bruising to her face and legs. Her lip had to be stitched.

The objects and principles of the CYPFA under ss 4, 5 and 208 were referred to. The circumstances of the offending met the s 290(1)(a) and (1)(b) requirements.

Issue: whether any Youth Court options were still available to SL. SL recently turned 17, leaving just under 6 months for top-end Youth Court orders to run.

Factors taken into account:

Against offering Youth Court jurisdiction

- Extremely serious nature of the offending.
- The offending was premeditated against a vulnerable woman
- Public concern about this type of offending
- offending while subject to the supervision order
- That SL absconded within a month of being sentenced
- The right of the victim to see justice done *For offering YC jurisdiction*

- Reports since SL was remanded have been positive
- SL had admitted his association with a youth gang
- SL had a supportive family
- SL was not attempting to avoid responsibility for his offending
- SL had been achieving at the YJ residence school and was seen as a role model to other YP

The Crown indicated that if SL were to be transferred a community-based sentence would not necessarily be out of the question, depending on the probation report.

Decision:

Judge Malosi considered that the District Court would be bound to take into account many of principles applicable to Youth Court. Neither supervision with activity, nor supervision with residence were appropriate.

- Community work order cancelled
- On the aggravated robbery charge SL was convicted and transferred to the District Court for sentence pursuant to s 283(o) of the CYPFA.

- By virtue of s 291 of the CYPFA SL was also convicted and transferred to the District Court for sentence on the other charges.

Police v EP YC Auckland CRI-2008-004-000322, 22 September 2008

Filed under:

Police v EP

File number: CRI-2008-004-322
Court: Youth Court, Auckland
Date: 22 September 2008
Judge: Judge Fitzgerald
Key title: Jurisdiction of the Youth Court: s 275 offer/election.

Summary

Whether to offer Youth Court jurisdiction.

Preliminary hearing. Sufficient evidence to put EP (14 years old) on trial. Complainants aged 4 and 6. No Family Group Conference (FGC) held yet. Court discusses s 4(f) CYPFA principles. FGC process not available if case goes to adult court, but longer sentencing timeframes in District Court would allow for EP to take part in a SAFE programme for young sexual offenders if CYF funded programmes are available through community probation services.

Youth Court capable of offering earlier hearing date than District Court. Families under much stress connected to alleged offending. Youth Court hearings less stressful for those giving evidence. *Police v H* [2004] DCR 97 cited. EP's age a positive factor when considering delaying disposition in the Youth Court in order to complete SAFE programme before jurisdiction runs out.

Decision

Youth Court jurisdiction offered.

Police v DF YC Blenheim CRI-2008-206-000022, 16 September 2008

Filed under:

Police v DF

File number: CRI-2008-206-000022
Court: Youth Court, Blenheim
Date: 16 September 2008
Judge: Judge R J Russell
Key title: Orders - type: Discharge - s 282

Sentencing. Not principal offender. 14 year old.

DF (14 years old) encouraged co-offender to fight victim who was listening to an i-pod. Co-offender punched the victim 6 times, resulting in surgery and permanent facial injuries.

DF a first time offender. Loving and supportive family. Comprehensive Family Group Conference plan successfully completed. No re-offending. Decision by a fine margin. Unlike the victim, no lifetime consequences.

Decision

Section 282 discharge granted.

R v Copping HC Tauranga CRI-2007-270-000104, 26 September 2008

Filed under:

R v Copping

File number: CRI-2007-270-000104
Court: High Court, Tauranga
Date: 26 September 2008
Judge: Heath J
Key title: Sentencing in the adult courts: Murder/manslaughter, Sentencing in the adult courts: Other

Summary

Sentencing. Manslaughter. Illegal street racing.

C (aged 16 at the time of the offence) was found guilty at trial. C and others were street racing. C and L decided to race. F was the starter. L's car suffered mechanical difficulties on the way to the finish line. On the way back to the start, L's car struck and killed F. C and L were found to have been racing on the way back. C denied this in a video interview, and at trial. L plead guilty. C was on a restricted licence, and was part of a group that had ignored police attempts to stop the street racing earlier in the evening. F would have been struck by either C or L, depending who happened to be on his side of the road.

Crown said C was as liable as L for F's death, and was not a suitable candidate for home detention because of his lack of acceptance of responsibility, as well as denunciation and deterrent. L was sentenced to 1 year 10 months imprisonment from a starting point of 3 years 6 months, with discounts for early guilty plea, cooperation, remorse and previous good character.

Court singles out loss of life as main aggravating factor, and age as the main mitigating factor: *R v Pretty* CA 227/00 26 October 2000 at [13]. Court also mentions sentencing principles including consistency and parity. Starting point 3 years 6 months imprisonment. No acceptance of responsibility. No real remorse. Discount of 1 year for age.

Decision

2 years 6 months imprisonment. Disqualification from holding or obtaining a driver licence for 4 years.

Police v MA YC Auckland CRI-2008-204-000296, 17 September 2008

Filed under:

Police v MA

File number: CRI-2008-204-000296
Court: Youth Court, Auckland
Date: 17 September 2008
Judge: Judge Fitzgerald
Key title: Orders - type: Supervision with residence - s 283(n).

Summary

Sentencing. Aggravated robbery.

Seven charges of aggravated robbery admitted at Family Group Conference (FGC) and confirmed in Court. Court accepted FGC recommendation to offer MA Youth Court jurisdiction. FGC could not agree whether or not to convict and transfer MA to District Court for sentencing.

Discussion of MA's role in offending. MA pressured by older associates to approach strangers with a knife and demand their possessions. MA admitted guilt early, and also had a long history of behavioural (ADHD) and educational difficulties, as well as drug and alcohol use. MA showed remorse, and had a supportive family. No previous Youth Court appearances.

MA's actions out of character, and still too young to consider the consequences of his actions. Social work report addressed offending-related needs, and would not necessarily be available in District Court.

Decision

MA sentenced to supervision with residence, then 6 months supervision with conditions.

Police v CCT YC Palmerston North CRI-2008-254-000158, 9 September 2008

Filed under:

Police v CCT

File number: CRI-2008-254-000158
Court: Youth Court, Palmerston North
Date: 9 September 2008
Judge: Judge Becroft
Key title: Lay advocate (326/328A)

Case Summary:

Appointment of a lay advocate in the case of CCT (a young person) under s 326 of the CYPFA. The appointment was on a one-off basis given the lay advocates obvious support to CCT and his family.

Judge Becroft commented that this would seem to be exactly the position envisaged in the CYPFA, where a lay advocate can add meaningful value to the process and work parallel with the youth advocate. Judge Becroft hoped that the lay advocate could work with the family and support them in the creation of the social workers report and a plan leading to a comprehensive supervision with activity programme.

The lay advocate was to be contacted by the court about the Lay Advocates Guidelines and the general remuneration rates. As she was employed at the Ministry of Social Development as a cultural advisor at a Youth Justice residence, it would not be appropriate that she be paid twice for her work with CCT.

It would be appropriate that the lay advocates functions in respect of the family be remunerated under the guidelines set out by the Ministry for lay advocates. Copy of the memo to be sent to the lay advocate, so that it is clear that the payment as a lay advocate could only be made for her separate work with the family over and above her work with CCT as a cultural advisor.

R v SO HC Auckland CRI-2008-292-000092, 14 October 2008

Filed under:

R v SO

File number: CRI-2008-292-000092
Court: High Court, Auckland
Date: 14 October 2008
Judge: Heath J
Key title: Jurisdiction of the Youth Court: s 276 offer/election, District Court - limitations on sentencing.

Case Summary:

Reasons for ruling of 10 October 2008. 14 year old. SO indicated desire to plead guilty in earlier Youth Court appearance. Court declined to offer SO jurisdiction and remanded him to the High Court, as he was 14 years old, and therefore excluded from being convicted and transferred to the District Court under s 283(o) of the CYPFA.

The Law

The ruling points out that s 276 of the CYPFA gives no explanation as to the outcome for a young person who indicates a desire to plead guilty but is denied Youth Court jurisdiction. The Court highlights the option offered by s153A of the Summary Proceedings Act 1957, which is incorporated by reference into the youth justice system by s 274(2)(a) of the CYPFA.

Section 153A(6) of the SPA directs that a young person who pleads guilty shall be sentenced in the District Court, as long as the offence is indictable (or, in Youth Court terms, purely indictable), and is not on a list of offences for which only the High Court has trial jurisdiction (including murder and manslaughter).

R v DJB HC Christchurch T26/01, 17 May 2001 discussed, and used to support view that the High Court did have jurisdiction to sentence previously. Any procedural inaccuracies were mere technicalities.

R v Vi 7 October 2008, HC Auckland CRI-2007-404-000362, 7 October 2008

Filed under:

R v Vi

File number: CRI-2007-404-362
Court: High Court, Auckland
Date: 7 October 2008
Judge: John Hansen J
Key title: Sentencing in the adult courts: Murder/manslaughter, Media reporting (s 438)

Summary

Sentencing. Manslaughter. 14 year old. Name suppression.

Guilty plea. DV (14 years old at the time of the offence) and 3 others (all associated with Tongan youth gangs) attacked innocent passerby. DV had good upbringing but went 'off the rails' after associating with gang. Pre-sentence report not positive. Court concludes DV has a tendency to violence and has a high risk of re-offending. Serious aggravating feature - two previous charges proven in Youth Court arising from offending occurring 24 hours before this attack. Mitigating factors early guilty plea, and age.

Other sentencing cases involving violence and young people considered. Starting point set at 8.5 years. Credit given for 'your extremely young age', guilty plea, and personal factors not detailed in the judgment. Discount of 3.5 years.

Application for name suppression. Defence claim that close media interest taken in cases of young people involved in violence, such as in the case of B J Kurariki, could influence and impede rehabilitation. Court refers to the need for openness, and the guilty plea to 'a quite horrendous offence of violence'.

Decision

Sentenced to 5 years imprisonment. Final name suppression refused.

Police v JDH YC Tauranga CRI-2008-270-000239, 20 October 2008

Filed under:

Police v JDH

File number: CRI-2008-270-000239
Court: Youth Court, Tauranga
Date: 20 October 2008
Judge: Judge C J Harding
Key title: Youth Court Procedure

Summary

Procedure. Sexual violation. Indecent assault. Purely indictable charge. Preliminary hearing. No proper basis for arrest.

Indecent assault charge not purely indictable, so cannot be laid indictably.

Preliminary hearing (depositions) scheduled to determine whether or not there was enough evidence to proceed on all charges. No indication of desire to plead guilty. Submissions filed from both sides addressing question of whether there was a proper basis for arrest. That question not capable of answer because no jurisdiction in District C summary jurisdiction or in Youth Court to hear preliminary arguments on points of law before evidential basis established to put JDH on trial. Youth Court only capable of hearing legal arguments after evidential basis established, and an offer of Youth Court jurisdiction (s 275 CYPFA) has been made and accepted.

Decision

Indecent assault charge dismissed. Depositions on charges of sexual violation adjourned.

R v SO HC Auckland CRI-2008-292-000092, 10 October 2008

Filed under:

R v SO

File number: CRI-2008-292-000092
Court: High Court, Auckland
Date: 10 October 2008
Judge: Heath J
Key title: Sentencing in the adult courts: Aggravated robbery

Case Summary:

Young person aged 14 at the time of the offence. Guilty plea. Declined Youth Court jurisdiction (see *R v SO* HC Auckland CRI-2008-292-000092, 14 October 2008). Offender and two others (aged 13 and 16) planned to rob a service station. Disguises were worn and a boning knife was used to threaten the attendant. SO helped take cigarettes, and $300 cash was also taken.

Serious offending with the possibility of death, if the knife had been used. Certain jail if offender was an adult. Early guilty plea indicated acceptance of responsibility. Young age, early guilty plea and remorse taken into account. SO also showed talent and prospects at rugby. Imprisonment inappropriate as it would bring SO into contact with people that he should avoid. Eligible for home detention. SO also emotionally affected by traumatic deaths of family members. Strong cultural background.

Decision

Starting point 4 years imprisonment. 50% credit for age and guilty plea. 100 hours community work. 6 months community detention. Two years intensive supervision, with special conditions relating to alcohol, drug, and life skills programmes, as well as judicial monitoring. A last opportunity.

Police v MR DC Manukau CRI-2008-292-000005, 2 October 2008

Filed under:

Police v MR

File number: CRI-2008-292-000005
Court: District Court, Manukau
Date: 2 October 2008
Judge: Judge Malosi
Key title: Sentencing in the adult courts: Aggravated robbery

Summary

Sentencing. Aggravated robbery.

Convicted and transferred from Youth Court. After a night of drinking, MR (15 years old) and 2 associates (17 and 14 years old) demanded money and other items from 2 Argentinean tourists who were parked in a campervan. When the demands were not met, MR pointed an air pistol at the victims and threatened to shoot them. The victims handed over money and personal items.

Probation report recommended imprisonment as no suitable home detention address available. Older co-offender sentenced to 9 months home detention. 14 year old co-offender remained in Youth Court with no prospect of imprisonment.

Court described attack as like a home invasion, and that the victims were vulnerable, and chose to visit New Zealand because they perceived it as a safe destination. They endured psychological terror that cannot be underestimated. MR was the primary offender. No mitigating factors in this offending.

In the debate about the place of youth justice principles in sentencing young people in the adult courts, Judge Malosi preferred the "pragmatic" reasoning of Mallon J in *P v Police* HC Wellington, 14 August 2007. Categories in *R v Mako* were only a "useful guide". Crown points to two cases of aggravared robbery on campervans: *R v Gladstone* HC Gisborne, 5 October 2005 per Venning J; *R v Growden* CA67/05 25 October 2005 per Potter J. Court

points out that it is restricted to a final sentence of no more than 5 years imprisonment. Argument that starting point must always be less for a young person than for an adult rejected.

Starting point of 5 years. Early guilty plea. Not dealt with grief after early death of father. One of 11 siblings, some of whom are also offenders. Drug and alcohol problems. Severe child onset conduct disorder. Known to Police Youth Aid from age 10. Care and protection history with CYF. Support from brother and auntie. Not in school since the age of 11. MR Remorseful, and interested in becoming a mechanic. 50% discount for offender's mitigating factors. Time in residence taken into account in parole decisions. Direction to prison authorities to keep MR apart from adult prisoners.

Decision

2.5 years imprisonment.

Police v SL DC Manukau CRI-2008-292-100/407/300, 2 October 2008

Filed under:

Police v SL

File number: CRI-2008-292-100/407/300
Court: District Court, Manukau
Date: 2 October 2008
Judge: Judge Malosi
Key title: Sentencing in the adult courts: Aggravated robbery

Summary

Sentencing. Aggravated robbery. Conversion of motor vehicles. Theft. Receiving.

These charges started out in the Youth Court. SL pleaded guilty and was convicted and transferred to District Court for sentencing. SL received a cellphone stolen from a car, was involved in a bag snatch with 2 co-offenders, was involved (with 1 co-offender) in a bag snatch from a moving car that injured the victim, and stole 3 cars.

Probation recommendation of community detention, intensive supervision, and community work. Parents successful and supportive. SL involved with Killer Beez gang. SL has built strong relationships and shown leadership qualities in his time spent in a youth justice residence on remand. Showed considerable talent as a poet. Father to help with engineering apprenticeship.

Starting point 2 years imprisonment (based on *Taueki*, and *Mako* cases). 25% discount for early guilty plea. 25% discount for age (16 years old at the time of the offending).

Decision

6 months community detention with conditions. 18 months intensive supervision with counselling, plus cultural involvement. 250 hours community work.

Police v HH YC Taupo CRI-2008-269-000056, CRI-2007-269-000078, 1 October 2008

Filed under:

Police v HH

File number: CRI-2008-269-000056, CRI-2007-269-000078
Court: Youth Court, Taupo
Date: 1 October 2008
Judge: Judge N A Walsh
Key title: Bail (s 238(1)(b))

Summary

Bail. HH entered non-denials to robbing a 13 year old of his wallet, and taking 4 mountain bikes. Police oppose bail, and report that HH has been intimidating witnesses. Family say they will take HH to live with his uncles in a remote area, where he will be under 24 hour curfew. HH involved in a burglary at his school and was suspended. Court directed authorities to prepare education report.

Decision

Bail granted with conditions.

R v SL YC Auckland CRI-2008-204-000412, 24 November 2008

Filed under:

R v SL

File number: CRI-2008-204-000412
Court: Youth Court, Auckland
Date: 24 November 2008
Judge: Judge Fitzgerald
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Indecent assault/indecent act

Summary

Whether to convict and transfer to the District Court.

1am attack by SL on a woman in the central city. Forced touching outside underwear, forced kissing, ignored pleas to let her go.

Delays in the court process mean SL would only be amenable to Youth Court orders for a further 6 months. Crown argued this is not long enough given the seriousness of the offending, and the length of time required for specialist sex offender programmes to be

effective. Social work report called for supervision with activity with special conditions that allow for a mentoring programme and assessment by a sex offenders treatment organisation.

Court discusses seriousness of the offence, school attendance, lack of Youth Court history, good family support, remorse, victim's ongoing emotional impact, history of concussion and cognitive impairment, specialist psychological reports, effects of alcohol. No appropriate alternatives available. Section 290(2) of the CYPFA satisfied. Likelihood of final sentence of intensive supervision.

Decision

Convicted and transferred to DC for sentence. Probation report to include assessment by SAFE programme.

R v J and T YC Waitakere CRI-2008-290-000487, 20 November 2008

Filed under:

R v J and T

File number: CRI-2008-290-000487
Court: Youth Court, Waitakere
Date: 20 November 2008
Judge: Judge Fitzgerald
Key title: Care and Protection cross over (s 280): Care and Protection (s 261), Jurisdiction of the Youth Court: s 276 offer/election.

Summary

Jurisdiction.

J and T forced 14 year old complainant into their house. It was intended that at least one of them would have sex with the complainant, who was unwilling. After resisting, the complainant was allowed to leave. No touching underneath clothes. No physical injury. No premeditation. Offences carried out while carrying out a Family Group Conference (FGC) plan for previous offending.

FGC unable to agree about whether J and T (both 14 years old) should be offered Youth Court jurisdiction. FGC adopted s 261 of the CYPFA procedure to decide that both young people were in need of care and protection on the grounds set out in s14(1)(d) of the CYPFA. Applications made for s14(1)(d) declaration, and s101 custody order made, and adjourned in the Family Court.

Discussion of factors to be considered not including usual sentencing factors as all usual sentencing information not available to the Court, as no charge yet proved, and so no ability to order s 334 report. Section 290 cannot apply as J and T are not yet technically within Youth Court jurisdiction.

Factors relating to facts of the offending are relevant. Both J and T had difficult family backgrounds, and have previous involvement with CYF for care and protection issues, and

experienced bullying. Both have conduct disorder, assessed as at high risk of reoffending, and of sexual recidivism. Forensic reports recommend programmes for sexual offending, conduct disorder, and drug and alcohol. Consultative management group recommended to deal with the complexity of J and T's issues.

Principles in sections 4,5, and 208 of the CYPFA mentioned. Discussion of therapeutic and public interest factors for and against offering Youth Court jurisdiction. Discussion of elements in CYPFA that go beyond therapeutic justice, and provide for restorative procedures, and procedures specifically designed for young people. The Act also enables and empowers families of young offenders.

Seriousness of the charge, and a high risk of reoffending are not, in themselves, good reasons for not offering Youth Court jurisdiction. Opposed jurisdictional cases such as these should be judged on a careful consideration of the circumstances of the young person and the offending. Important that dual Youth and Family Court issues are provided for, and proceedings synchronised, with a judge warranted in both courts dealing with the case. Specialist youth agencies and service providers are more associated with the Youth Court, as opposed to Corrections, who do not have a background in youth issues.

Public interest concerns: Victims needs and issues can be adequately dealt with in the FGC process. The Youth Court is a court of record, and orders in the Youth Court have the same standing as convictions in the District Court. There is a public interest in rehabilitation, and the chances of successful rehabilitation are greater in the Youth Court. The Youth Court is able to hold offenders to account and to deter young people from reoffending just as well as the adult courts.

Decision

Youth Court jurisdiction offered. FGC admissions confirmed in Court.

Police v JN YC Gisborne CRI-2008-219-000024, 13 November 2008

Filed under:

Police v JN

File number: CRI-2008-219-000024
Court: Youth Court, Gisborne
Date: 13 November 2008
Judge: Judge Taumaunu
Key title: Orders - type: Supervision with activity - s 283(m), Orders - type: Reparation - s 283(f).

Summary

Robbery of a dairy with a weapon. J (16 at the time of sentence) and co-offender had been drinking home brew. Co-offender sentenced to supervision, community work plus reparation. J had a previous appearance in Youth Court. Would face 4 - 6 years imprisonment using tariff indications in *R v Mako* [2000] 2 NZLR 170 (CA) if an adult in same situation. Sufficiently good prospects for rehabilitation.

Decision

Supervision with activity (Life Skills for Life in Rotorua) plus supervision and reparation.

Police v ITW and EP YC Whangarei CRI-2008-088-000107, CRI-2008-088-000108, 7 November 2008

Filed under:

Police v ITW and EP

File number: CRI-2008-088-000107, CRI-2008-088-000108
Court: Youth Court, Whangarei
Date: 7 November 2008
Judge: Judge de Ridder
Key title: Arrest without warrant (s 214), Family Group Conferences: Held/Convened, Family Group Conferences: Timeframes/Limits: Intention to charge

Summary

Application to dismiss on grounds of 1) unlawful arrest; 2) non-compliance with s 245; or 3) non-compliance with s246.

Alleged that ITW and EP together with two others approached several road workers, while brandishing knives. Police spoke with ITW and EP a short time later and arrested them for assault with a weapon. Intention-to-charge family group conferences were held in respect of charges of being a party to assault with a weapon and possession of an offensive weapon. Charges were later amended to threatening to injure knowing conduct likely to intimidate.

Discussion of s 214(1) of the CYPF Act 1989; police not able to establish that arrests were necessary; court has a discretion to dismiss any informations laid as a consequence of an arrest that does not satisfy s 214.

Discussion of the alternative argument that the mandatory provisions of s 245 have not been followed because a Family Group Conference was held in respect of the previous (more serious) charges, rather than the current ones. Held that s 245 has not been complied with because there has been no Family Group Conference in respect of the current charges.

Discussion on whether an arrested young person must be brought to court before a Family Group Conference so that the arrest procedure can be vetted. Held that there is nothing in s 246 to prevent the police holding an intention to charge family group conference where a young person has been arrested and released with the intention of charging them later.

Decision

Informations are dismissed on the grounds of unlawful arrest.

Police v IE and DK YC Wanganui CRI-2008-083-000113, 4 December 2008

Filed under:

Police v IE and DK

File number: CRI-2008-083-000113
Court: Youth Court, Wanganui
Date: 4 December 2008
Judge: Judge Callinicos
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated Robbery

Summary

Sentencing notes. IE and DK, (together with two others - one of whom stayed in the car), entered a dairy occupied by the shopkeeper and her four year old daughter. DK utilized a double-barrelled sawn-off shotgun, clicking it into place, suggesting that it was then armed. They entered quickly and IE leapt the counter targeting the tobacco. The victims were terrified. IE struck the shopkeeper more than once, and used profane language and verbal violence. The robbery was organised, well-structured and lasted about 15 seconds. They stole packets of tobacco to the value of $470.

IE and DK both expressed a desire to plead guilty and were offered Youth Court jurisdiction.

At the time of the offence, IE had two existing charges of burglary, and DK had numerous other charges of intentional damage, assault, resisting arrest, burglary and aggravated robbery.

The Court must now consider sentencing options, specifically whether any of the sentencing options, short of s 283(o) would be appropriate.

Both IE and DK have had dysfunctional and troubled upbringings, both have a very limited education, and have moved into alcohol or drug dependence. Both accept that they must pay a penalty for this offence, but neither has identified their co-offenders.

IE has two existing charges of burglary. DK had an extensive history of offending over the previous year.

Given the seriousness of the offending, the only sentencing options are s 283(n) supervision with residence, or s 283(o) conviction and transfer to the District Court for sentencing.

Aggravated robbery is a purely indictable offence, and the circumstances in this case are such that, if either IE or DK were adults, a sentence of imprisonment would be required. Both IE and DK have shown indifferent compliance with previous Youth Court orders or plans. Any sanction of the Youth Court is unlikely to achieve the level of rehabilitation required.

Decision

In respect of the aggravated robbery, IE and DK are convicted and transferred to the District Court for sentence. In respect of IE's burglaries, he is admonished under s 283(b). In respect of DK's other charges, he is admonished in respect of the intentional damage, assault and

resisting arrest charges. In respect of DK's further charges of burglary and aggravated robbery, he is also convicted and transferred to the District Court for sentencing. Both are remanded in custody with orders to be separated from adult prisoners.

Police v DRK YC Waihi CRI-2008-279-000016, 25 November 2008

Filed under:

Police v DRK

File number: CRI-2008-279-000016
Court: Youth Court, Waihi
Date: 25 November 2008
Judge: Judge JP Geoghegan
Key title: Delay (s 322)

Summary

Application for a stay of proceedings based on delay. DRK , then aged 16 and a half and in breach of the conditions of his restricted drivers licence, drove from Waihi to Paeroa with three passengers in the car. Upon completing an overtaking manoeuvre, he collided with a motorcyclist who died at the scene. The information was laid five months and 25 days later. The issue of delay was first raised seven days after that.

The relevant test is whether the time between the offence and the application to stay was longer than that which would be reasonably expected in a case of that nature. The Court considered the relevant factors to be those adopted in *The Attorney-General of New Zealand v The Youth Court at Manukau* HC Auckland CIV-2006-404-002202, 18 August 2008 per Winkelmann J. The Court must also consider the seriousness of the offence and the public interest in seeing the offence dealt with by the justice system.

The delay in this case, was within the time limits prescribed by six days, and was partly caused by the complex nature of the case. DRK has not been unduly prejudiced because he has not been in custody or on onerous bail conditions. Also, the delay has not adversely affected his ability to collect evidence. There is a strong public interest in seeing this case dealt with because it was a serious accident involving the death of the motorcyclist.

Decision

The delay in this case does not warrant a stay.

R v Rongo DC Manukau CRI-2007-292-000558, CRI-2008-292-000259, 7 November 2008

Filed under:

R v Rongo

File number: CRI 2007-292-000558, CRI 2008-292-000259
Court: District Court, Manukau
Date: 7 November 2008
Judge: Judge Malosi
Key title: Sentencing in the adult courts; Aggravated robbery, Sentencing in the adult courts: Application of Youth Justice principles.

Summary

R, together with 2 others, snatched a bag from a shop, stole its contents and disposed of the bag. R also faces other charges of threatening behaviour, theft of property over $1,000, and escaping custody.

R has had a care and protection history with CYF since he was 5 or 6 years old. The Court discussed youth justice principles, particularly the requirement to impose the least restrictive outcome appropriate. The starting point should be two and a half years imprisonment. Mitigating factors (early admission of guilt, personal history and current circumstances) took the Court to an end point of one and a half years. That allows for consideration of a community-based sentence. Community work is warranted because it sends a strong message and has a punitive element.

Decision

18 months intensive supervision with special conditions; 4 months community detention; 250 hours community work; judicial monitoring.

Police v T DC Manukau CRI-2008-292-000352, CRI-2007-292-000731, 13 November 2008

Filed under:

Police v T

File number: CRI-2008-292-000352, CRI-2007-292-000731
Court: District Court, Manukau
Date: 13 November 2008
Judge: Judge Malosi
Key title: Sentencing in the adult courts: Serious assault (including GBH), Orders - type: Supervision - s 283(k), Orders - type: Community Work - s 283(l), Orders - type: Reparation - s 283(f).

Summary

T and his older brother entered a video store armed with a knife and a roman candle firework, demanded money and threatened to stab the shop assistant. T and his brother left when the shop assistant said she was calling the Police. Three days later T, together with the brother and an associate, entered a superette armed with knives and a hammer. All three left when storeowner hit the alarm. Six months later, T and two brothers burgled a property twice, stealing property worth about $1,700.

The Court took a starting point of 3 years. One year was taken off this for mitigating personal features (including the fact that this was a first offence, and T had the support of his parents). The end point therefore is two years. That opens the door to a community based sentence.

Cases considered

P v NZ Police HC Wellington CRI-2007-485-000048, 23 August 2007 per Mallon J
R v Mako [2000] 2 NZLR 170

Decision

18 month Intensive Supervision with special conditions; 6 months community detention (Friday, Saturday and Sunday nights, with electronic monitoring); 250 hours community work; reparation totalling $134 to victims.

Police v JT YC Whakatane CRI-2008-287-000102, 14 November 2008,

Filed under:

Police v JT

File number: CRI-2008-287-000102
Court: Youth Court, Whakatane
Date: 14 November 2008
Judge: Judge Rollo
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH), Family Group Conferences: Non-agreement

Summary

Assault with a weapon. Previous conviction. Application to convict and transfer to the District Court.

JT (2 days short of his 17th birthday at the time of the offence) was at a party when a dispute arose about music. Police say JT lunged at a pregnant girl with a wine knife. No agreement on conviction and transfer at FGC. JT sentenced to imprisonment for the manslaughter of his brother 18 months previously: *R v JT* HC Rotorua CRI-2006-287-000083, 13 June 2007 per Harrison J. Police rely on s 290(1)(b) of the CYPFA. Court agrees, given previous conviction. Age also a factor, and Youth Court penalties not an adequate response.

Decision

Application to convict and transfer to the DC for sentence granted.

Police v HT YC Taupo CRI-2008-269-000072, 10 December 2008

Filed under:

Police v HT

File number: CRI-2008-269-000072
Court: Youth Court, Taupo
Date: 10 December 2008
Judge: Judge Munro
Key title: Orders - type: Supervision with residence - s 283(n).

Summary:

H 14.5 years old. Charges were injuring with intent to injure, assault with a weapon (hammer), burglary. First time in Youth Court, but had long history of offending from age 9. H 'highest violent offender, youth or adult, in the [name of town deleted] community'.

Family Group Conference agreed to supervision with residence. Family involvement with crime meant alternative whanau placement would exacerbate problems. H's mother unable to control him.

Decision:

Supervision with residence, followed by supervision.

Police v GC YC Manukau CRI-2008-292-000370, 11 December 2008

Filed under:

Police v GC

File number: CRI-2008-292-000370
Court: Youth Court, Manukau
Date: 11 December 2008
Judge: Judge Malosi
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mental impairment/unfit to stand trial.

Summary:

GC had an IQ of 40, which was within the lower limits of the moderate range of retardation. Moderate intellectual disability. Impairments across all areas of cognitive function, indicating congenital dysfunction. Long care and protection history. Court found an intellectual disability for the purpose of s 14(1) of the CP(MIP) Act.

GC had poor understanding of charges, Court processes, or roles of players in those processes. Can only understand the meaning of simple words and sentences. No higher thought processes and cannot judge or reason verbally. Found GC unable to conduct a defence or instruct a lawyer, unable to plead or adequately understand the nature or purpose or consequences of proceedings.

Decision:

Unfit to stand trial.

2007

YP v Youth Court at Upper Hutt & Attorney-General (30 January 2007, HC, Wellington, CIV-2006-485-1905) Mallon J

Filed under:

Name: YP v YC at Upper Hutt & Attorney-General
Unreported:
File number: CIV-2006-485-1905
Court: High Court
Location: Wellington
Date: 30 January 2007
Judge: Mallon J
Charge: Wounding with Intent to cause GBH
CYPFA: s214
Key title: Arrest without Warrant
Case Summary: Judicial review application of YC decision. Whether arrest lawful; consequence of lawfulness of arrest on charges.

YP (16 at time of offending) and brother involved in altercation between "white power" and "black power" groups. Brother seen with screwdriver in hand and injuries from the screwdriver were inflicted on two boys in the "white power" group; death threat appeared on victim's website. Plaintiff arrested on two charges of wounding with intent to cause GBH; bail; bail breached, further offending. Plaintiff's brother initially charged with wounding with intent to cause GBH; at depositions agreement reached and brother admitted an amended charge of wounding with intent to injure.

Section 214(1) CYPF Act; under s214(2) the arresting officer must have reasonable cause to suspect under s 214(2)(a) and the belief on reasonable grounds under s214(2)(b). Arresting officer here did not have a reasonable cause to suspect purely indictable offence committed; she acknowledged that she did not consider the public interest. Thus, officer did not comply with s214(2).

Second defendant argued that the Police officer had in substance considered and weighed all the necessary interests when the arrest was made. *ITW v Police* (HC, CH, CIV-2003-409-35, 11 September 2003) distinguished; arrest not obviously required to ensure the offender did not escape. Second defendant argued that two Police officers assessments can constructively be added together. Divergent authority between UK and NZ on whether arresting officer must exercise their discretion independently discussed. Judge concluded the two Police officer's knowledge and assessment should be added together – between the two of them there needed to be reasonable cause to suspect and the belief on reasonable grounds required by s214(2).

There was reasonable cause to suspect purely indictable offence (s214(2)) despite various Police views over the course of the investigation as to the correct charge. Police are entitled to develop their thinking on a charge as an investigation progresses.

Section 214(2): arrest required in the public interest. "Public interest" not defined in CYPF Act suggesting it is to be interpreted broadly. Youth justice principles discussed; matter not urgent or serious at outset and nothing changed apart from victim's mother's complaints to

justify a different view. Gang tensions involved thus it would have been appropriate to consider alternative approaches at FGC unless arrest necessary in the public interest.

Fact that offence purely indictable does not of itself mean that an arrest is required in the public interest. Arguments as to the plaintiff's subsequent re-offending not of assistance to the second defendant; the matter must be viewed at the time the arrest was made. At time of alleged offending the plaintiff was already charged with an aggravated robbery; arresting the plaintiff enabled a curfew to be imposed as a condition of bail; thus, some basis for a belief that there was a risk of further offending if the plaintiff was not arrested. Gang friction and death threat provided some basis for belief that there was a risk of interference with witnesses.

Second component of section 214(2) complied with. Section 214(3) not complied with. Consequences of non-compliance discussed but as s214(2) complied with and not s214(3), the decision to arrest was lawful. Non-compliance with s214(3) does not invalidate the earlier lawful arrest. Section 440 CYPF Act.

Decision: Order declaring there was non-compliance with s214(3); further relief claimed by plaintiff declined.

New Zealand Police v DW, 13 February 2007, Youth Court, Wellington, Judge Becroft

Filed under:

Name: New Zealand Police v DW
Unreported:
File number:
Court: Youth Court
Location: Wellington
Date: 13 February 2007
Judge: Becroft, DCJ
Charge:
CYPFA: s19(4)
CYPFA: s280 (1), s333 (3)
Key title: Care and Protection, Reports
Case Summary:
Memorandum regarding the inadequacy of the CYFS response for the defendant in respect of a care and protection referral made in respect of his case on 20 December 2006. Section 19(04) of the Children Young Persons and Their Families Act 1989, CYPFA requires that a care and protection co-ordinator, shall within 28 days furnish a written report to the Court. The report dated 31 January 2006 was an inadequate response, and was provided to the Court six weeks since the direction was given. The report provided no information as to what further action other than a care and protection conference, would be held. The report should have provided a statement as to when any proposed action was to be completed. The care and protection Co-ordinator was not in Court to respond. Judge Becroft commented that this sort of action was 'absolutely typical nationally of what happens when a s 280 of the CYPFA referral is made'. If the hold up in the Care and Protection conference was due to the unavailability of a s 333 of the CYPFA psychological report, this should have been explained to the Court.

Decision: Directions that a copy of this memorandum be sent to the Care and Protection Co-ordinator, to the site manager of the Wellington region and to the Chief Executive of Child, Youth and Family Service.

New Zealand Police v TF, 14 February 2007, Youth Court, Wellington, Judge Becroft

Filed under:

Name: New Zealand Police v TF
Unreported:
File number:
Court: Youth Court
Location: Wellington
Date: 14 February 2007
Judge: Becroft, Judge
Charge: Theft, aggravated robbery
CYPFA:
Key title: Bail
Case Summary:
Unsuccessful application by the defendant for bail.
The defendant, TF faced charges of theft, which may become aggravated robbery, and wounding with intent to cause grievous bodily harm. The police opposed bail. The grounds of opposition were that the two seriously violent incidents were alleged, the second being an unprovoked attack on another young man, now in hospital with a skull fracture and severe concussion. The defendant, it was alleged, punched him with a fist to the jaw and a co-offender stamped on his head. The evidence suggested that TF was involved with the Full Blooded Islander (FBI) gang. The FBI gang was said to be recruiting younger Pacific Island boys. The police feared that the influence by older men on TF meant that there was an unacceptable risk of violence if TF was released. Counsel for TF argued that TF should be released on bail. He was a 7th former at school, was actively involved in sport and school activities, his home life was stable and his family wished him to be present with a 24 hour curfew, save from school attendance. A family friend was willing to provide 12-hour supervision. TF had no prior history of offending.

Decision:
Held:
1. Due to the seriousness of the allegations, and the unknown outcome for the victim, and the risk of association with the FBI, it would have been wrong to grant bail.
2. The risks to the public were too great and bail would not be remotely appropriate.
3. Orders that TF be locked in a Youth Justice Residence for two weeks.

Police v BM (8 February 2007, YC, Auckland, CRI: 2006-204-000759) Judge Becroft

Filed under:

Name: Police v BM
Unreported:

File number: CRI: 2006-204-000759
Court: Youth Court
Location: Auckland
Date: 8 February 2007
Judge: Becroft DCJ
Charge:
CYPFA:
Key title: Reports - Social Worker
Case Summary: A late and inadequate Social Worker's Report highlighted a "woefully concerning" state of affairs regarding CYFS social services. That was the view of Judge Becroft when dealing with BM, a long standing offender whose offences in early 2006 had lead to a supervision order and community work order in May 2006. The community work order had "effectively collapsed". BM admitted further (unresolved) offending in June 2006 and had offended in January 2007. Consequently, the social work report was finally provided to the Court in February.

The social worker was not in Court and the young person was adamant he had never met the social worker. Judge Becroft noted that the very late delivery of the social work report breached all statutory requirements and considered it “grossly unacceptable”. Further, the report was superficial, accurate chronologically but deficient in terms of the serious and comprehensive interventions necessary for BM, particularly with regard to addressing his alcohol and other drug and anger problems.

Police v DKJ YC Porirua CRI-2006-291-000115, 12 March 2007

Filed under:

Police v DKJ

File number: CRI-2006-291-000115
Court: Youth Court, Porirua
Date: 12 March 2007
Judge: Judge Becroft
Key title: Orders - type: Discharge - s 282

D (14 years old at the time of the offence) charged with indecently assaulting 4yr old girl who was in the care of his mother, a childcare worker. D left in charge of a number of children because of medical emergency. Others went outside, while victim remained with D. D lifted her top and tickled her stomach. D also pulled down her pants and used his fingers to play with her vagina and backside, telling her it was a tickling game.

D admitted offence at intention to charge FGC. All FGC plan components completed, but no agreement on discharge. Family argue for absolute discharge under s 282. Police argue for s 283(a) discharge with offending noted but no further penalty.

Even though no listed criteria, Judge took into account all s 284 factors, as well as general objects and principles. Relevant factors were: age, school attendance, plans to enlist in the airforce, supportive family, good parents, 'a model family', excellent attitude, honesty during

counselling, written apology. Counsellors assessed D at lowest risk of re-offending, with low background risk factors, no evidence of sexual preference for children, and motivated primarily by curiosity. D also remorseful.

Police submitted that: victim was not of equivalent age, D breached her trust (albeit in an emergency situation), a s 283 discharge is the lowest possible sanction. D's counsel submitted that a s 283 discharge would be an 'albatross' around D's neck for life.

Decision:

Section 282 discharge granted, as if charge never laid. Comments from the bench that this is an 'enormous gift', 'once in a lifetime'.

Police v Moala HC Auckland CRI-2006-404-000389, 2 March 2007

Filed under:

Police v Moala

File number: CRI-2006-404-000389
Court: High Court, Auckland
Date: 2 March 2007
Judge: Harrison J
Key title: Sentencing in the adult courts: Application of Youth Justice Principles, Sentencing in the adult courts: Aggravated robbery, Sentencing in the adult courts: Aggravated burglary, Sentencing in the adult courts: Serious assault (including GBH)

Case Summary:

M pleaded guilty in the Youth Court to 32 offences over 8 months. He was then convicted and transferred to the District Court (DC) under s 283(o) of the CYPF Act. Though defence counsel recommended a sentence of 3 to 4 years imprisonment, M was eventually sentenced to two and a half years. The Crown appealed.

M turned 16 during his 8 month 'avalanche of offending'. Youth offenders can only be sentenced in the DC to imprisonment on ‘purely indictable' charges (Sentencing Act 2002, s18(1)). 6 out of the 32 offences fell into this category.

Harrison J identified the lack of a starting point as the DC judge's primary mistake and referred to the sentencing practices spelled out by Gault J in *R v Mako* [2000] 2 NZLR 170 (CA) for these particular offences. *Mako* is authority for the principle that determining a starting point is universal regardless of age, and youth should then be properly treated as a mitigating factor to be given greater weight than normal: *McCollum v Police* HC Whangarei AP22/03, 18 August 2003 per Priestley J.

A psychological report described M as having severe conduct disorder, little consideration for the consequences of his behaviour, and little real empathy with his victims, leading to little overall prospect for his rehabilitation. Prospects of M's rehabilitation were also hindered, in

the Court's mind, by a spate of 26 serious assaults and burglaries committed against pensioners in the months following his arrest on the more serious aggravated robbery charges.

Justice Harrison determined a starting point of 10 years imprisonment based on the seriousness of M's offending. Two mitigating factors were then considered: guilty pleas; and age and prospects for rehabilitation. Despite his view that 6 to 7 years imprisonment was appropriate, Justice Harrison felt restrained by the 5 year cap on custodial sentencing when a young offender is convicted and transferred to the DC under s 283(o).

Commenting on the debate over the place of youth justice principles applying to DC sentencing following transfer from the Youth Court, Justice Harrison noted his attraction to the decision of Miller J in *R v Patea-Glendinning* [2006] DCR 505 (HC). Miller J held that CYPF Act sentencing principles do not travel with a Youth Court offender when they are transferred to the DC. Instead, s 9(2) of the Sentencing Act 2002 applies to make youth a factor in mitigation. Justice Harrison went on to echo Justice Miller's observation in *Patea-Glendinning* that, whichever enactment applied to give a discount for an offender's age, the result would be no different.

Calling M 'a violent offender whose behaviour displays the worst traits of hardened and callous adult criminality', Harrison J commented that a reduction from his preferred sentence to one of 5 years reflected the extent of the leniency that he was prepared to show to M 'to allow for his age and associated immaturity and its effect on his culpability'.

Decision:

Sentences increased from two and a half years to concurrent 5 year terms on all aggravated burglary and aggravated robbery charges, with minimum non-parole periods of two and a half years for each.

Police v M, N & Z 16 March 2007, Youth Court, Dunedin

Filed under:

CRN 7212008000, CRN 6212008002 and 7212000049-83, CRN 6212008003 and 7212000084-117 Judge O'Dwyer

Name: Police v M, N & Z
Unreported
File number: CRN 7212008000, CRN 6212008002 and 7212000049-83, CRN 6212008003 and 7212000084-117
Court: Youth Court
Location: Dunedin
Date: 16 March 2007
Judge: Judge O'Dwyer
Charge: aggravated robbery
CYPFA: 283(o)
Key title: sentencing
Case Summary:

Young persons (YPs), all 16 yrs at time of offending. During period without adult supervision, YPs had committed minor offences, then planned robbery, and stole sweets from a dairy, disguised, and with knives. Offending was out of character, and none had appeared in YC before. All three admitted charges, expressed remorse, apologised, and wished to make reparations.

Judge considered CYPFA s290 and s208 principles, *W v Registrar of Tokoroa* YC [1999] FRNZ 433, *X v Police* (11 February 2005) HC, and *R v Patea Glendinning* [2006] DCR 505 HC.

Factors in sentencing included: each YP participated in planning offence, disguises, knives. Personal circumstances: M was high achieving at school, but negatively influenced by relationship with mother and death of relative. Now responding well to bail conditions. N has struggled at school, is promising in cultural activities and sport, and has a supportive family. Z's offending was out of character, is in fulltime training, but had since breached bail and re-offended. Z had a tragic family background, which had not been helped by a lack of professional support and counselling. All families have been supportive, and expressed shame and disappointment.

Police argue for conviction and transfer to DC (s283(o)) due to: seriousness of offending; greater range of sentencing options in DC; lack of time remaining in YC jurisdiction.

Judge commented that each YP needs a long period of supervision. Supervision with Activity not suitable to meet the seriousness of the offending, and not capable of including an order for community work. Supervision with Activity would not meet Youth Court sentencing goals in this case.

Decision:
Conviction and transfer to DC for sentencing. Community-based sentencing options are likely, but YPs will have to deal with the conviction on their record. Reports ordered.

The Queen v E , [2007] NZCA 133 [Hammond, Chambers and Arnold JJ]

Name: The Queen v E
Reported: [2007] NZCA 133
File number: CA 362/06
Court: Court of Appeal
Location: Wellington
Date: 18 April 2007
Judge: Hammond, Chambers and Arnold JJ
Charge: Sexual violation – Rape/Oral sex/ Digital Penetration
CYPFA:
Key title: Sentencing in the Adult Courts – Sexual Violation – Digital Penetration
General principles of sentencing

Subject to suppression order s139 Criminal Justice Act 1985

Case Summary
Unsuccessful appeal against sentence by the appellant following the appellant's guilty plea to two charges of sexual violation when he was a 16 year old High School student. Extension of time within which to bring the appeal granted. At the time of the offending the appellant and the complainant were good friends and were in the same class at school. The appellant, using two cell phones, deceptively blackmailed the complainant. He threatened to ensure that a rape charge was laid by a school girl against the complainant, threatened to damage the complainant's home and his parents' property unless the complainant agreed to allow the appellant to perform sexual acts on him.

These sexual acts included masturbating the complainant, digitally penetrating the complainant's anus and performing oral sex on him. The offending occurred several times a week over several months and ended when the complainant told his parents.

The sentencing Judge in the District Court identified the aggravating features as; the high level of premeditation, the fact that the offending extended over a period of approximately three months, the humiliating and degrading nature of the offending, the significant abuse of trust and the severe consequences of the offending for the complainant.

The identified mitigating features were the guilty pleas and the appellant's youth. The Judge considered *R v Castles* CA105/02 23 May 2002 and fixed the appropriate starting point at seven years. Two years was deducted for the appellant's age and one year and three months for the early guilty pleas. Counsel for the appellant submitted that the Judge erred in fixing a starting point on the basis that the offending had been committed by an adult offender and was too high in any case. It was submitted that the Judge had failed to give sufficient weight to the appellant's personal circumstances and the need for rehabilitation.

HELD: The first step in identifying a staring point is the culpability inherent in the offending. The personal circumstances of the offender should be considered at the second stage. In this case the Judge would have been justified in fixing a higher starting point to reflect the circumstances of the offending. The seven year starting point was at the lower end of the available range.
The sentencing Judge allowed a deduction of 28.5% for the appellant's personal circumstances. The offending was not "one off" offending and could not be described as impulsive. The additional reduction for the appellant's guilty pleas was generous, given that they were not entered at the first opportunity. In the circumstances of the offending and the offender, the outcome was within the range properly available to the Judge.

Decision:
Appeal dismissed. Suppression order to remain in force.

Statutes and regulations referred to
Criminal Justice Act 1985, s139
Cases Referred to
R v Castles CA 105/02 03 23 May 2002
R v Taueki [2005] 3 NZLR 372
R v Hall CA412/95 17 May 2006
R v Mahoni (1998) 15 CRNZ 428

R v Edwardson HC Rotorua CRI-2006-069-001101, 27 April 2007

Filed under:

R v Edwardson

File number: CRI-2006-069-001101
Court: High Court, Rotorua
Date: 27 April 2007
Judge: Stevens J
Key title: Sentencing in the adult courts: Murder/manslaughter

Case Summary:

E was 16 at time of offending (13 May 2006). Drinking with friends, and at a party. Deceased intervened in dispute between E and another. Verbal confrontation, threats, pushing and shoving, punching from both parties. E then produced knife from jacket pocket and stabbed deceased in neck, nicking her carotid artery.

Crown argued for sentence of 8 years based on aggravating factors including use of a weapon, fleeing the scene, last minute indication of intention to plead guilty followed by presentation of defence of self defence at trial.

Defence argued mitigating factors including no specific premeditation, previous good character, sporting involvement, schooling, character references, good chances for rehabilitation, remorse, co-operation with Police, low risk of re-offending.

Court mentioned troubling use of alcohol amongst all young people involved on the night of the incident. Court also referred to mitigating factors including age, and involvement of deceased, and presence of a weapon: *R v Waho* HC Palmerston North T13/89, 3 November 1989 per Eichelbaum CJ, and the manner in which it was used. Court downgraded indication of guilty plea as 'more tactical than an expression of genuine remorse': *R v Reweti* HC Auckland CRI-2005-092-014652, 6 September 2006 per Winkelmann J.

Decision:

Starting point 7 years with a reduction for age: *R v Raivaru* HC Rotorua CRI-2004-077-001667, 5 August 2005, of 2 years 3 months. Final sentence 4 years 9 months imprisonment.

R v Barlow HC Auckland CRI-2003-019-000001, 27 April 2007

Filed under:

R v Barlow

File number: CRI-2003-019-000001
Court: High Court, Auckland
Date: 27 April 2007
Judge: Keane J
Key title: Sentencing in the adult courts: Murder/manslaughter

Case Summary:

Barlow was convicted of murder after admitting to beating, together with a co-accused, a drinking companion in Hamilton in 2003. The victim sustained fractured ribs, a ruptured liver, and head injuries resulting in a brain haemorrhage. All parties were under the influence of alcohol and marijuana at the time of the incident.

Barlow had just turned 16 at the time of the offence. The Court cited *R v Rapira* [2003] 3 NZLR 794 (CA) which held that youth is a factor properly to be taken into account at sentencing, and '[w]here the offending is grave, the scope to take account of youth may be greatly circumscribed.'

Barlow did not ask for any less than the life sentence (Sentencing Act 2002, s 102), which was duly imposed by the Court. The Crown did not ask for any more than the minimum 10 year non-parole period, which was also accepted by the Court.

Decision:

Barlow to serve life imprisonment for murder, with a minimum non-parole period of 10 years.

R v C-W [2007] NZCA 216

Filed under:

R v C-W [2007] NZCA 216

Court of Appeal
File number: CA265/06
Date: 31 May 2007
Judge: Gendall, Chambers, Heath JJ
Key title: Sentencing in the adult courts: Serious assault (including GBH), Sentencing in the adult courts: Application of Youth Justice Principles

Decision: There are no exceptions to s18 of the Sentencing Act 2002. A sentence of imprisonment may not be imposed on a young offender who has committed a non-purely indictable charge.

Successful appeal against sentence following the appellant's guilty plea and sentencing in the District Court to 18 months imprisonment on a charge of assault with intent to injure. The appellant was 14 years old at the time of the offending.

Issues:

1. Whether the District Court had jurisdiction to impose imprisonment?
2. If not, what was the appropriate sentence?

Background Facts

During an altercation with the victim, the appellant kicked and punched the victim, leaving him unconscious outside his flat in the cold. The victim suffered severe brain damage.

The appellant denied the charge in the Youth Court (YC) and a preliminary hearing took place in the YC on 28 July 2005. At the preliminary hearing, the YC judge held that a prima facie case had been established.

Judge declined to offer YC jurisdiction for the purely indictable offence. In exercising his discretion not to offer YC jurisdiction, the Judge took into account the seriousness of the charge and the inability to transfer the appellant for sentence in the District Court (DC) (the appellant being under 15 years of age). The appellant was committed for trial in the High Court (HC). Subsequent orders were made by the HC under s 168A of the Summary Proceedings Act 1957 transferring the appellant's and the adult co-offender's trials to the DC. Before trial the Crown Solicitor filed an amended indictment containing one count of assault with intent to injure (not a purely indictable charge) to which the appellant plead guilty.

The majority decision, Chambers and Gendall JJ

District Court Jurisdiction

The DC Judge referred to s 18 of the Sentencing Act, but considered it was trumped by s 17 of the Sentencing Act. Section 17 reads '*Nothing in this Part limits the discretion of a court to impose a sentence of imprisonment …if that offender is unlikely to comply with any other sentence…'*

The Court of Appeal (CA) considered that s 17 of the Sentencing Act did not trump s18 of the Sentencing Act. The meaning of s17 of the Sentencing Act 2002 lay in its legislative history and its forerunner the Criminal Justice Act 1985.

The CA considered that it is absolutely clear that under s 8 of the Criminal Justice Act 1985, a youth under 16 years could not be imprisoned except for a purely indictable offence. Section 9 of the Criminal Justice Act 1985 was essentially reproduced in s 17 of the Sentencing Act. Section 9 of the Criminal Justice Act 1985 could only override ss 6 and 7(1), not s 8 of the Criminal Justice Act 1985. Section 9 read '*Nothing in section 6 or 7(1) of this Act shall limit the discretion of the court to impose a full-time custodial sentence…'*.

The CA considered the wording was changed to 'Nothing in this Part…' in s 17 of the Sentencing Act because the Criminal Justice Act was very sparse in setting out purposes and principles of sentencing.
Only ss 5,6, and 7 dealt with this topic. Section 9 was available to override ss 6 and 7's presumptions against imprisonment where the court was 'satisfied on reasonable grounds that the offender was unlikely to comply with any sentence other than imprisonment'.

The Sentencing Act was structured differently, where the presumptions of ss 5-7 of the Criminal Justice Act 1985 were replaced by a raft of considerations, setting out where

imprisonment would be appropriate.
It was no longer possible just to refer to two sections limiting the court's discretion to impose full-time custodial sentences.

The CA considered that when Parliament referred to 'nothing in this Part,' it was referring to '*so much of ss 7-16 as may point against a sentence of imprisonment'*.

Nothing in the legislative history of the Sentencing Act 2002 suggested that Parliament intended to reverse the dominance of s 8 of the Criminal Justice Act 1985 (now s18 of the Sentencing Act) over s 9 (now s17).

Indications to the contrary included that Parliament raised the age at which a person became eligible for imprisonment for purely indictable offences from 16 to 17. It would be unlikely that Parliament intended to then widen the net by rendering all young people eligible for imprisonment, including those who have committed only non-indictable offences.

Secondly, ss 8 and 9 of the Criminal Justice Act 1985 have been placed in reverse order in the Sentencing Act 2002. That suggested that Parliament was emphasising the limits on a court's discretion to impose imprisonment to which s17 of the Sentencing Act 2002 was referring were those limits found in the immediately preceding sections. Section18 of the Sentencing Act 2002 was dealing, not with limits on the courts' discretion to impose imprisonment, but a prohibition on imprisonment of young people, except for those committing purely indictable offences.

Held:

1. The charge to which the appellant pleaded guilty was not a 'purely indictable offence.' Imprisonment could only be imposed if s 17 trumped s18 of Sentencing Act 2002. The CA was satisfied that it did not. The DC had no jurisdiction to impose imprisonment on the appellant; therefore the sentence was quashed on jurisdictional grounds
2. The appellant was sentenced to 200 hours community work, 18 months supervision, with special conditions not to consume alcohol or use illicit drugs, not to associate with his co-offenders or the victim. The appellant was ordered to undertake an assessment for drug and alcohol counselling. The appellant was ordered to report to a probation officer within 72 hours of this judgment.

The following is a summary of the dissenting view of Heath J. Heath J agreed with the result, but took a different view on the interrelationship between ss 17 and 18 of the Sentencing Act 2002 Act 2002.

Heath J.

On the face of it the s18 (1) of the Sentencing Act 2002 prohibition on any court imposing a sentence of imprisonment on an offender under 17 at the time of the offence, is absolute.

However, Heath J considered that s 17 of the Sentencing Act qualifies the circumstances in which s 18 is engaged. Section 17 of the Sentencing Act has primacy over s 18 of the Sentencing Act. The opening words to s17 'nothing in this Part…' are plain and make s 18 subservient to s 17 of the Sentencing Act 2002.

Heath J considered it unlikely that Parliament intended to curtail completely a court's ability to sentence a young offender to imprisonment for a non-purely indictable offence. The ability to imprison arising from section 17 of the Sentencing Act is limited. The court must be satisfied that the offender would be unlikely to comply with a non-custodial sentence, and be satisfied that imprisonment is otherwise appropriate.

The reason for the application of the s 17 qualification is clear. Otherwise, a court would be required to sentence the offender to a non-custodial sentence even though it had reasonable grounds to believe the offender would not comply with its terms.

If the approach of the majority was correct, a young offender could refuse to comply with a non-custodial sentence in the knowledge he or she could not be imprisoned for breach. This would impact adversely on public confidence in the criminal justice system. Public safety issues will arise if violent offenders cannot be imprisoned. Police prosecutors might seek to charge more serious offences in cases where they have a genuine belief that imprisonment should be the appropriate sentence.

A YC may under s 283(o) of the CYPFA 1989, transfer a young person for sentence in the DC if that young person is 15 years or older. The DC has the ability to imprison, subject to s17.

The appellant's age was significant for assessing whether imprisonment was 'otherwise appropriate' for s17 purposes. It was a material pointer for a non-custodial sentence.

There were no reasonable grounds to believe the appellant was 'unlikely to comply' with a sentence of community work. Therefore there were no grounds to apply s17, with the consequence that a non-custodial sentence was required.

K v Police [2007] NZFLR 1029 (HC)

Filed under:

K v Police [2007] NZFLR 1029

Reported: [2007] DCR 770
File number: CRI-2007-454-000002
Court: High Court, Palmerston North
Date: 30 May 2007
Judge: Mallon J
Key title: Orders - type: Reparation - s 283(f), Appeal to High Court/Court of Appeal: Jurisdiction.

Note: this decision was appealed to, and overturned by, the Court of Appeal - see *Police v Z and X* [2008] NZCA 27

Decision: Reparation orders can only be made against the parents of an offender pursuant to s283(f) of the CYPFA where the parents are at fault.

Issue

The overriding considerations in the exercise of a discretion under s 283(f) of the CYPFA are whether it is appropriate to make a reparation order in respect of the offending and reasonable to order that it may be made against a parent?

Case Summary

Successful appeal by the appellants against an order for reparation for $10,000. The appellants are the parents of a young person, J. The order was made pursuant to s 283(f) of the Children Young Persons and their Families Act 1989 (CYPFA). Where the young person is under 16 years, that order may be made against the parent or guardian of the young person.

Facts:

J had a significant history of offending and difficulties beginning from his early school days. Significant steps were made to deal with J's difficulties. J was placed in Warkworth, from which he absconded and then offended, which led to his first remand and sentence to a Youth Justice Center in 2004. The Judge had described J, when in offending mode as 'cunning, manipulative and devious'.

The Youth Court Judge described the appellants' role in relation to J as 'long-suffering' and as having 'a continuing desire throughout to have J at home … providing moral and practical support …and had remained a family group to which J was strongly attached.'

On 8 August 2005 J was on bail, conditional on him residing at his parents house, a 24 hour curfew, and a condition that he present at the door if called on by police. The Youth Court Judge also stated that a further condition of bail was that J's parents supervise the curfew. That latter condition was not recorded on the notice of bail.

On 11 August the curfew was relaxed to a 10pm to 7am curfew. Following further offending it went back to 24 hour on 16 September 2005, unless accompanied by parents or approved persons.

Between 14 October and 10 November 2005, when subject to a 24 hour curfew, J committed burglaries, thefts and car conversions in various towns, including Levin. The offending in Levin was the subject of the reparation order. J burgled a farmhouse with another on 25 October 2005. The burglary took place at 5pm and involved approximately $80000 worth of property, including firearms, cash and alcohol.

J was sentenced to up to 3 months residence and 6 months to follow. A reparation order was sought by the owners of the Levin property against J. The Judge declined to grant the order against J, as he could not meet such an order.

The basis for the reparation order against the appellants was that J had been absent from his home on 25 October 2005 and the appellants had failed to advise Youth Aid or the Police. The Judge concluded the appellants should have been more proactive. The Judge took into account the amount of loss, and considered the most that could be ordered against the parents was one half of the loss. Taking into account their financial position and need to 'underline the seriousness…of good parenting and the standard required in certain circumstances', the Judge made the order for $10,000.

The Court considered the principles for making an order for reparation pursuant to s 283 of the CYPFA, and the factors to be considered under s 284 of the CYPFA. General guidance as the when it would be appropriate to make an order against the parents of a young person is found in ss 4,5, and 208 of the CYPFA. Orders for costs of prosecution, reparation and restitution may be imposed on a parent where the young person is under the age of 16 years.

The Court compared the principles of the CYPFA with the similar provision in England in s 137 of the Powers of Criminal Courts (Sentencing) Act 2000. In contrast the CYPFA, the English legislation applies to fines, but where the young person is under 16 the Court is required to order that the parent pay the fine, compensation or cost, unless the Court is satisfied the parent cannot be found or it would be 'unreasonable to make an order for payment, having regard to the circumstances of the case'. Cases have considered the steps taken by parents and local authorities to control the offender. In relation to parents, parental responsibility has been considered by asking whether the parents have done what they reasonably could be expected to do to keep the young person from offending.

The liability of parents generally is set put in the Care of Children Act 2004. There is no obligation under the provisions of the Care of Children Act 2004 or the common law for a parent to assume financial responsibility for the actions of their children. However, a parent may be liable when he or she has a duty to a third person to control a child and is negligent in the exercise of that control.

Reasoning

Where a young person is under 16 years the presumption is that the young person does not have the ability to pay. Whether it is reasonable to make an order against he parents depends in part on the parent's ability to pay. It will not be reasonable to order reparation against a parent in the absence of fault. Fault will be determined by what reasonably could be expected of the parents in the circumstances.

There must be a causative link between the parent's fault and the offending. This is consistent with the requirement that damage be caused 'through or by means of an offence', before reparation is ordered under the CYPFA or the Sentencing Act. It is also consistent with the s 4(g) and s 280(c) of the CYPFA principles that the relationship between the young person and his family should be maintained and strengthened. Reparation against the parents in the absence of fault risks interfering with strength and stability of the family and may hinder the ability of a family to deal with the offending.

Where the parents have done what reasonably can be expected of them, taking the approach of *Wilmot v Police* HC Dunedin AP25/96, 15 July 1996 , the parents actions or inactions must have been a material cause of the offending in respect of which reparation is to be ordered.

Held:

1. It would be inconsistent with other jurisdictions to impose reparation orders against parents when there is no parental fault. It would also be inconsistent with the philosophy of the CYPFA. Imposing a reparation order on parent's risks alienating them from the Youth Court process, especially where the offending has occurred through no fault of the parents.

2. The Judge erred in finding the parents at fault through their failure to notify the police of J's absence. They could not be at fault if it was not made clear to them that they were to actively contact the police if J was absent. It was not a condition of bail that they do so and they were aware the police would make regular checks. Even if they were at fault for not pro-actively contacting the police, the second error was in not determining whether a pro-active approach would have been likely to have prevented the offending.
3. There was nothing to suggest the police would have apprehended J before the burglary had the appellants alerted the police. The failure to notify the police was not a material cause of the loss suffered by the owners of the farm property
4. The reparation order was unduly punitive.
5. Appeal allowed.

Youth Aid v KBTMT, 16 May 2007, Youth Court, North Shore, CRI-2007-244-0009, Principal Youth Court Judge, Judge Becroft

Name: Youth Aid v KBTMT
Unreported:
File number: CRI-2007-244-0009
Court: Youth Court
Location: North Shore
Date: 16 May 2007
Judge: PYCJ, Judge Becroft
Charge: Burglary, taking of a motor vehicle, cheque book fraud
CYPFA: s288, s283(f)
Key title: Reparation

Note: This case was decided before the Court of Appeal decision, Police v Z, X, 26 February 2008, CA, O' Regan, Robertson and Ellen France JJ, CA400/07 CA504/07 [2008] NZCA 27

Case Summary:
Application for a reparation order by the Police against the K's parents, Mr and Mrs T. K was under 16 years of age at the time of the offending. K pleaded guilty to murder and faced a life imprisonment sentence. The offence was committed two days after a family group conference related to several property-related charges. From the FGC it was agreed that K would take responsibility for the reparation that arose from his offending.

Reparation:

1. $1286 owing to Ms S and Mr J as a result of burglary and unlawful taking of a motor vehicle.
2. $1270 to Mr and Mrs C in respect of three burglaries and cheque book fraud.

It was accepted that due to the murder charge, K could not realistically pay the amounts owing, therefore the Police sought a reparation order against K's parents.

Mrs T exercised her right under s288 of the CYPFA to be heard:

(a) Mr and Mrs T would rather not pay the reparation: they did not say they would not pay.
(b) They wanted the Police to put to the four victims of K's earlier offending exactly K's

plight, to see whether reparation was still sought, and if so whether that reparation was sought in full against the Ts, or whether some Court arrangement could be reached.
(c) Mrs T said that her husband, a self employed plasterer, had serious mental health issues arising out of this incident. Consequently, it was very difficult for him to work. Mrs T worked as a night shift worker in a plastic factory. They had a mortgage.

Judge Becroft stated that he would require details about the Ts financial position and confirmation as to the victims' positions. He indicated that if the victims wanted a reparation order, the principle should be that they get their money. A reparation order should be made unless 'absolutely impracticable.' The victims' interests should be properly looked after. While a reparation order might cause the Ts a little hardship, it could be paid off weekly or monthly.

Decision:
Hearing adjourned to 27 June 2007, as there was not enough information from either K's parents, the youth advocate or from the Police.

Police v Kennedy HC Wellington CRI-2007-485-000005, 15 May 2007

Filed under:

Police v Kennedy

File number: CRI-2007-485-000005
Court: High Court, Wellington
Date: 15 May 2007
Judge: Wild J
Key title: Sentencing in the adult courts – Serious assault (including GBH)

Case Summary:

Crown appeal against sentence of 350 hours community work and $2,400 reparation. K (16 yrs at time of offending) was part of group which chased and kicked victim.

Crown argued that sentencing judge in District Court erred in considering parity of sentencing between co-offenders as the determinative factor, not just one factor to be weighed with others, and that differences between co-offenders not adequately distinguished. Court held these criticisms were well made.

Crown also argued that District Court judge did not refer to *Taueki* sentencing bands, or fix a starting point for the sentence. Court agreed and referred to *R v Pakaru* HC Hamilton CRI-2006-070-000492, 29 September 2006.

Court decided it "neither necessary or appropriate" to resolve differences between *X v Police* (2005) 22 CRNZ 58 (HC) and *R v Patea-Glendinning* (2006) 22 CRNZ 959 (HC), but held that any application of the offender's youth as a factor in sentencing does not affect the applicability of *Taueki*, and can only be done after a starting point has first been fixed.

Decision:

Held offending was *Taueki* band 2 and deserved 2 – 2.5 years. But, given time since offending, part completion of community work sentence, reparation, anger management course, and cooking qualification, plus perfect compliance with supervision conditions, and taking *R v Donaldson* (1997) 14 PRNZ 537 at 550 into account, appeal dismissed.

Police v N, 4 May 2007, Youth Court, Lower Hutt, CRI-2006-232-000168, Judge A J Becroft

Filed under:

Name: Police v N
Unreported:
File number: CRI-2006-232-000168
Court: Youth Court
Location: Lower Hutt
Date: 4 May 2007
Judge: Judge A J Becroft
Charge: assault, theft
CYPFA:
Key title: victims, bail
Case Summary: Four charges of assault and theft where victim is legal guardian. FGC where "everyone was present" and reported back with a comprehensive plan. Question as to where N should live. Police and CYFS admit to having no where for him to go.

FGC recommend returning N to guardian. Guardian argued strongly in favour of return, despite being victim of offending. Police only party to argue against returning N to guardian. Guardian's adult son, a positive male role model for N, also to live in house.

Decision to return N to guardian, made 'only just'.

Police v PR YC Gisborne CRI-2007-216-000023, 21 May 2007

Filed under:

Police v PR

File number: CRI-2007-216-000023
Court: Youth Court, Gisborne
Date: 21 May 2007
Judge: Principal Youth Court Judge Becroft
Key title: Evidence (not including admissibility of statements to police/police questioning)

Issues:

1. Whether under s 235(b) of the Crimes Act 1961 the aggravating factor of the defendant 'being with another person' was proved beyond reasonable doubt.
2. Whether it could be said there was a ‘common purpose’ or ‘common intention’ to rob the victim.

Case Summary:

The defendant, P was offered and accepted Youth Court jurisdiction following a depositions hearing on a charge of robbery, a purely indictable charge. The complainant was walking home when P and another young woman, K confronted her. K told the complainant to hand over her cell phone and keys, which she refused to do. The defendant grabbed the complainant and held her arm while K punched her in the forehead. K grabbed the complainant’s bag. The defendant punched the complainant and ran off. P claimed she did not know what K was going to do, and she hit the complainant because she said she saw the complainant hit K with her bag

The complainant agreed she heard nothing between the defendant and K during the incident. The evidence of witnesses was preferred to that of the defendant as the Judge considered the defendant's evidence to be unreliable, untruthful and contradictory to that of the witnesses.

Decision

Holding the charge to be proved beyond reasonable doubt.

On the evidence heard, the only possible explanation was that P was intentionally participating with K in assisting with the bag being pulled off the complainant’s shoulder, with violence being used without justification and taking the bag.

The facts overwhelmingly supported one inference, that of an intentional participation in a common purpose.

R v Z HC Auckland CRI-2006-204-000487, 22 June 2007

Filed under:

R v Z

File number: CRI-2006-204-0487
Court: High Court, Auckland
Date: 22 June 2007
Judge: Baragwanath J
Key title: Admissibility of statement to police/police questioning: Explanation of rights, Rights

Case Summary:

Z gave video, and reconstruction interviews to Police, in the presence of his father, 2 days after an assault by three people on a victim who then died of injuries 2 days later. During these interviews, Z admitted involvement in the assault. Z was 14 years old at the time of the

offending. Z's mother also gave an interview to Police two weeks later, in which she said that Z admitted his involvement in the assault. Z referred to this admission to his mother in his interviews with Police.

Police applied for all three interviews to be admitted. Z opposed applications on the grounds that he was not told how to obtain legal advice by Police, and he did not appreciate the consequences of giving up the right to instruct a lawyer, because the Police did not inform him that the victim was likely to die from his injuries. Z consequently also opposed the admission of his mother's interview as 'poison fruit'.

Court recounted facts, including: that the Police informed Z on a number of occasions that he had a right to be accompanied in the interviews by a nominated person (Z chose his father), that he had the right to speak with a lawyer, that he had the right not to answer Police questions. Z admitted kicking the deceased in a video interview at the Police station, and later during a video interview at the scene of the assault.

Defence cited *R v Alo* CA155/06 3 May 2007 where the Court of Appeal held that the BORA, s 23(1)(b) right to be informed of the right to instruct a lawyer does not extend to advice about the means of doing that, or that a lawyer can be available at no cost. Defence submitted that this did not apply to young persons, and that young persons arrested or detained also needed to have a true appreciation of the consequences of giving up the right to instruct a lawyer.

Court discussed CYPFA, ss 208, 215 and 224 and *Alo*, and concluded obiter that a young person must be informed of the means of getting practical access to legal advice so that the decision to waive it is truly autonomous. Despite this, Justice Baragwanath avoided basing his final decision on this point and commented that it would be better decided in the Court of Appeal.

Court discussed *R v Shaheed* [2002] 2 NZLR 377 in relation to the mothers interview, and held that her interview was too far removed from her son's for it to be fruit of a poisonous tree.

Court finally looked at whether Z had a true appreciation of the consequences of giving up his right to consult a lawyer, given the seriousness of the offence. Baragwanath J referred to *R v Warhaft* HC Auckland CRI-2006-057-1581, 7 June 2007, which discussed a number of authorities, and formulated a test for a 14 year old facing a potential murder charge in the absence of a clear explanation by an arresting authority.

Decision:

Z's 2 video interviews with Police are inadmissable because there was not enough evidence to hold that Z truly appreciated the consequences of waiving the right to consult a lawyer.

Z's mother's interview was admissible.

Police v R 8 June 2007, Youth Court, Lower Hutt, CRI-2006-232-000163, Judge John Walker

Filed under:

Name: Police v R
Unreported
File number: CRI-2006-232-000163
Court: Youth Court
Location: Lower Hutt
Date: 8 June 2007
Judge: Judge John Walker
Charge: sexual violation by unlawful sexual connection
CYPFA:
Key title: Consent
Case Summary:
R aged 14 at time of offending. Two representative charges, and one specific charge of unlawful sexual connection with 8 yr old playmate.

Crown failed to prove that offending relating to representative charges happened after the R turned 14. R admitted specific charge.

Considered R v Cox in the CA re informed consent. Victim admitted mutuality, agreement, and reciprocation. Judge said that, given victim's age, it was "inarguable" that victim could have consented.

As to whether evidence showed that R did not have reasonable grounds for his belief that the victim had consented, Court referred to *L v R* [2006] NZSR 18, and *R v Clark* [1992] 1 NZLR 147, which held that the adequacy of the grounds for a belief in consent must be judged objectively. *Clark* also noted that previous legislative provision had been recently replaced with this new test. Court also referred to *R v P* [1993] 10 CRNZ 250 which held that mental impairment was irrelevant to assessing belief on reasonable grounds. Judge attracted to argument based on relevance of age of criminal responsibility.

Judge concluded that victim's age meant that R had no reasonable grounds to believe that victim consented.

Decision:
Specific sexual violation charge proved. Representative ch

Police v RR , 18 June 2007, Youth Court, Tauranga, CRI-2007-070-000037, Judge Harding

Filed under:

Name: Police v RR
Unreported
File number: CRI-2007-070-000037
Court: Youth Court
Location: Tauranga
Date: 18 June 2007
Judge: Judge Harding

Charge: Burglary
CYPFA: s214
Key title: Arrest without warrant

Case Summary:
RR, a YP (16) faced two charges of burglary.
RR was arrested without warrant following the arrival of a Police Constable at the scene of the burglary. On the evidence it was clear RR was involved in the burglary. Evidence was given against RR by his co-offenders who had all pleaded guilty and had been dealt with.
The Police Constable gave evidence that he had arrested RR to remove him and to avoid the destruction of evidence at the scene.
Counsel for RR submitted that there was no basis for the arrest, that there was no invitation to accompany and the arrest was fictional and improper, and therefore the information was improper and should be dismissed.

Decision:
Finding the charges proved beyond reasonable doubt against RR.
By the time the Police arrived at the scene, some but not all property had been returned. As nobody had left the property, it was reasonable to assume and conclude that evidence relating to the offence was still there, therefore the Constable's desire to protect the scene was justifiable.
While it would have been better to ask RR to accompany, the arrest was not a fiction and the charges were proved beyond reasonable doubt.
RR was remanded on the present terms of bail.
Directions for a FGC.

R v Te Moana-Takau HC Rotorua CRI-2006-287-000083, 13 June 2007

Filed under:

R v Te Moana-Takau

File number: CRI-2006-287-000083
Court: High Court, Rotorua
Date: 13 June 2007
Judge: Harrison J
Key title: Sentencing in the adult courts: Murder/manslaughter

Summary

Sentencing. Manslaughter.

J (15 years old at the time of the offence) pleaded guilty to killing his 17 year old brother after both had been drinking for most of the day. J stabbed his brother once in the chest with a steak knife.

Court referred to *R v Reweti* HC Auckland CRI-2005-92-014652, 6 September 2006, and *R v Erstich* CA93/02, 6 June 2002. Commented on the difficulty of finding a comparable case.

Aggravating factors included lethal weapon, aimed knife at chest region. Unusual features warranted substantial reduction in starting point: no intention to kill - the attack was essentially an assault with no planned consequences, no premeditation, the level of intoxication was such that J lost all self control and responsibility, lack of parental control over drinking. Starting point of four years imprisonment.

Mitigating factors included: earliest possible guilty plea, remorse, sorrow, willingness to accept responsibility, age ('I am satisfied that a 15 year old boy does not have anywhere near a properly developed sense of responsibility'), involved in petty crime since the age of 7, early parental neglect, care and protection issues, dysfunctional family environment. Discount of two years.

Decision

Two years imprisonment with special release conditions.

Police v JAF, 20 June 2007, Youth Court, Nelson, CRI 2006-242-118, Judge Zohrab

Name: Police v JAF, KCH
Unreported
File number: CRI-2006-242-118
Court: Youth Court
Location: Nelson
Date: 20 June 2007
Judge: Judge Zohrab
Charge: Arson, Burglary

Key title: Joint offenders

Case Summary:
Two YP JAF and KCH and co accused, C an adult, (17) were charged with arson, a purely indictable charge and burglary, the latter being laid summarily with a trial elected on that mater by both JAF and KCH. C lit fires in a residential property accompanied by JAF and KCH. A depositions hearing was conducted on 30 January 2007 and a prima facie case was established. Both YP elected not to plead guilty and where offered and elected to remain in the YC. C was dealt with in the trial jurisdiction.
Consideration of s66(1) of the Crimes Act 1961 in terms of ‘aiding’ and ‘abetting’. The young person need not know the precise details of the crime to be carried out, but must know the essential facts of what is going to happen.
Evidence was heard from MJD, a young person who went with JAF and KCH to the address where the fires were lit. The Judge considered MJD’s account of the involvement of JAF and KCH to be accurate and true.

Decision
Arson Charge: The arson charges against JAK and KCH under s276(1)(b) and s66(1) of the Crimes Act 1961 were found proven.
Burglary: Burglary charges pursuant to s231(1)(a) and s66(1) of the Crimes Act 1961 against KCH and JAF were dismissed as those charges could not be substantiated.

Police v S HC Auckland CIV-2007-404-002372, 11 July 2007

Filed under:

Police v S

File number: CIV-2007-404-002372
Court: High Court, Auckland
Date: 11 July 2007
Judge: Harrison J
Key title: Care and protection cross over (s 280): Family Group Conferences/Care and Protection (s 261), Jurisdiction of the Youth Court: Age.

Case Summary:

Successful appeal by appellant against a decision of a Family Court Judge dismissing an application by Police that S be declared a child in need of care and protection under s14(1)(e) CYPFA, for want of jurisdiction.

Original application to place S under the care and protection of the CYPFA was filed in the Family Court when S was 14. S had previously been accepted into a SAFE programme for young sex offenders following allegations of indecent assaults that occurred before he turned 14.

Decision:

The Court held that the Family Court did have jurisdiction to hear the application because S was under 14 at the time of the alleged offending.

The Court also held, in contrast, that there is no limitation on proceedings (the application) being filed or disposed of, except that disposition must be prompt, and no more than 60 days from filing (s 70 of the CYPFA). Harrison J commented that, if the Family Court was correct, no court would have jurisdiction over a child under the age of 14 who had committed qualifying offences, if an application under s14 was not filed until after his 14th birthday.

The Court noted that s 2(2) of the CYPFA was amended to reinforce this conclusion following the dissent of Gault J in *Police v Edge* (1992) 9 FRNZ 659 (CA) in which argued that the age of the date of the offence is determinative of whether the alleged offender be dealt with as a child or a young person.

Decision:

Appeal allowed.

New Zealand Police v EH (5 July 2007, Youth, Whakatane, CRI 2007-287-22 Judge Rollo

Filed under:

Name: Police v EH
Unreported:
File number: CRI-2006-291-207
Court: Youth Court
Location: Whakatane
Date: 5 July 2007
Judge: Judge Rollo
Charge: Assault, Demanding with menace
CYPFA: s322
Key title: Delay
Case Summary:
Unsuccessful application by the defendant, EH, a young person aged 16 years and three months at the time of the alleged offences to dismiss the charges pursuant to s322 of CYPFA due to undue delay.

Facts:
EH was charged with aggravated robbery, together with RM. The victims were three boys, SN, DD and MD. The complainant in the present case was DD. RM was dealt with on the lesser charge of robbery. A charge of aggravated robbery against EH was withdrawn on 15 June 2007. The current charges were laid on 9 March 2007. A further charge was laid on 25 May 2007 that "together with RM, EH had robbed SN of a skateboard." That charge was withdrawn on the same day. On 15 June 2007 an assault charge was laid and withdrawn against EH. Counsel for EH submitted that the circumstances had brought about personal prejudice to EH as he has had to live with a charge of aggravated robbery hanging over his head from December 2006 to 15 June 2007.

The aggravated robbery charge, first laid on 21 December 2006, was remanded by a Community Magistrate to 10 January 2007. On that day EH's bail conditions were varied and the matter was further remanded without plea until 26 January 2007. EH was remanded to 9 Febnuary 2007. On 9 February 2007 the matter was remanded to 23 February 2007, EH's presence excused, as there were ongoing discussions between the Police and the Youth Advocate which required more time to resolve. On 23 February the presiding judge remanded until 9 March 2007, noting the discrepancy between the admission by RM to robbery that day, and the continuation by the Police of the aggravated robbery charge against EH. On 9 March 2007 the current two charges were laid and all three charges were then remanded on bail to 23 March 2007. On March 23 2007 the aggravated a robbery charge was denied. EH's bail was varied and he was remanded to 25 May 2007.

The fixture for 23 or 25 March was vacated due to no Courtroom and no Judge. The case was recalled on 25 May 2007 when the charge of robbery was laid and withdrawn. On 15 June 2007 the aggravated robbery charge was withdrawn. On the night before the 15 June hearing the Police told a defence witness that he was stood down and counsel for the defendant was not informed of this until the time of the proposed hearing. That hearing was aborted due to lack of time.

HELD:
1. While there was some apprehension regarding the matter, that apprehension was not to such an extent to exercise discretion under s322 CYPFA to dismiss the informations.

2. Part of the delay was due to the Christmas period and also by the request by counsel for EH and the Police to discuss issues in the case.
3. This had not been an unnecessarily, or unduly protracted case, and the delays had not adversely affected EH's right to a fair hearing because of the presumed prejudice
4. Application declined.

New Zealand Police v WBC (10 July 2007, Youth Court, Rotorua, CRI-2007-263-102) [Judge Geoghegan]

Filed under:

Name: Police v WBC
Unreported: unreported
File number: CRI-2007-263-102
Location: Rotorua
Date: 10 July 2007
Judge: Judge JP Geoghegan
Charge: Possession of an offensive weapon with intention to commit bodily injury, threatening to kill
CYPFA: s333 s238(1)(d), s239(1)(a) to (c) s101
Key title: Custody, Remand,
Case Summary:
Reconsideration of a decision pursuant to s238(1)(d) to remand WC, a young person. WC had entered a non-denial to the charges on 12 June 2007, and at the time had been remanded under s238(1)(d) of the CYPFA.

Following a letter dated 5 July from Dr John Newman, the clinical leader of Kids First Centre for Youth Health the Judge had concerns regarding WC's fitness to plead. As a result Geoghegan J had directed a s333 report to address that issue and WC was remanded until 7 August pursuant to s238(1)(d).

WC's social work supervision report had expressed concerns around resources in relation to 24 hour monitoring for WC. Counsel for WC submitted that the Judge reconsider in terms of s238(1)(d) and that there was no real basis for WC being remanded under s238(1)(d), and that the Chief Executive needed to take control pursuant to s101.

At the time of the alleged offence WC had been in care and supervision on a 24 hour basis and the incident occurred as a result of WC being assaulted.

Decision:
HELD:
1. Care and protection considerations should be put aside and the limitations imposed by s239 should be considered.
2. Section s238(1)(d) remands cannot be made unless the Court can be satisfied that WC is likely to abscond
s239(1)(a), or is likely to commit further offences s239(1)(b), or there is a danger of destruction of evidence or interference with witnesses s239(1)(c). As there was no evidence that any of those situations would occur, a s238(1)(d) remand was not justified.

3. WC was remanded at large to 7 August 2007 at 10:30 am with the same direction for a s333 report.

Police v Kiripatea, 3 July 2007, High Court, Auckland, CRI-2007-204-00081, Justice Andrews

Filed under:

Name: Police v Kiripatea
Unreported
File number: CRI-2007-204-00081
Court: High Court
Location: Auckland
Date: 3 July 2007
Judge: Justice Andrews
Charge: wounding with intent to cause GBH
CYPFA: s208
Key title: sentencing
Case Summary:
Sentencing. K was acting as a bouncer for a party. Victim arrived in a taxi. K confronted victim and stabbed him 3 times in the abdomen. K attempted to kick the victim after he had fallen but was restrained. At the time of the offence, K was in breach of other bail conditions, and this attack was the third in a series with escalating violence.

Appeared first in the Youth Court. Convicted and transferred under CYPFA s283(o).

Court considered CYPFA and Sentencing Act principle that K's youth was a significant, and "a particularly important factor". Guided by Taueki found that K's actions came within 2nd band (5 to 10 yrs imprisonment) due to seriousness of injuries and use of a knife. In determining starting point, Court referred to recent cases: *R v Pritchard* HC AK 8 August 2005, Potter J, *R v EGO* DC WAN 15 May 2006, Judge Callinicos, *R v Kara* HC CHCH 18 October 2006, Panckhurst J, *R v Uili* CA CA148/06 26 October 2006.

Starting point 5.5 years. Personal factors considered: on bail for robbery, considerable time drinking, positive change in family and employment circumstances since first appearance on this charge, assessed at low risk of re-offending, self referral to alcohol counselling centre, support of whanau. Other factors taken into account were: early guilty plea, acknowledgement of seriousness of offending, agreeing to and acting on future goals. K has made "a real commitment to breaking the mould".

Decision 50% reduction from starting point of 5.5 years for youth, early guilty plea, chances of rehabilitation, remorse. Sentenced to 2 yrs 9 mths.

P v Police, 23 August 2007, High Court, Wellington, CRI 2007-478- 48, Mallon J

Filed under:

Name: P v New Zealand Police
Unreported
File number: CRI 2007-478-48
Court: High Court
Location: Wellington
Date: 23 August 2007
Judge: Mallon J
Charge: Aggravated Robbery
CYPFA: s208, S283(o)
Key title: Sentencing in the Adult Courts, Youth Justice Principles

Case Summary:
Unsuccessful appeal against sentence. P, a YP (16 at time of offending) pleaded guilty to a charge of aggravated robbery. On this charge and a number of lesser charges he was sentenced in the DC to 3 years imprisonment.
YC jurisdiction was originally offered and accepted by P under s276 of the CYPFA. The charge was "not denied" and he was remanded to the YC for orders following a FGC.
A decision to transfer to the DC for sentencing was conceded due to the seriousness of the charge, P's record and because his age precluded him from high-end YC orders.
DC Sentencing
In sentencing the DC Judge took a starting point as four years imprisonment for the aggravated robbery charge. From this she reduced the sentence by 18 months for P's age, his guilty plea and his "to a limited extent' remorse. The sentence was uplifted 6 months for aggravating factors, which were that P had committed most of the offences while he was subject to sentences, his previous convictions and the previous orders that had been made in the YC.
Three years imprisonment was imposed on the aggravated robbery charge, concurrent with three months imprisonment on the other charge and the appellant was discharged from driving for six months.

CYPFA Principles
There is conflicting HC authority regarding whether the DC, following transfer, is a Court exercising a power under s238(o) of the CYPF Act. If so, it should be guided by the principles in s208 of the CYPF Act. Otherwise the DC's sentence or decision is exercised solely by reference to the principles in the Sentencing Act 2002. In *X v Police* [2005] 22 CRNZ 58 Courtenay and Heath JJ held that youth justice principles should be taken into account. In *R v Patea-Glendenning* [2006] DCR 505 Miller J declined to follow X and held that, once proceedings were transferred to the DC, youth justice principles did not apply.

Effect of Applying YJ Principles
Counsel for P submitted that *R v Mako* [2000] 2 NZLR 170 is not relevant to sentencing a YP as that case refers to youth, but not 'youth justice principles'. *Mako* is authority for the principle that determining a starting point is universal regardless of age, and youth should then be treated as a mitigating factor to be given greater weight than normal.
Counsel for the respondent submitted that *Mako* is relevant to sentencing on all aggravated robbery offending despite the five year jurisdictional limit on the DC.

Discount
The DC Judge gave a discount of 37% for the guilty plea, youth and remorse. A discount of 25% is common for a guilty plea and the remorse, leaving a 12% discount for youth.

Uplift
Counsel for the appellant submitted that is was wrong to uplift the sentence for aggravating features and that the DC convictions were not relevant because they post-dated the aggravated robbery.
It was also submitted for the appellant that the Judge erred in referring to P's YC record as this amounted to a double counting. She said it had already been taken into account when the decision was made to transfer P to the DC.
ISSUES
1. Whether as a matter of law the DC was required to take into account the principles of the CYPF Act when sentencing the appellant.
2. Whether the principles of the CYPFA if applied would lead to a lesser term of imprisonment.
3. The effect of the Judge wrongly referring to privileged material from the family group conference under the CYPFA.
4. Whether too much weight was placed on other convictions and the appellant's YC record.

Decision
Dismissing the appeal. The sentence gave an appropriate discount for mitigating factors, including youth and the effective term of the sentence on all the charges before the DC was not excessive.
1. The outcome would not be different whether the *X v Polic*e or *Patea-Glendenning* approach was applied.
Mallon J considered that the assessment of culpability was not to be assessed as though the five year jurisdictional limit was the maximum penalty for the most serious kind of aggravated robbery. If the offending was so serious that it warranted a sentence greater than five years that might be relevant in determining whether YC jurisdiction should be offered. The ability to offer YC jurisdiction to an offender reflects that youth is relevant for the reasons set out in *Patea-Glendenning*: the development level of adolescents may make their culpability lower and may cause them to suffer more from incarceration than adults.
That does not make *Mako* irrelevant to the assessment of the appropriate starting point where a term of imprisonment is to be imposed. Youth will be a relevant consideration as recognised by *Mako. Mako* is also not inconsistent with youth justice principles that the sanction 'takes the least restrictive form that is appropriate in the circumstances'. The Sentencing Act 2002 has a similar provision.

2. No greater discount than 12% for youth was warranted in this case. The appellant was not a first offender nor one genuinely motivated to reform. The 37% discount was not inadequate. A focus on the youth justice principles of rehabilitation would not have made a difference as under the Sentencing Act 2002 the Court was required to consider rehabilitation, and here rehabilitation prospects are not good in the short term.

3 Mallon J did not see the privileged report. In light of the admissible material, a sentence of three years imprisonment was appropriate.

3. The DC convictions were relevant because they were the 10 convictions that were before the Judge for sentencing. The DC judge looked at the totality of the offending and considered 3 years appropriate. Those 10 matters related to offending when the appellant was 17 years old and therefore the restriction on imprisonment for offenders under 17 (s18 Sentencing Act 2002) no longer applied. Each of the offences were subject to maximum penalties of between three months and seven years and the Judge could have imposed cumulative sentences

totalling six months rather than treating this offending as an aggravating feature of the aggravated robbery.
Mallon J found that it was not necessary to decide whether and when a YC record would warrant an uplift on an imposition of a sentence to be imposed in the YC. There were 10 other charges before the Court. Cumulative sentences totalling a further six months on a two and a half year sentence was warranted. That would have had the same net result for the appellant.

Police v K (leave to appeal) HC Wellington CRI-2007-454-000002, 2 August 2007

Filed under:

Police v MK and TO

File number: CRI-2007-454-000002
Court: High Court, Wellington
Date: 2 August 2007
Judge: Mallon J
Key title: Orders - type: Reparation - s 283(f), Appeals to High Court/Court of Appeal: Jurisdiction.

Case Summary:

Successful application by the Police for leave to appeal against a decision of the HC to quash a reparation order made against the parents of a young offender pursuant to s 283(f) of the Children Young Persons and Their Families Act 1989. The order was quashed on the grounds that there was no fault on the part of the parents. It was further held that it would not be reasonable to order reparation in the absence of a causative link between the parent's fault and the offending.

Leave to appeal was sought on the question of whether Mallon J was wrong to find that a reparation order could only be made against a parent under s 283(1)(f) of the CYPFA if the parent was at fault and there is a causative link between the parent's fault and the child's offending.

Counsel for the Police submitted that the decision was wrong on the following grounds:

a. The statutory wording of s 283(1)(f) confers a wide discretion expressly limited only by whether any loss has been suffered through or by means of the offence.
b. Fault and causation, while relevant considerations, should not be elevated to pre-conditions limiting the discretion of youth court judges.
c. Under the CYPFA family are an integral part of ensuring young people take responsibility for their actions and reparation orders against parents are consistent with that.

Counsel for the respondents submitted that the decision supported the philosophy of the CYPFA and that to adopt the position of the Police would alienate the parents of difficult children away from the process.

Decision:

Granting leave to appeal.

The Judge agreed that the formulated question was a question of law and that the question raised was one of general or public importance. The decision is currently the only higher court guidance on whether s 283(1)(f) of the CYPFA is available to those involved in the youth offending process. There is general importance in determining the correct approach to the exercise of the discretion under s 283(1)(f).

Queen v Stephen Thomas Hudson [2007] NZCA 363

Filed under:

Queen v Stephen Thomas Hudson [2007] NZCA 363

Court of Appeal
File number: CA431/06
Date: 27 August 2007
Judge: O'Regan, Harrison, Heath JJ
Key title: Jointly Charged with Adult (s 277)

Section 274 of the CYPFA should be given primacy of over s277 of the CYPFA.
An interpretation of ss272- 277 of the CPYFA, which reads s277 as being "subject to s274" is justified.

Whether the DC had jurisdiction to conduct the adult's trial.
Whether an extension of time for the appeal would be allowed.

Case Summary:

Unsuccessful appeal against conviction following trial in the DC. The appellant, Mr H was aged 31 at the time of the offence and was jointly charged with S, a 16 year old girl. The charge was laid in the YC.

Depositions hearing was in the YC. The JP's conducting the depositions neglected to make a s 275 decision for S, the YP. A YC Judge remitted S back to JP's for a s 275 decision. S was offered and accepted YC jurisdiction and was remanded for a hearing in the YC. The charges were dismissed against S after a defended hearing.

Mr H was committed for trial to the HC after the establishment of a prima facie case. Mr H was tried in the DC and, having been middle banded to that Court from the HC, and was found guilty, convicted and sentenced to 6 years imprisonment.

Counsel for the Mr H submitted that where there is a joint charge of an adult and a YP, for a purely indictable offence, if a YP is offered YC jurisdiction, so must the adult. Then the adult's charge would be determined in the YC also, so that there would be no jury trial for the adult.
Mr H argued there are effectively two regimes and that where adults are charged with YP, there is a quite separate process allowing the adult to be dealt with along with the YP in the YC. Counsel for the Mr H argued the process followed in the appellant's case was flawed,

such that the DC did not have jurisdiction and the jury trial was a nullity. He submitted that the appeal should be allowed and a retrial should be ordered in the YC.

Crown submissions were that if applied literally s 277 would conflict with s 272(4) of the CYPFA and would curtail the procedural protections of ss 275 and 276 and would prevent adults being tried by a jury if charged indictably and would also remove the ability of adults to elect trial by jury (under s 66 of the Summary Proceedings Act 1957) if jointly charged summarily with a YP. It would provide an incentive to commit offences with children as s 277(2) provides that the adult would be subject only to DC summary penalties.

Decision

The time for appealing extended, but appeal dismissed. The decision was essentially a contest about the primacy of 2 provisions:- s 274,- where a YP is charged with a purely indictable offence, or trial by jury is elected; and, s 277, which on its face governs all cases where a YP is charged with an adult.

1. Given the compelling policy reasons, s 274 should be given primacy over s 277 of the CYPFA. Given the protective mechanisms in the CYPFA of ss 275and 276 which operate only when the s 274 process is followed, the CA did not consider that the s 274 process could be bypassed where a YP was charged jointly with an adult.
2. It is customary process to conduct a single depositions hearing for parties charged with a summary offence. Section 277(5) clearly contemplates that an adult may be tried in the YC if jointly charged with a YP for a summary offence and there is no reason why a similar regime should not apply to preliminary hearings. There is no disadvantage to the adult, as s 274 imports all the requirements of Part 5 of the Summary Proceedings Act 1957.
3. Section 274 governs the process to be followed for depositions hearings (for YP and adult) where a YP and adult are charged with a purely indictable offence, or where the YP (purely indictable offence) has elected trial by jury.
4. The CA's reading requires that the words "subject to s 274" to be read into s 277.
5. The conduct of the appellant's case was in accordance with the requirements of s 272 and the trial Court had jurisdiction to conduct the appellant's trial.

Practical Effect of Decision

Depositions hearings involving YP and adults for purely indictable offences or where the YP has elected trial by jury will be heard together in the YC. If a prima facie case is established, the adult must thereafter be dealt with in the adult Court and will be committed for trial in the adult Court, but the YP can be dealt with thereafter in the YC. In the case of a jury trial, convenience and the need to avoid two trials would usually result in the YP being committed to trial in the adult Court as well, with YC jurisdiction not offered under s 275.

R v LF YC Waitakere CRI-2005-004-014541, 17 August 2007

Filed under:

R v LF

File number: CRI-2005-004-014541
Court: Youth Court, Waitakere
Date: 17 August 2007
Judge: Judge P Recordon
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH), Jurisdiction of the Youth Court: Age.

Case Summary:

LF (15 1/2 yrs at the time of the offence) charged with two others after fight outside school ball after-party. LF and victim from rival schools, and associated with (but not part of) rival gangs. LF challenged victim to fist fight, which proceeded until victim was hit over the head by another offender with a piece of wood. LF kicked victim in the head as he lay on the ground after being hit with the wood. A bystander broke up the fight but victim was left close to death, and suffers from ongoing problems.

LF first appeared in Youth Court on 21 July 2005. Preliminary hearing in the Youth Court established a case to answer. Adult co-offenders then committed to High Court. LF offered Youth Court jurisdiction based on LF's clean record, his age, and CYPFA youth justice principles.

Delays in proceeding with defended hearing. Defended hearing held 12 months after first appearance (July 2006), with Court finding that charge was appropriate given evidence that LF could have caused brain injury by kicking.

Family Group Conferences held September 2006. No decisions or recommendations made. Victim's family forgave LF and invited LF and family around for a meal. Social worker report eventually prepared December 2006. Report recommended supervision order with detailed conditions. Court asked counsel for submissions relating to extending Youth Court jurisdiction until LF was 19 yrs old. Court also asked CYF for further comprehensive plan involving LF's school. Hearing in June 2007 to consider plan.

Meanwhile Crown counsel questioning delays, and lack of orders. Suggested Court was preparing a backdoor to a s 282 discharge, and conducting an "experiment", "so inconsistent with what was required by law that the case would raise issues of credibility that could compromise the situation" . LF's counsel advocating extended plan which would lead to s283 discharge.

Court considered s 283(o) conviction and transfer to District Court. Cited *S v Police* [2000] NZFLR 380 per Potter J; *W v Registrar of the Youth Court (Tokoroa)* [1999] NZFLR 1000, and s 284 factors. Judge acknowledged likelihood of appeals, and commented that appeal court would need to consider differences between Justice Harrison in *Police v Moala* HC Auckland CRI-2006-404-000389, 2 March 2007 per Harrison J, and Heath and Courtney JJ in *X v Police* (2005) 22 CRNZ 58 in relation to sentencing of youth offenders in the adult courts.

Court also highlighted CYPFA age-related principles and cited *W & Ors v Registrar of the Youth Court (Tokoroa)* [1999] FRNZ 433 in the CA, before canvassing recent s 283(o) cases.

Decision

Decision adjourned. LF to participate in detailed social work plan until age 19. Conviction and transfer not appropriate due to high likelihood of rehabilitation plus good family and victim support. Seriousness of offence noted. By the time he is 19, LF will have been subject to plan terms the equivalent of home detention for 3 1/2 years.

Court acknowledged that LF would prefer prison, and may not be the perfect candidate for Youth Court rehabilitation, due to minor bail breaches and attitude towards schooling. Also acknowledged that success of plan relies on the social worker. Judge promised to monitor LF's progress every two months, and transfer LF to District Court "if LF goes off the rails".

Police v JR YC Tauranga CRI-2007-270-000111, 27 August 2007

Filed under:

Police v JR

File number: CRI-2007-270-000111
Court: Youth Court, Tauranga
Date: 27 August 2007
Judge: Judge Harding
Key title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Other.

Summary:

JR 17 at time of sentence. Burglary x 6, plus burglary as an adult (dealt with in District Court). Previous Youth Court orders of supervision and supervision with residence. Court satisfied that JR would be sentenced to imprisonment if appearing in Court as an adult. No other alternatives.

Decision:

Convicted and transferred to DC for sentence.

NZ Police v SBC, 14 August 2007, Youth Court, Blenheim, Judge Whitehead, CRI 2007-218-00008

Name: NZ Police v SBC
Unreported
File number: CRI 2007-218-00008
Court: Youth Court
Location: Blenheim
Date: 14 August 2007
Judge: Judge Whitehead
Charge: Burglary, indecent act with intent to assault, unlawful possession of a firearm, disorderly behaviour, unlawful taking of a motor vehicle, theft
CYPFA: s283(c)
Key title: Sentence, FGC-Care and Protection

Case Summary:
SBC admitted all charges at a FGC and confirmed his admission in Court. Care and Protection and Youth Justice FGCs were held.
SBC was fit to stand trial in terms of sanity, but it was determined from psychiatric and psychological reports written in respect of him that he suffered from paranoid psychosis. This would require ongoing treatment and SBC's illness fulfilled the criteria in the Mental Health Act for mental disorder.
The Youth Justice FGC required the Court to approve the FGC plan for SBC to come up before the Court if called upon within a period, pursuant to s283(c) of the CYPFA. The Care and Protection FGC required the Family Court to make an order under s102 of the CYPFA for Interim Custody for six months, the goal being for SBC to return to his family with appropriate support in place. The family said it would work with CYFS to explore options to meet the young person's needs. The Judge was concerned that the needs were not well defined. The Lawyer to assist the Court had made an application under s8 of the Mental Health (Compulsory Assessment and Treatment) Act for SBC to be compulsorily treated for his mental health disorder. The Judge was concerned about the varying diagnosis for two different consultants and that SBC might fall "through the cracks".

Decision:
Charges proved by admission at Youth Justice FGC. YJ plan accepted and order made for SBC to come up for further action if called upon within 12 months.
SBC to remain in custody

Police v RTP DC Dargaville CRI-2007-288-000073, CRI-2007-211-000009, 15 August 2007

Filed under:

Police v RTP

File number: CRI-2007-288-000073, CRI-2007-211-000009
Court: District Court, Dargaville
Date: 15 August 2007
Judge: Judge Becroft
Key title: Adjournment, Jurisdiction of the Youth Court - s 276 offer/election

Case Summary:

R (14 years old) had indicated a desire to plead guilty. Family Group Conference (FGC) unable to agree whether YC jurisdiction should be offered under s 276 CYPFA, or be remanded to District Court (DC) for sentence.

Court outlined reasons for its decision:

R under influence of alcohol at a party. Previous violence between R and victim. Punching occurred at party, after which R left. R returned to party with steel spike sharpened at both ends. Victim stabbed through ear with spike, nearly entering the brain; A sentence of up to two years imprisonment would ordinarily be available; First violent Youth Court (YC) offence. A history of family violence; A report to the Court indicates a number of

psychological risk factors, but all can be overcome with help; Enormous family support; Encouraging attitude in court.

Youth Court options canvassed, but Police submit that R needs longer supervision than top end YC sentences. YC jurisdiction not right. Yet imprisonment not right either.

Comment that law reform needed to prevent injustice that arises because 14 year olds cannot be convicted and transferred to the DC, but, if not able to be offered YC jurisdiction, can only be dealt with (more harshly than 15-16 years olds, who are able to be convicted and transferred) in the High Court.

Decision:

Decision on offering YC jurisdiction adjourned. FGC ordered to formulate plan based on psychological report. Plan to be monitored (possibly monthly) for up to 18 months.

Police v MLV , 13 August 2007, Youth Court, Blenheim, CRI-2007-206-000050, Judge Whitehead

Filed under:

Name: Police v MLV
Unreported
File number: CRI-2007-206-000050
Court: Youth Court
Location: Blenheim
Date: 13 August 2007
Judge: Judge Whitehead
Charge: Burglary
CYPFA: s238(1)(e)
Key title: Custody; Custody-CYPF; Custody- Police

Case Summary:
MLV, a YP aged 14 while on bail and strict curfew and bail conditions following 4 other charges, was charged with a further burglary. He had breached his curfew or association with co-offenders on twelve occasions. MLV had no explanation for the breaches.

Decision:
Remanding MLV in Police custody under s238(1)(e) until 14 August 2007. As the YP would be likely to continue to offend and breach his bail, and there was no Youth Justice bed available, the Judge was satisfied that the conditions

Police v CDA, 28 August 2007, Youth Court, Blenheim CRI 2007-206-000027, Judge DC McKegg

Name: Police v CDA
Unreported:
File number: CRI 2007-206-000027
Court: Youth Court

Location: Blenheim
Date: 28 August 2007
Judge: Judge DC McKegg
Charge: Burglary, Possession of an offensive weapon
CYPFA: s283(n)
Key title: Supervision with residence, Youth Court Orders, sentencing

Notes on Sentencing

Case Summary:
Re-sentencing of CDA on a supervision order and a community work order. At the FGC no agreement could be reached as there were no identifiable community-based sanctions possible. Had CDA been an adult the repetitive type of offending and failure to comply with community-based sanctions, he would have been sent to prison.

Decision:
Supervision with residence ordered due to the seriousness of the offending. This would mean 3 months in a residence, followed by 6 months supervision.
The Judge warned CDA that he would be under 'a double microscope' and he only had until March 2008 before he would be subject to the adult courts. This was his 'last shot'.

Police v WNB 28 August, Youth Court, Blenheim, CRI 2007-206- 000024, Judge DC McKegg

Police v WNB 28 August, Youth Court, Blenheim, CRI 2007-206- 000024, Judge DC McKegg

Name: Police v WNB
Unreported:
File number: CRI 2007-206- 000024
Court: Youth Court
Location: Blenheim
Date: 28 August
Judge: Judge DC McKegg
Charge: Sexual violation, attempted sexual violation
CYPFA: s283(n)
Key title: supervision with residence

Case Summary:
WBN (15 at time of offending) was sentenced to supervision with residence on charges of sexual violation and attempted sexual violation.
Psychological reports recommended that WBN be sentenced to supervision with residence. If WBN was an adult a sentence of approximately 8 years would have been appropriate.

Decision:
Taking into account the requirements under the CYPFA, supervision with residence was ordered.
The Judge commented that WBN was lucky to have the support of his whanau, and stressed that he hoped WBN would take advantage of the help that was being offered to him over the next year.

Police v LM 7 August 2007 Youth Court Gisborne CRI 2007-263-41 Judge JP Geoghegan

Filed under:

Name: Police v LM
Unreported
File number: CRI 2007-263-41
Court: Youth Court
Location: Gisborne
Date: 7 August 2007
Judge: Judge JP Geoghegan
Charge: Grievous Bodily Harm
CYPFA: s333, s238(1)(d)
Key title: Insanity, Remand
Case Summary:
The defendant, LM faced one charge of wounding with intent to cause grievous bodily harm, a purely indictable charge.
It was uncontested and accepted that at the time of the offence the YP was insane. The provisions of the Criminal Procedure (Mentally Impaired Persons) Act 2003 clearly contemplate the YC having jurisdiction. Once the defence of insanity is raised pursuant to s20 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, that the Judge must record a finding of 'not guilty' on account of insanity.
As a prerequisite to a recording of a finding of not guilty, when the charge is purely indictable, YC jurisdiction was offered and accepted.
1. Whether the Judge was required to conduct a hearing to establish on the balance of probabilities whether or not the defendant caused the act or omission that formed the basis of the charge.
2. Whether there is jurisdiction to remand LM under s238(1)(d) of the CYPFA.

Decision: Finding LM not guilty on account of insanity.
1. Section 9 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 requires a hearing to take place where the issue is the fitness of the defendant to stand trial. Section 9 does not refer to a finding of insanity and accordingly the Act does not require the Court to be satisfied on the balance of probabilities that the evidence is sufficient to establish that LM was responsible for the acts.
There was no dispute that LM was responsible for the assault.

2. As LM was the subject of a compulsory treatment order, requiring him to be an in patient, s23 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 required that where a person is acquitted on account of insanity, the Court must order that enquiries be made to determine the most suitable method of dealing with him under ss23,24. The jurisdiction issue under s238(1)(d) was solved by recording the remand of LM to hospital pursuant to s23(20(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

The Queen v Z, [2007] NZCA 401, 10 September 2007, Court of Appeal, Wellington, Robertson, Wild, Fogarty JJ

Filed under:

Name: The Queen v Z
Reported
File number: [2007] NZCA 401, CA 318/07
Court: Court of Appeal
Location:
Date: 10 September 2007
Judge: Robertson, Wild, Fogarty JJ
Charge: Assault
CYPFA: s215(1)(f) , s208, s224
Key title: Admissibility evidence

Case Summary:
Successful appeal by the Crown against part of a HC pre-trial ruling regarding the admissibility of both a video statement of the respondent to the police and a reconstruction interview with the police. The HC Judge held that the video statement and the interview were inadmissible as the Crown had not shown that '*Z comprehended the real substance of the likely allegations against him at the point of either the initial interview or the reenactment*'.

Facts
Z (14) with a group of young males attacked and assaulted the victim. The victim was knocked to the ground and kicked while unconscious. It was alleged Z kicked the victim's head with a 'soccer style kick'. The victim died four days later.
The police went to Z's house to speak to Z. Z was advised of his rights and told that he could have a lawyer present and was asked if he understood what this was. He chose to have his father accompany him as a nominated person.
Once at the police station Z had his rights explained to him and the interview proceeded in a procedurally correct manner. Z was interviewed at the police station over several hours. Initially Z denied having kicked the victim, but eventually admitted it and was arrested and given his rights. The father left the police station.
His rights were again explained following the return of Z's father. Z made further incriminatory comments.
At no time was a lawyer present.

Legislation
Statutory provisions considered: s23 of the Bill of Rights Act 1990, s208 of the CYPFA 1989, s215 of the CYPFA 1989 and s224.

HC Decision
Whether Z had a true appreciation of the consequences of giving up his right to legal advice? Noting the treatment of another suspect in this case, where that adult was informed that the victim might die and that the adult should be aware of the how serious the situation was, the HC Judge concluded:

"… in the case of a 14 year old the Crown must surmount two hurdles… first that the accused would appreciate the likelihood of death…the second is that his contribution to the attack could find him facing a murder charge…that conclusion would require some understanding of causation and perhaps of the law of parties. In the absence of a clear warning from the officer I am not satisfied that such a state of mind can be attributed to a 14 year old ".

CA
Regarding the issue of whether Z had a true appreciation of the consequences of giving up his right to legal advice, the standard test was described by the CA in R v Robinson CA16/97 12 May 1997:

"…an allegedly voluntary waiver of an accused's right to counsel must be properly informed: that is, an accused must be possessed of sufficient information to enable him or her to make an informed decision as to whether to speak to a lawyer…it follows that a suspect must know the real substance of the allegations against him or her at the point of the interview…"

The Crown submitted that an interchange between Z and his father in the absence of the police in the video interview had material significance. Z and his father referred to the possibility that the victim might die and that Z might be sent to prison for murder.
The defence submitted it was not established that Z or his father understood that Z was being interviewed as a murder suspect, if the victim was to die, as he was not aware of the extent of his son's involvement.

Decision: Granting the appeal
The CA could not accept that it could be concluded that Z did not know the real substance and seriousness of the allegations against him. Z knew the victim might die and said so during the video interview. Z knew the victim's condition was a result of the beating by Z and the co-accused.
The proper inference was that Z knew he was being questioned as a party to a potential homicide.
It would have been better if the police officer had been completely forthright in informing Z of the seriousness of the situation, but the question is whether Z knew enough to make an informed decision.
The CA held that Z had the requisite knowledge.
In terms of the CYPFA there was proper compliance with the statutory code.
Order that the interview and evidence of the reconstruction are admissible at trial.

Police v Shane Hughes DC Napier CRI-2007-220-000015, 6 September 2007

Filed under:

Police v Shane Hughes

File number: CRI-2007-220-15
Court: District Court, Napier
Date: 6 September 2007
Judge: Mackintosh J
Key title: Sentencing in the adult courts: Sexual violation by rape

Case Summary:

SH, a YP aged 16 years faced sentencing on charges of sexual violation by rape (purely indictable), aggravated wounding, threatening to kill and escaping from custody.

On 22 January the complainant became lost while walking to work in Hastings in the evening. She asked assistance from SH who was on his bike. SH insisted on showing her where to go and asked her to walk towards a park. As she was walking through the park SH grabbed her form behind, dragged her behind trees and strangled her on four occasions until she was unconscious. SH violently raped the complainant and threatened to kill her if she did not settle down.

SH told the police that he had pushed her down but could not remember whether he had had sexual intercourse with her. The complainant suffered physical injuries to her back, lost her job, has flashbacks and has been suicidal.

SH was taken into CYPS care in January as he had been for many years. He had a dysfunctional childhood, having been the victim of psychological, emotional and physical abuse. He had a history of truancy and misconduct at school. SH had not provided an explanation for his conduct, nor shown any remorse or empathy for the complainant.

Aggravating features identified were that the rape involved physical violence, the threat to kill, that he raped her while she was totally unconscious, and that there was an element of premeditation. Also aggravating was that the victim was vulnerable.

Mitigating factors were the guilty plea, SH's young age and his dysfunctional background.

A starting point of 12 years imprisonment would be warranted for an adult.

Decision:

Giving maximum credit for the guilty plea of one third, an allowance for youth and SH's background a sentence of six and a half years was imposed. On the aggravated wounding four years, threatening to kill nine months and escaping from custody nine months. All concurrent.

Police v TH and ID YC Tauranga CRI-2007-270-000125, 31 August 2007

Filed under:

Police v TH and ID

File number: CRI-2007-270-000125
Court: Youth Court, Tauranga
Date: 31 August 2007
Judge: Judge Ingram
Charge: Attempted murder
CYPFA: s 275, s 283(o)
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated burglary, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other, Jurisdiction of the Youth Court: Charge type. Jurisdiction of the Youth Court: s 275 offer/election

Note:

This decision was judicially reviewed in the High Court, see *D v Youth Court at Tauranga* HC Tauranga CRI-2007-470-000767, 3 October 2007 per Baragwanath J.

Case Summary:

Issues

1. Whether to offer Youth Court jurisdiction under s 275 of the CYPFA?
2. Whether or not s 238(o) precludes the transfer to the District Court (DC) of proceedings where the young person was under 15 at the time of the commission of the offence, but 15 years or more at the time of depositions in the Youth Court (YC)?

ID faced charges of attempted murder, aggravated burglary and three charges of using a firearm against a Police Officer. TH faced a charge of attempted murder. The attempted murder charges were in respect of a Police officer, who was at the time carrying out his duty. Following depositions the Judge was satisfied there was a case to answer.

The allegation against ID and TH was that they had used a firearm to dissuade the Police from continuing with a vehicular pursuit and from arresting them. At the time of the offending both TH and ID were 14 or just turned 15 years of age (now 15).

The Judge was unable to accept the view of Thorburn J in *Police v H* [2004] DCR 97 that s 283(o) allows an offender who is 14 at the time of the offence, but 15 or older at the time of Court hearing, to be transferred to the DC for sentence.

Decision:

Declining to offer YC jurisdiction

The reference to age 15 years in s 283(o) of the CYPFA is referring to a youth who committed an offence at the age of 15 and that offenders under the age of 15 on the date of the commission of the offence cannot be transferred to the DC for sentencing from the YC - if YC jurisdiction was to be offered.

Given the seriousness of the attempted murder charge and that it would be difficult to find a more serious scenario than this case, a sentencing Judge might conclude that the provisions of the Sentencing Act 2002 requiring the imposition of the maximum penalty must come into play. It follows that the range of sentencing options available in the YC are inadequate to deal with these offences.

Given the jurisdictional bar to sending TH and ID to the DC for sentencing, it would be inappropriate to make an initial offer of YC jurisdiction. The charges are of such seriousness that no forum other than the High Court could be appropriate.

Police v PM CRI-2007-263-208 Tauranga Geoghegan J

Filed under:

Name: Police v PM
Unreported
File number: CRI-2007-263-208
Court: Youth Court
Location: Tauranga
Date: 4 September 2007
Judge: Geoghegan J
Charge: Wounding with intent to cause GBH
CYPFA: s238(1) (d)
Key title: Bail

Case Summary:
PM appeared on a total of nine charges, four regarding incidents in July and August 2007 and five from an alleged assault on 1 September 2007. It was alleged that PM and three others assaulted the complainants outside their Rotorua home. The younger complainant received a four centimetre gash to his scalp and his father was admitted to hospital with a depressed fracture to his skull.
The alleged assault was unprovoked, and arising from that incident P faces two charges of wounding with intent to cause GBH (purely indictable), and one charge of being found without reasonable excuse in an enclosed yard, and one charge of threatening to kill a police constable, and one charge of escaping from custody.
The police notice of opposition to bail referred to a witness who identified P as being involved in the assault.
In respect of two of the earlier charges P was bailed and then appeared again in the YC in respect of two new charges, possession of cannabis and unlawful taking of a motor vehicle.
P already had a recorded breach of bail conditions, including a breach of a non-association clause, a breach of a condition not to consume alcohol and a breach of a 24 hour curfew.

Decision: Declining bail
Recent history would suggest that PM will not only breach his bail conditions, but would also continue to offend while on bail.
Bail declined and PM was remanded under s238(1)(d) to 18 September so a date could be set for depositions.

NZ Police v A K, 24 September 2007, District Court, Auckland, Judge Fitzgerald, CRI 2007-204-000438

Filed under:

Name: NZ Police v AK
Unreported
File number: CRI 2007-204-000438
Court: District Court
Location: Auckland
Date: 24 September 2007
Judge: Judge Fitzgerald
Charge: Sexual violation, indecent assault
CYPFA: s283(e) Rating: 4
Key title: Social Work plan, discharge Rating: 3

Case Summary:
At a FGC on 16 July 2007, AK admitted one charge of sexual violation, one representative charge of sexual violation by unlawful sexual connection, two charges of detaining the victim- one with intent to have sexual intercourse and one with intent to have unlawful sexual connection, a representative charge of indecent assault and a representative charge of threatening to do GBH and two representative charges of doing an indecent act.
The offending occurred when AK was aged between 14 and 17 years of age. The victim was AK's niece who was between 7 and 10 years of age during that period.
On 19 July 2007 AK was offered and accepted YC jurisdiction.
The Court was asked to approve the updated social work plan and regularly monitor it by reviews throughout its duration. The plan included participation in a SAFE programme that AK was undertaking. The programme would last for 18-24 months and would therefore run well beyond the period of YC jurisdiction as AK was already 17 years of age. This course of action was approved by all concerned.
The Court said that, if AK complies with the plan, he could expect to be discharged under s283(a) of the CYPFA. If he does not comply he most likely would face conviction and transfer to the DC for sentencing and likely imprisonment.

Decision:
Approving the social work plan. Having regard to the objects and principles of the CYPFA,- ss4,5 and 208 and the factors when sentencing under s284 the Judge approved the social work plan.
The matter was adjourned until 8 October for the initial review, which would include a review of AK's involvement in the SAFE programme

Police v MR, 4 September 2007, Youth Court, Rotorua, CRI-2007-263-109, Judge Geoghegan

Filed under:

Name: Police v MR
Unreported
File number: CRI-2007-263-109
Court: Youth Court
Location: Rotorua
Date: 4 September 2007
Judge: Geoghegan J
Charge: Possession of an offensive weapon
CYPFA: s280(1)(b)
Key title: Adjournment pending outcome of referral to Care and Protection Coordinator

Case Summary:
MR, a YP (15) appeared in respect of one charge of possession of an offensive weapon in circumstances showing intention to use that weapon.
The Judge had previously directed a social worker's report, which addressed an ongoing issue (two years) of MR's non-attendance at school. The report refers to the fact that a previous social worker had discussed MR's situation with the Ministry of Education with a result that MR was considered under the NETT scheme and the case had been closed as irresolvable. It was unclear what "irresolvable" meant.

Decision:
Given concerns regarding MR's education the Judge considered that MR was in need of care and protection.
The matter was referred to a care and protection coordinator pursuant to s280 of the CYPFA and the proceedings adjourned in accordance with s280(1)(b) of the CYPFA until 27 November 2007.
Pending the outcome of that reference, a social worker's report is to be filed advising of the outcome.
Comment: the Judge commented that would be entirely appropriate that M be discharged under s283 and it would be likely that course will be adopted in November.

Police v LM, 4 September 2007, Youth Court, Rotorua, CRI-2007-263-41, 41, Judge Geoghegan

Filed under:

Name: Police v LM
Unreported
File number: CRI-2007-263-41
Court: Youth Court
Location: Rotorua
Date: 4 September 2007
Judge: Geoghegan J
Charge: Wounding with intent to cause GBH,
CYPFA:
Key title: Insanity, Reports – medical, Bail

Case Summary:
Bail notes. LM was found not guilty to a charge of wounding with intent to cause GBH on account of insanity.
The Judge directed an enquiry to determine the most suitable means of dealing with LM pursuant to ss24, 25 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
A doctor's report concluded a diagnosis of paranoid schizophrenia (currently in remission) and a recommendation that LM receive treatment at the Henry Bennett Centre under s25(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 as a patient subject to a compulsory treatment order or pursuant to s24(1)(a) as a special patient. The orders are considerably different, the latter directing that LM be detained indefinitely as a special patient.
The report was "utterly devoid" of any helpful information. The report did not address LM's needs as to the best alternatives for him, taking into account the nature of his illness, his current treatment, his response to that treatment, his age and the availability of support for him in the community.

Whether it was necessary in the interests of the public and LM to have LM detained for an indefinite period?

Decision
Directions for a further report to address the issues referred to.
Recommendation that L's social worker engage with the Doctor to ensure that all possible

alternatives for LM's return to the community be considered.
LM was remanded under s23(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 to 16 October 2007.

Police v JAW, 11 September 2007, Youth Court, Blenheim, CRI-2007-206-000056 Judge P Whitehead

Name: Police v JAW
Unreported
File number: CRI-2007-206-000056
Court: Youth Court
Location: Blenheim
Date: 11 September 2007
Judge: Judge P Whitehead
Charge: Burglary
CYPFA: s283(k)
Key title: Supervision

Sentencing notes

JAW, a young person was sentenced to supervision of the Chief executive for a period of four months (with conditions). He had been before the Youth Court for several burglaries and also had a number on bail breaches.

Judge Whitehead commented that JAW was his 'own worst enemy' as he cut himself off from members of his whanau who had been trying to do their best for him. His Honour further warned JAW that he needed to make the most of the opportunity being offered to him as prison would be the next step.

New Zealand Police v CAL , 2 October 2007, Youth Court, Whangarei, CRI 2007-255-000077 Judge Harvey

Name: Police v CAL
Unreported:
File number: CRI 2007-255-000077
Court: Youth Court
Location: Whangarei
Date: 2 October 2007
Judge: Judge Harvey
Charge:
CYPFA: s238(1)(d), s239
Key title: Remand

Case Summary:
Successful application by the Police that CAL be detained in the custody of the Chief Executive under s238(1)(d) of the CYPFA. Consideration of s239 that the Court may not make an order under s238(1)(d) unless it appears that the YP is likely to abscond. Previous placements of C in YJ facilities had broken down due to C's behaviour, the most recent being on 10 September when C a warrant was issued for C's arrest.

Decision:
Making an order pursuant to s238(1)(d) of the CYPFA. A suitable bed was available for C in a Youth Justice residence. The Judge considered that any other arrangements that made for C would result in C absconding.
Order that a family group conference be convened within 7 days.

D v Youth Court at Tauranga HC Tauranga CRI-2007-470-000767, 3 October 2007

Filed under:

D v Youth Court at Tauranga

File number: CRI-2007-470-000767
Court: High Court, Tauranga
Date: 3 October 2007
Judge: Baragwanath J
Charge: Attempted murder, aggravated burglary, using a firearm against Police
CYPFA: ss2(2), 283(o), 275
Key title: Appeal to High Court/Court of Appeal: Jurisdiction, Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Other, Jurisdiction of the Youth Court - s 275 offer/election.

Case Summary:

Unsuccessful application for judicial review. D challenged Youth Court decision not to offer Youth Court jurisdiction under s 275 of the CYPFA.

Discussion:

D was aged 14 at the time of the offence, but had turned 15 by the time of the YC hearing. He was charged with 5 purely indictable offences, including attempted murder of a Police officer. After depositions in Youth Court, parties agreed there was a case to answer. The Youth Court Judge declined to follow authority in *Police v H* [2004] DCR 97, and declined to offer D the chance to forego the right to trial by jury and stay in the Youth Court, which would have given the Court the opportunity to convict and transfer D to the District Court for sentencing under s 283(o)of the CYPFA. D was sent to the High Court for trial.

D argued that as he was 15 at the time of the proceedings s 283(o) would apply if Youth Court jurisdiction was to be offered under s 275. A Youth Court Judge could have then convicted and transferred D to the District Court. The Attorney-General argued that s 283(o) should be read in the light of s 2(2) which states that 'age' means age 'at the date of the alleged offence' for the purposes of jurisdiction and proceedings taken.

The combination of these two provisions means that 14 year olds charged with the most serious offences must be tried and sentenced in the High Court, where they are subject to adult sentencing rules, whereas 15 year olds in the same circumstances can be convicted and transferred to the District Court, where sentences of imprisonment are limited to 5 years.

Baragwanath J compared the age limit under the CYPFA (16 years old) for making parents and guardians liable for reparation and other costs with the age limit for conviction and transfer, and held that standard principles of statutory interpretation meant that both should be interpreted in the same way. He considered that the age limit as applied to parental reparation is illogical, but needed to be strictly interpreted in order not to make s 2(2) meaningless. He described the 'fit' between s 2(2) and s 283(o) as 'uncomfortable', but unavoidable, given that the High Court has no power to fix inconsistencies in legislation, in the same way as it does in contract.

The Court upheld the Youth Court Judge's reasoning declining to offer Youth Court jurisdiction: the seriousness of the offences would require close to the maximum penalty, which would be unavailable in the Youth Court and the District Court (given the jurisdictional bar to sending 14 year olds to the District Court).

Decision:

Application dismissed.

Police v D F, 17 October 2007, Youth Court, Palmerston North, Judge GM Ross, CRI 2007-254-092

Filed under:

Name: YP v YC at Upper Hutt & Attorney-General
Unreported:
Name: Police v D F
Unreported
File number: CRI 2007-254-092
Court: Youth Court
Location: Palmerston North
Date: 17 October 2007
Judge: Judge GM Ross
Charge: Grievous bodily harm
CYPFA: s214(2) **Rating:** 2
Key title: Arrest without warrant **Rating**: 2

Summary Application to determine the validity of the arrest some days after offence. Discussion of s214(2) CYPF Act 1989 - where charge is purely indictable, police must believe on reasonable grounds that arrest is required in the public interest.

Police knew nothing of DF prior to arrest, no history of bail breaches, or failure to turn up at court. DF cooperated with search warrant, and voluntarily attended police station. Police wished to proscribe on-going behaviour by the imposition of police bail conditions after arrest. Discussion of the seriousness of the offending – charge laid was purely indictable. The public interest was clearly addressed by police. Night-time assaults by alcohol-fuelled young people of major concern to police and public.

Decision Arrest was lawful. Application to dismiss charge is declined.

Police v W YC Manukau CRI-2007-292-000285, 5 October 2007

Filed under:

Police v W

File number: CRI-2007-292-000285
Court: Youth Court, Manukau
Date: 5 October 2007
Judge: Judge Malosi
Key title: Care and Protection Crossover (s 280): Family Group Conferences/Care and Protection (s 61): Criminal Procedure (Mentally Impaired Persons) Act 2003: Disposition if unfit

Case Summary:

W (15 years old) is mentally impaired, and was subject to a s 101 CYPFA custody order due to the number, nature, and magnitude of his offending. W was also subject to a secure care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. The Court reviewed the ID(CCR)A order.

Judge Malosi considered the option to make an order under s 25(1)(b) and s 27 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, which would mean the local community care organisation would have responsibility for W's day to day care, but W would be housed in a CYF secure facility. The Judge described the process to enable this option as a 'minefield'. Judge Malosi also considered the option to revert W back to the CYPFA s 101 order which would place him under the full care and control of CYF, and W would be housed at the local CYF secure youth facility. The Judge expressed her doubts that CYF was able to provide the same level of security as a youth justice residence, given W's propensity for absconding. She also endorsed the willingness of the local community care organisation to be involved in W's care while he was under the protection of CYF.

Judge Malosi criticised the lack of secure care facilities for mentally impaired young offenders, and described the centres set up under the ID (CCR) Act as 'manifestly unsuitable for the detention of young people', and young offenders such as W as 'marginalised'.

Decision:

The Court decided to release W into the care of CYF, who must complete a plan that could last, initially, for up to 2 years, with a further 2 years available under a CYPFA s 110(2)(a) or (b) order. The Judge said she would be hard pressed to make such an order under the CP (MIP) Act. Proceedings in the Youth Court for unlawful taking and reckless driving were stayed.

R v Police , 30 October 2007, High Court, Tauranga, Williams J, CRI 2007 470 000027

Filed under:

Name: R v Police
Unreported
File number: CRI 2007 470 000027
Court: High Court
Location: Tauranga
Date: 30 October 2007
Judge: Williams J
Charge: Burglary
CYPFA: s214, s245
Key title: arrest

Case Summary: Unsuccessful appeal against charges proven in YC.

Two charges of burglary were proven in YC in June 2007. Burglaries were committed at an adjacent property in February 2007 by R and associates who had been "involved in a lengthy party". Police were called by neighbours, although by the time the arresting officer arrived at the house, any disturbance had ceased. R was arrested, but, before arresting him, the constable made no request of R to accompany the constable to the police station to assist with enquiries. Constable gave evidence that arrest was made to get R out of the house to prevent further destruction of evidence, and to protect the scene.

Appellant argued that Police reasons for arresting R were a fiction. Court held that reasons written in constable's notebook and given in evidence mirrored requirements in s214 CYPFA. Ground of appeal rejected.

Appellant further argued that a requirement to first ask young person to accompany police officer to a police station should be implied in CYPFA, to satisfy restrictions on arrest of young people in s214. Court rejected this argument also.

R v T [2007] NZCA 550

Filed under:

R v T [2007] NZCA 550

Court of Appeal
File number: CA521/07
Date: 29 November 2007
Judge: Wilson, Chisholm, Potter JJ
Key title: Sentencing in the adult courts: Sexual violation by rape, Sentencing in the adult courts: Sexual violation by unlawful sexual connection.

Case Summary:

T, 16 years old at the time of the offending, plead guilty to rape and sexual violation, and was sentenced in the District Court to six and a half years imprisonment. T was 20 by the time he was sentenced. The Solicitor General appeals the sentence.

Victim was 14. She had run away from home, and been drinking beer with T and co-offenders. Victim was sexually violated by one of the group, digitally penetrated by two others, raped and orally violated by a co-offender, and sexually violated and raped by T in the presence of the group.

Court of Appeal endorsed *R v Tawha* CA396/02, 26 February 2003 as the proper way to read *R v A* [1994] 2 NZLR 129 (CA) which fixes the starting point for rape at 8 years. Court of Appeal accepted Crown argument that sentencing judge made a larger than appropriate reduction (two and a half years) for T's guilty plea, especially given that T only pled guilty after the victim had given her evidence and been cross examined by two of the three defence counsel.

Court of Appeal held that 2 years should be added to starting point for aggravating circumstances, 1 year discounted for T's age, and a further 10% discount for the guilty plea.

Decision:

Sentence increased to 8 years imprisonment.

Police v J , 12 November 2007, Youth Court, Tauranga, Judge Rollo, CRI 2007-270-238

Filed under:

Name: Police v J
Unreported
File number: CRI 2007-270-238
Court: Youth Court
Location: Tauranga
Date: 12 November 2007
Judge: Judge Rollo
Charge: intentional damage, unlawful taking, theft, damaging a Police vehicle, driving with excess breath alcohol, failing to stop, reckless driving, driving whilst forbidden
CYPFA:
Key title: Bail

Case Summary:
Bail hearing for young person, who, while summonsed to appear on charges of intentionally damaging a window valued at $1,472.00, unlawfully taking a BMX bicycle valued at $400.00 and theft of three bottles of Jim Beam Bourbon valued at $117.00, was arrested and charged with theft of $40.00 of cigarettes, intentionally damaging a Police vehicle, driving with excess breath alcohol with a level of 506, failing to stop for flashing red and blue lights, reckless driving, and driving whilst forbidden.

J has appeared in Youth Court previously, including 11 offences for possession of cannabis, burglary, injuring with intent, unlawfully taking, theft, wilful damage etc.

J has been staying with grandparents, who admit that they have no control over J's actions. J's grandparents willing to accept J back on bail with conditions. J has no history of breaching previous bail conditions.

Decision:
Bail to grandparents granted on conditions. File marked "final warning".

New Zealand Police v RR, 20 November 2007, Youth Court, Christchurch, CRI- 2007-009-000884, Judge JJD Strettel

Name: Police v RR
Unreported:
File number: CRI- 2007-009-000884
Court: Youth Court
Location: Christchurch
Date: 20 November 2007
Judge: Judge JDD Strettell
Charge: Burglary, theft, dishonestly taking
CYPFA: s283(n)
Key title: Sentencing, Supervision with residence

Case Summary:
RR (16 years and 6 months of age) faced a number of serious charges including burglary, thefts, dishonestly taking, car conversion and driving whilst forbidden.
RR had previously been sentenced to 2 terms of supervision with residence.

Decision:
Sentencing RR to supervision with residence for 3 months to be followed by supervision for 3 months in terms of the plan prepared and dated 20 November 2007.
The Judge warned RR that if there was a next time, it would be likely that he would be transferred to the DC for sentencing, or if already 17 he would be in the DC and would go straight to prison

Police v W FC Manukau FAM-2005-092-002310, 3 December 2007

Filed under:

Police v W

File number: FAM 2005-092-002310
Court: Family Court, Manukau
Date: 3 December 2007
Judge: Judge Adams
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: disposition if unfit, Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261)

Following on from the judgment of Judge Malosi on 5 October 2007 in this matter, this judgment examined the issue of which organisation, the Regional Intellectual Disability Care Agency (RIDCA), or Child Youth and Family (CYF), should take responsibility for the care of W.

W has an intellectual disability and has been found unfit to stand trial on three previous occasions. He is a persistent offender, and absconder from care or custody placements. The Court said '[when] he absconds the community is placed at risk'.

A psychologist recommended that W be placed in secure care as he is at high risk of absconding and reoffending. CYF argued for a plan that would eventually lead to W no longer needing secure care, but the Judge noted that no agency has yet been able to deliver such a plan.

The Court noted that Judge Malosi reviewed the case again a month after the delivering her judgment of 5 October 2007, at which time she commented that W was due to be placed in the CYF secure care and protection unit for 6 months from 20 November 2007.

RIDCA informed the Court that it no longer consents to a support order being made against it, and the Court recognised that it cannot make such an order without the consent of the agency under s 91(2)(c) of the CYPFA 1989. RIDCA, however, did promise to provide a full range of support services to W, should he be placed at the CYF secure facility in question.

Counsel for CYF criticised RIDCA for not providing a secure facility for young people such as W. The CYF proposal, previously before the Court, and in support of the judgment by Judge Malosi of 5 October 2007, proposed a 6 month placement at the CYF care and protection unit, after which, W would be 'transitioned home' and provided with further education assistance.

Counsel for CYF changed this offer in submissions in this proceeding. They opposed the cancellation of the CP(MIP)A order, proposed that RIDCA should take all responsibility for W, and backed away from a commitment to house W in their secure youth facility if the CP(MIP)A order was cancelled. CYF do accept that the current s 238(1)(d) CYPFA order, under which W was remanded into the custody of CYF by the Youth Court, trumps the Compulsory Care order.

The Court held that it had no jurisdiction to order either RIDCA or CYF to be W's lead care provider. It supported Judge Malosi's call for a specialist secure facility for mentally impaired youth.

Decision:

Court directs that CYF stand by the plan it filed in response to the judgment of Judge Malosi on 5 October 2007. The Court identified CYF as being better resourced to coordinate and deliver services that W needs, but also relied on RIDCA to stand by its promises of support for W. Section 101 CYPFA order continued. Section 86 and 91 CYPFA orders discharged. Review of orders in 3 months. Section 84 ID(CCR)A order cancelled. Matter to be called in the Youth Court to deal with the s 25 CP(MIP)A order, and stay proceedings against W on his most recent charges.

R v Chankau [2007] NZCA 587

Filed under:

R v Chankau [2007] NZCA 587

Court of Appeal
File number: CA265/07
Date: 19 December 2007
Judge: Hammond, John Hansen, Miller JJ
Key title: Sentencing in the adult courts: Serious assault (including GBH)

Case Summary

C (15 years old at the time of the offence) appeals against conviction for GBH with intent to cause GBH, and sentence of seven years in prison.

C hit 51 year old woman with kilikiti bat causing serious head injuries. Attack occurred in the midst of a fight between members of woman's family and C and associates, who had earlier been involved in fighting with members of Crips gang.

Court of Appeal dismissed criticism of trial judge's summing up.

In passing sentence, trial judge mentioned aggravating factors including the serious injury, the use of a bat, and the vulnerability of the victim. Also mentioned as aggravating was C's conduct after the attack (laughing) and during the trial.

In mitigation, C had no previous convictions, and strong family and church support. The trial judge adopted a starting point of 10 years imprisonment.

The Court of Appeal acknowledged age as a mitigating factor, and recognised that a lengthy sentence of imprisonment could be crushing to a young person. The Court also said age alone does not often justify substantial discounts in violent cases, and cited a number of decisions.

Decision:

Appeals against conviction and sentence dismissed.

Ministry of Social Development v BM, 13 November 2007, Youth Court, Christchurch, CRI 2007-209-000823, Judge Walsh

Name: Unreported: Ministry of Social Development v BM
File number: CRI 2007-209-000823
Court: Youth Court
Location: Christchurch
Date: 13 November 2007
Judge: Judge Walsh
Charge:

CYPFA: s371
Key title: Sentencing, secure care

Case Summary:

Successful application for renewal of secure care by the informant, the Ministry of Social Development (MSD) in respect of BM (17 years of age).

Decision:
Application granted with the further condition that BM be permitted to accompany staff members from time to time in order to access the recreation facilities.
There were compelling reasons to grant the application for renewal of approval for BM's continued detention in secure care, namely that BM was struggling to handle the residential environment, and that there were several risk factors for BM and others due to the complexity of BM's needs and lack of understanding.

R v Moala and Others HC Auckland CRI-2006-092-000461, CRI-2007-404-000028, 12 December 2007

Filed under:

R v Moala and Others

File number: CRI-2006-092-000461, CRI-2007-404-000028
Court: High Court, Auckland
Date: 12 December 2007
Judge: Courtney J
Key title: Sentencing in the adult courts: Other

Case Summary:

M (16 years old at the time of the offending) pleaded guilty to being an accessory after the fact of a fatal shooting, carried out by an adult associate in a gang related street confrontation. Two other adult associates, also charged with being accessories, had previously been sentenced to 9 months imprisonment.

Justice Courtney recognised that the charge was only plead to after M was within the High Court jurisdiction, and, that if it had been laid earlier, M would have been entitled to have had it dealt with in the Youth Court. This factor was taken into account by the Court in sentencing, following *S v R* CA284/02, 31 October 2002.

Other factors in mitigation included remorse, no previous convictions, and good behaviour during 12 months on bail. M also had prospects of employment, a stable home, and a pregnant partner.

The Court commented that M's youth gang associations put him at a high risk of reoffending.

Decision:

6 months home detention with conditions.

Police v ML-V YC Rotorua CRI-2007-263-000069, 18 December 2007

Filed under:

Police v ML-V

File number: CRI-2007-263-000069
Court: Youth Court, Rotorua
Date: 18 December 2007
Judge: Judge Geoghegan
Key title: Orders – type: Come up if called upon - s 283(c); Family Group Conferences: Non agreement

Case Summary:
Unsuccessful stabbing attempt by co-offender. M younger, less involved and under the influence of co-offenders. M, however, no stranger to violence. M later appeared in YC on other charges, and sentenced to supervision with residence, followed by six months supervision, which had just begun at the date of this judgment.

FGC undecided about sentencing outcome for M on original charges. Court considered that conditions of supervision order were designed to address all aspects of these charges, as well as previous ones. Court indicated that M would have received same sentence as currently serving if sentenced on these charges earlier.

Discharge inappropriate. Community work of no benefit to M or the community.

Decision:
M to come up for sentence if called upon within 12 months.

D v Police , 4 December 2007, High Court, Rotorua, Justice Rodney Hansen , CRI 2006-063-4350

Filed under:

Name: D v Police
Unreported
File number: CRI 2006-063-4350
Court: High Court
Location: Rotorua
Date: 4 December 2007
Judge: Justice Rodney Hansen
Charge: attempted murder, injuring with intent to injure, wounding with intent to cause grievous bodily harm
Statute: Criminal Justice Act 1985 s142
Key title: Remand to a penal institution

Case Summary:
Remand on bail in CYF custody for under 16 year old.

D (15 years old) appeared in the High Court charged with 3 serious offences including attempted murder. Trial to be held 3 months hence.

D on bail for the previous 12 months. Various different bail conditions were imposed, including living with first his mother, then his father. D frequently found in breach of his bail conditions, including associating with known gang members, interfering with a motor vehicle, and breaching curfew.

In the light of the bail condition breaches, Justice Hansen, in a judgment dated 27 November 2007, looked first at remanding D to a CYF secure youth facility in Auckland under s142(4A) of the Criminal Justice Act 1985. This course was rejected on advice from D's counsel and family, who said the travelling time would inconvenience visits and trial preparation. Hansen J remanded D to the youth section at a prison closer to home.

The Court commented:

"It is only with the greatest reluctance that the Court remands someone of D's age in custody. But having regard to his repeated breaches, his apparent inability to observe bail conditions and his parents' inability to ensure that he does, I believe that I have no choice. I also take the view that it is likely to be in D's interests that he be remanded in a secure and supportive environment. He is plainly going through a deeply troubled and unstable period in his life and his parents, with the best will in the world, have been unable to exercise any real control over him. It seems to me that a remand in a secure facility is likely to work to his advantage. It will keep him out of harm's way and provide him with the stability he desperately needs."

In this subsequent judgment, Hansen J noted advice from correctional authorities which pointed out that s142(1) does not allow any person aged under 16 years to be remanded to a prison pending hearing or trial. Section 142(4B) CJA allows remand in the custody of the Director General (CYF) in special circumstances.

The Court was also informed that an application for electronic bail was to be made shortly.

Decision:
D was remanded to a secure facility under the auspices of CYF, pursuant to s142(4B) of the Criminal Justice Act 1985.

2006

Police v JL YC Wellington CRI-2005-285-000093, 3 February 2006

Filed under:

Police v JL

File number: CRI-2005-285-000093
Court: Youth Court, Wellington
Date: 3 February 2006
Judge: Mill DCJ
Key title: Databank Compulsion Order, Orders – type: Discharge – s 282

JL charged with robbery; not denied; charge 'proved by admission at FGC'; Informant issued notice under Criminal Investigations (Bodily Samples) Act 1995 ('CIBSA'); JL discharged pursuant to s 282 of the CYPFA; JL challenged CIBSA notice and sought hearing.

Whether there was a 'finding' by the Youth Court that the charge was proved.

Term 'conviction' not normally used in Youth Court but s 2 of CIBSA defines 'conviction' to include: 'a finding, by a Youth Court, that a charge against a young person is proved.' Discussion of what amounts to a finding in the Youth Court – whether 'not denied', 'admitted', or a formal guilty plea are necessary. C v Police (2000) 19 FRNZ 357 (HC) per Hammond J; Police v B (2001) NZFLR 585 (HC) per McElrea DCJ discussed. Guilty plea required in s 283(o) of the CYPFA cases but this does not assist in determining a CIBSA case. *Police v M* (2001) 20 FRNZ 199 (YC) per Harding DCJ; *Police v S* [2000] NZFLR 188 (YC) per Ryan DCJ discussed. Sections 281 and 246 of the CYPFA contain no statutory requirement that charge must be proved prior to a s 282 discharge. *Police v M* followed. The entry on the record by the Judge of an admission is a 'finding' and a 'conviction' in terms of the CIBSA. 'A 'finding' can be made quite independently from a subsequent discharge, as happened in this case when a discharge was not agreed at the FGC when the admission was made.

Held: There was a 'conviction' in terms of the CIBSA in this case.

Whether the words 'deemed never to have been laid' in s 282(2) CYPFA mean that the conviction has been quashed in terms of s 40 of CIBSA.

Whether a subsequent s 282 discharge amounts to the conviction being 'quashed' pursuant to section 40 CIBSA. Section 282(2) CYPFA: 'An information discharged under subsection (1) of this section shall be deemed never to have been laid'. Informant argues s 281 of CYPFA requires that a charge must be proved before a s282 discharge may be given. This is incorrect as s 281 requires proof only where orders are to be made under s 282(3). Meaning of 'quash' discussed; parallels drawn between s 282 discharge and s 106 of the Sentencing Act 2002 discharge without conviction, also s 19 of the Criminal Justice Act in *Police v S* (supra). Police Act 1958, s 57; Children Young Persons and Their Families Amendment Bill (No. 4) cl 23 discussed. Youth justice jurisdiction a 'peculiar animal'; principles of accountability,

rehabilitation and presumption against proceedings being initiated must be tempered by need to protect public.

Held: Unique wording of s 282(2) CYPFA can only have one meaning in this context. 'Deemed never to have been laid' is very strong language indeed and it is sufficiently clear that the charge has been quashed, annulled, or made null or void. When this happens after the notice but before the sample is taken then the notice is of no effect (s 42(1)).

Decision:

Databank compulsion notice is of no effect.

Police v EGO, 29 March 2006, Youth Court, Wanganui, CRI 2005-283-29, Judge Callinicos

Filed under:

Name: Police v EGO
Unreported
File number: CRI 2005-283-29
Court: Youth Court
Location: Wanganui
Date: 29 March 2006
Judge: Judge Callinicos
Charge: Wounding with intent to cause grievous bodily harm s188(1) Crimes Act 1961
CYPFA: s283(o)
Key title: Sentencing, Conviction and Transfer

Case Summary: Successful application by the informant, Police, to have E convicted in the YC and transferred to the DC for sentencing pursuant to s283(o) CYPFA. This decision followed E's admission in the YC to a charge of wounding with intent to cause grievous bodily harm, an indictable offence.

E stabbed the victim with a knife, following an altercation with the victim. The victim was hospitalised for five days. E admitted the charge at the FGC and the Youth Court. Following a reserved decision retaining E's trial within the YC, the matter proceeded to a hearing. The matter was referred to a FGC which could not reach agreement on sentencing.

The Judge considered the factors in s284 and s290 of the CYPFA. In this case one of the prerequisites of s290 exists, namely that the charge was purely indictable. The objects and principles sections 4, 5 and 208 of the CYPFA were considered. Relevant principles in this case were identified as s208(c),(d),(f) and (g).
R v Taueki (2005) 21 CRNZ 769 was referred to as the leading tariff case for grievous bodily harm. The CA stated in Taueki that as noted in *R v Mako* [2000] 2 NZLR 170, the sentencing bands should be used flexibly and that 'sentencing Judges will need to exercise judgment in assessing the gravity of each aggravating feature and that the features of the offending in each case must be carefully assessed in order to establish a starting point which properly reflects the culpability inherent in the offending.'

Youth factors were discussed with reference to *X v Police* (High Court Auckland, Health and Courtney JJ, CRI 2004-4-4-374, 11 February 2005), *W and Others v The Registrar of Tokoroa Youth Court* (1999) 18 FRNZ 433.
The particular circumstances of E's situation were considered with reference to the s284 CYPFA factors. The attack was premeditated. E had a dysfunctional background, and her drug use had caused some level of mental functioning impairments. E had displayed some positive attributes when free of some of the substantial dysfunction of her family life. E's family had diminished capacity to appreciate that E's behaviours were a consequence of their abuse and neglect. E had not apologised formally to the victim, however no victim impact statement was available. E had no previous proven offences.

Decision:
HELD: Convicting and transferring E to the DC for sentencing.
1. E was now almost 17 years of age. She had a substantial range of serious longstanding issues.
2. It is important in sentencing to balance the goal of reduction in future offending with a degree of punitive response, rehabilitation and protection of the community.
3. In the absence of Youth Justice principles, the offence would have a high probability of leading to a significant term of imprisonment with the second band described in Taueki.
4. The options available other than a s283(o) were not appropriate. Rehabilitation is still an option, but the time available for rehabilitative measures in the YC was not sufficient.
5. Directions that a full adult pre-sentence report be obtained pursuant to s26 of the Sentencing Act 2002. Note that any reports and recommendations should take into account youth justice principles.
6. Directions to the informant to obtain a verified statement of the victim's views to be available at sentencing.

Police v JY [2006] DCR 900

Filed under:

Name: Police v JY
Unreported
File number: CRN 05204004940/05204005038
Court: Youth Court
Location: Auckland
Date: 9 March 2006
Judge: Thorburn DCJ
Charge: Possession of methamphetamine for purposes of supply, Importing
CYPFA: s333; s441
Key title: Jurisdiction of the Youth Court – Age; Reports – medical

Summary:
JY charged with importing methamphetamine after drug found in his luggage upon arrival at Auckland International Airport; charges not denied; whether JY under 18 as physical appearance suggested he was older. Despite South African passport listing age as 15, age could be determined by obtaining an x-ray of JY's wrist; JY refused consent. Age to be determined by the Court: s441(1), issue was whether s333 CYPFA gave power to order x-ray to allow Court to establish age.

Held:
Section 333 does not give the Court power to order compliance with a medical procedure to establish age, as wording of section is such that apparent purpose of ordering compliance with a medical procedure is to ascertain mental state of youth and to provide basis for appropriate orders, not for the purpose of basic evidence to do with jurisdiction and age.

Under s441 the age of JY was fixed as over 17. While not provided for in the section, adverse inference was factored into the s441 finding of age from JY's refusal to submit to the x-ray, as it was a simple, non-invasive procedure which would not breach any of JY's ordinary or specific rights. From the information placed before the Court, JY's age was found to be over 17. This generated a burden on JY to prove he was under 18, which he did not shoulder. As JY was found not to be a young person, he was not caught by the s2 definition and was ineligible to be treated as a young person.

S v Police HC Auckland CRI-2004-404-000515, 14 March 2006

Filed under:

Police v S

- Discussion in High Court
- Decision

File number: CRI 2004-404-000515
Court: High Court, Auckland
Date: 14 March 2006
Judge: Baragwanath and Heath JJ
Key title: Admissibility of statement to police/police questioning (ss 215-222): Nominated Person, Admissibility of statement to police/police questioning (ss 215-222): Reasonable Compliance

S (15) was visited at home by a Police officer in connection with unresolved car conversion and burglary offences; s 215 warning given; officer asked S to accompany him on a drive to point out where the offences had been committed. Officer had no intention of charging S and communicated this to him but did not expressly limit this immunity to car conversion and burglary.

During the drive S said he had committed two aggravated robberies; officer warned S again but S said that although he understood the aggravated robberies were more serious he wanted to 'clear them all up'. The officer told S to stop talking to him and that any information provided 'from that point' might result in charges. A videotaped interview was held in accordance with s 221 and S confessed to two aggravated robberies. A nominated person spoke in private with S for about 10 minutes prior to the interview and was present, but offered no advice, during the interview (s 222).

Judge Harvey in Manukau Youth Court and Judge Callander at Auckland Youth Court heard the severed charges against S. Both Judges ruled the oral utterances were made spontaneously (s 223) and admitted the evidence. S was convicted and transferred under s 283(o) on both charges.

In ruling that the statement was spontaneous, Judge Harvey decided that the recorded statements were not induced by any promise from the police officer and did not run counter to s 20 of the Evidence Act; S's evidence that he gave a video interview because he believed that he would not be charged was not credible; there had been substantial compliance with s 221.

Judge Callander held that the nominated person had supported S properly, that there was no issue of 'reasonable compliance' under s 224, that the 'vulnerability of young persons' principle (s 208) had not been breached, that there had been compliance with s 221 and that the video statement was inadmissible.

Statutory scheme discussed, also Evidence Act 1908, s 20, *X v Police* (2005) 22 CRNZ 58 (HC) at 59-60 and *R v Irwin* (1991) 8 FRNZ 487 (HC) at 491-493.

Discussion in High Court

Issues:

1. Whether the utterance made in reliance on an assurance of immunity can properly be said to be 'spontaneous';
2. If not 'spontaneous', is the evidence gathered in the videotaped interview tainted and inadmissible;
3. Whether nominated person properly appointed;
4. Whether nominated person lawfully carried out their duties;
5. Whether the admissions should be ruled inadmissible because of unfair conduct on the part of the police;
6. Whether the convictions were against the weight of evidence.

1) Whether utterance 'spontaneous'
R v W (J) (1996) 2 C.R. (5th) 233, judgment of Ontario Court of Appeal where Canadian provision similar to s223 considered, of assistance as little New Zealand authority on issue of whether an utterance made in reliance on an assurance of immunity is 'spontaneous'. The Ontario Court of Appeal considered that: 'any doubt as to whether the statement is spontaneous should be resolved in favour of the young person' considering an adolescent's 'immature power of judgement'. These were deliberate utterances made in response to officer's original offer of immunity and not spontaneous.

2) If not 'spontaneous', is videotaped evidence tainted and inadmissible
Appellant argues that the non-spontaneous admissions of aggravated robbery were the effective cause of the officer continuing the interview; discussion of causation. Police argue that the warning preceding the videotaped interview superseded the initial causation. Cf. test in *R v Te Kira* [1993] 3 NZLR 257 and *R v Shaheed* [2002] 2 NZLR 377, there was a 'real and substantial' connection between the non-spontaneous statement and the subsequent videotaped statement. The use of an inadmissible statement for the purpose of securing a subsequent statement is not consistent with the policy of the legislation. In videotaped interview the appellant was asked to elaborate on details of incidents mentioned prior to that interview.

Canadian test adopted (*R v R* (M.L) (2002) Carswell Ont. 2485 Pardu J; *R v F* (D) (20020 8 CR (6th) 156 (Manitoba Court of Appeal)); as non-spontaneous evidence was the effective cause of the officer's questions at the police station and thus of S's responses the evidence of both must be excluded. There being no other evidence to support either conviction, both must be set aside.

3) Whether nominated person properly appointed
Section 222(1)(d). Appellant argued as officer did not take him through list of available nominated persons, his statement that he did not want to nominate anyone for the interview was made in ignorance of his rights and was not a refusal or failure to nominate (as per s 222(1)(a) and (c)). Young persons vulnerable and thus ordinary presumption of knowledge of law not applicable. Although s 222 does not expressly require enforcement officer to inform the young person of range of options, as there is no other way for knowledge of the rights to be imparted such obligation must be implicit (cf s 222(4)).

Role of nominated person is (a) to ensure performance of officer's duty to explain s 215 rights in a way the young person understands and, (b) to give the young person the sense of security of having someone looking after their interests both prior to the decision to answer questions and during the questioning process and the making of any statement.

Officer ought to have explained simply to S the nature of the nominated person's role and have taken him through the s 221(1)(a) to (c) categories but there is no reason to believe the result might reasonably have been any different had this course been followed. Thus, there was reasonable compliance (s 224).

4) Whether the nominated person fulfilled his statutory duties
Nominated person explained s 215 rights to S; s 222(4)(a) satisfied. Section 222(4)(b) satisfied as nominated person not required to intervene as a lawyer may have when inquiry turned to the aggravated robberies. Section 215 rights do not include the right for a young person to be told that the consequence of the statements being used in evidence may be that the prosecution is able as a result to establish its case. Nominated person did fulfil their statutory duties.

Consideration of **(5)** and **(6)** not necessary.

Decision:

Statement inadmissible as the original admissions were not spontaneous and the subsequent questions were a direct consequence of that evidence.

Police v B [2007] DCR 232

Filed under:

Name: Police v B
Reported: [2007] DCR 232
File number: CRN 062270005724-38
Court: YC
Location: Kaikohe

Date: 29 March 2006
Judge: H M Simpson
Charge: Unlawful sexual connection, rape, indecent assault of children
CYPFA: s322
Key title: Delay
Case Summary: Application to dismiss for undue delay.

B was charged with seven indictably laid charges: five counts of unlawful sexual connection, and two counts of rape. He also faced 15 summarily laid charges relating to indecent assault of children aged under 12 and between 12 and 16 years of age. It was alleged that the offending took place between July 2003 and February 2005. The last of the complainant interviews was held on 17 June 2005. All matters were then referred to the police in Auckland. The investigation file was assigned to Detective Vickers on 1 August. On 8 November 2005 the Youth Aid file was forwarded to Kaikohe for further attention. An intention to charge family group conference was held on 12 January and charges were laid in Court. B made his first appearance at the Youth Court in connection with these charges on 16 January 2006 and matters were adjourned until 13 February.

These fact disclose 2 unexplained gaps in the process. First, between the referral of the matter to the Auckland Police on 17 June 2005 and the assignment of the file to Detective Vickers on 1 August 2005 a period of six weeks and three days. Secondly, between the forwarding of the file to Kaikohe Youth Aid on 8 November 2005 to the holding of the intention to charge family group conference on 16 January 2006 a period of nine weeks and three days.

The Court applied the principles set out in Police v P [2004] DCR 673, a decision of Judge Harvey in the Youth Court at Manukau, as well as those set out by the High Court in BGTD v Youth Court Rotorua (High Court, Rotorua 15 March 200, M119/99).

The Court accepted that the issues in this case were complex and, despite police staff being required for another high-profile investigation, held, following Police v P, that workload pressures were not enough to justify the delay. Following BGTD, the judge described the delays as unnecessary and unduly protracted.

The Court than considered whether there has been any prejudice to B as a result of turning 17 before appearing in the Youth Court on these charges. The judge cited X v New Zealand Police High Court, Auckland CRN 2004–404–374, 7 February 2005, in which the full bench of the HC held that an adult Court must take youth justice principles into account when sentencing youth offenders convicted and transferred into the District Court under s 283(o) of the CYPF Act. The Court held that B will still have the benefit of the relevant youth justice principals, if his case is transferred after an initial Youth Court appearance, and any prejudice is neither real or presumptive.

Decision: Application dismissed

Police v T [2006] DCR 599 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v T
Reported: [2006] DCR 599
File number: CRI 2005-454-62
Court: High Court
Location: Wellington
Date: 4 April, 3 May 2006
Judge: Wild J
Charge: Burglary (x2)
CYPFA: s322; s5(f)
Key title: Delay

LexisNexis Case Summary:

This was an appeal by way of case stated. The respondent T was charged in 2005 with two offences of burglary that occurred in 1999 and 2000 respectively when T was under the age of 16. The burglaries were unsolved until the police in 2005, using technology not available to them at the time of the burglaries, matched T's palm print with a palm print left at the scene of the 2000 burglary. A DNA sample taken on his arrest linked him to the scene of the 1999 burglary. The District Court dismissed the charges under s 322 of the Children, Young Persons and Their Families Act 1989 (the Act), which continued to apply. Section 322 provides that a Youth Court Judge may dismiss an information if satisfied that the time that has elapsed between the offence and the hearing "has been unnecessarily or unduly protracted".

Held (dismissing the appeal)

1 The Judge was wrong in holding that the phrase "unduly protracted" in s 322 of the Act related only to the fact of delay alongside s5(f) of the Act (which states the principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child's or the young person's sense of time). The fact that Parliament had not simply prescribed a limitation period suggested that it had in mind a more broadly based assessment of whether the time elapsed was unduly protracted. The factors that were relevant were the length of the delay, waiver of time periods, the reasons for the delay, and any resulting prejudice to the accused (see paras [18], [22], [23]).
Martin v District Court at Tauranga [1995] 2 NZLR 419 (CA) applied.

2 The Judge did not give sufficient weight to the words "wherever practicable" in s5(f) of the Act. It was not practicable for a Court to make decisions affecting T within age-appropriate frames, because the charges had not been, and could not be, brought while the requisite technology was not available to the police to enable them to apprehend the suspected offender (see para [28]).

3 The Judge was correct in holding that prejudice to a defendant arising from delay was a relevant, but not a necessary, precondition for a finding that the lapse of time was unnecessarily or unduly protracted (see para [33]).

4 The Judge was correct in holding that the **seriousness of the alleged offence was a factor that should be taken into account under s 322**. However, this was not to suggest that the

seriousness of the alleged offending was a factor more important than any others (see para [44]).

5 The Judge was correct in holding that the lapse of time in the present case was unduly protracted. The primary factor was the lapse of five and six years, which overwhelmed the countering considerations of a sound explanation for the delay and the seriousness of the charges (see para [66]).

Other cases referred to in judgment
BGTD v Youth Court at Rotorua (High Court, Rotorua M 119/99, 15 March 2000, Robertson J)
HWT v Police (High Court, Auckland, CRI 2005-404-340, 19 December 2005, Simon France J)
Police v BRR (1993) 11 FRNZ 25.
Police v DH [1995] NZFLR 473.
Police v P (2004) 20 CRNZ 1005.
R v M (District Court, Blenheim, CRN 421-8004-914, 20 June 1995, Judge McAloon).
R v Shaheed [2002] 2 NZFLR 377 (CA).
U v R [1995] NZFLR 966.

Appeal
This was an appeal by way of a case stated from the decision of a District Court Judge dismissing two charges of burglary laid against the respondent T.

GTH v New Zealand Police HC Tauranga CRI-2006-470-000011, 16 May 2006

Filed under:

GTH v Police

File number: CRI-2006-470-000011
Court: High Court, Tauranga
Date: 16 May 2006
Judge: Simon France J
Key title: Orders – type: Discharge - s 282; Orders – type: Discharge - s 283(a)

GTH had been discharged under s 283(a) by the Youth Court after completing a FGC plan. That s 283(a) order was made on the basis that a drunk GTH had 'got into a scrap, smashed a beer bottle and stabbed it at somebody, just grazing them and cutting their clothes. Fortunately not doing any more damage.' On appeal to the High Court the appellant argued that this was an incorrect summary of the facts in that:

a. The appellant did not initiate a confrontation out of the blue;
b. The assault was not the use of a bottle but rather threatening the victim with it; and
c. The appellant did not thrust the broken bottle at the victim.

The Youth Court viewed the former facts as sufficiently serious to opt for the s 283(a) discharge to create a record if the appellant offended in future. France J agreed that if the facts had been as described by the Youth Court he would have upheld the Court's exercise of its discretion in imposing a s 283(a) discharge [para 13]. The High Court noted there was

little authority on the relevant factors to take into account when choosing between s 282 and s 283(a) but that 'obviously the principles of the Act are applicable and important'. France J quoted Principal Youth Court Judge Becroft in *Police v KF* YC Wellington CRI-2004-285-000133 at [22] where a s 283(a) order was imposed after KF took a long time and much cajolling to complete his FGC plan and in light of the statutory factors in the CYPFA.

France J stated that, in contrast, the efforts of the young person in this case to make amends were 'exemplary'. Further, he had good family support and, although the resort to the use of a weapon was a concern it was not seen as decisive by Judge Becroft in *Police v KF* nor by Judge Thorburn in *Police v R* YC Auckland CRN 1204003769, 7 January 2002. Thus, it was possible on the less serious amended facts to reflect the efforts of the appellant by substituting a discharge under s 282.

Decision: s 282 discharge.

Police v HGBH [2006] DCR 958

Filed under:

Police v HGBH [2006] DCR 958

File number: CRI 2005-291-000106
Court: Youth Court, Porirua
Date: 22 May 2006
Judge: Becroft DCJ
Key title: Orders - type: Discharge – s 282, Orders – type: Discharge - s 283(a)

H (16) had admitted operating a motor vehicle on a road carelessly and thereby causing the death of her driving instructor. Whether to impose a s 282 or a s 283(a) order. The Police and the victim's family were firmly in favour of a s 283(a) discharge while H's lawyer and the FGC co-ordinator argued for a section 282 discharge.

Judge Becroft noted that in considering whether to exercise his discretion as to which type of discharge should be entered, the law required a consideration of s 284, the youth justice principles in s 208 and the general principles set out in s 4 and s 5. Further, he noted that s 282 was not confined to less serious offending and that:

'in recognition of the particular facts of an individual case and an offender's positive response, it is sometimes appropriate to absolutely discharge an offender where there has been serious offending (para [8]).'

However, in this case the section 284 factors were mostly in H's favour and consequently the level of carelessness became the central issue. The Judge weighed up:

- the degree of driving fault;
- the fact that a human life had been lost; and
- the victim's family's view that the value of that life might be discounted and the seriousness of the situation might be undervalued if a section 283(a) order were not made.

against:

- The very positive response of the young person, a first offender
- The young person was very remorseful
- And a learner driver under the guidance of a more mature adult.

H's carelessness was her failure to see the signs that were, in fact, incorrectly placed to properly signal upcoming road works; FGC 'magnificent'; H carried out all FGC recommendations and did more community work than required. The youth justice principles in section 208(c)(e) and (f) particularly supported a section 282 discharge but nevertheless regard must be had to section 208(g) - measures taken need to have due regard to the interest of any victim; very difficult decision.

Decision: Because of HGBH's age, her positive response, the moderate degree of carelessness and the fact that she was a learner driver, Judge Becroft granted her a section 282 discharge 'with some reservation'.

New Zealand Police v MK TO, 30 June 2006, Youth Court, Palmerston North, Judge Ross

Name: Police v MK TO
Unreported
File number: CRI 2008-027-48
Court: Youth Court
Location: Palmerston North
Date: 30 June 2006
Judge: Judge Ross
Charge: Burglary
CYPFA: s283(f)
Key title: Reparation against parents

Case Summary:
Successful application by the Police in respect of a reparation order against the parents of J (who was under 16 at the time of the offending) pursuant to s283(f) of the CYPFA. The reparation order was sought by the Police against J's parents for losses incurred by J and others during a period of offending when J was bailed to their address. J had no funds whatsoever and for all practicable purposes would unlikely ever to be in a position in the foreseeable future to meet a reparation order.

Bail history

At the time of the offending, J was bailed to his parents' house on the conditions that:

- was to reside only at his parents' house
- He was to be there subject to a 24 hour per day, seven day per week curfew.
- He was to be supervised as to curfew compliance by his parents
- He was to present himself to the door for any Police curfew checks.

The curfew was relaxed on 11 August 2005 to 10.00pm and 7am overnight.

On 30 August 2005 J was arrested on fresh charges. Police opposed bail and J was remanded to Police cells under s238(1)(e) of the CYPFA. Those charges were not denied and bail was

granted with the original 24 hour curfew conditions. Two other persons were added as approved accompanying persons on 30 September 2005, and their homes were permitted as places where J was permitted to be.

J returned to YC on 14 October for confirmation of that hearing date and a further condition of bail was added, that J was to attend daily at any training course as directed by his youth justice social worker.

There was then further offending (including the offending relating to the reparation order) and J was remanded in custody pursuant to s238(1)(d) of the CYPFA. J absconded while in transit to a detention facility.

Upon his apprehension he was held by CYF at a Christchurch Residential Centre.

J's apprehension took place in Fielding on 17 November 2005. Prior to that, the Police asserted that he met with his mother who had the opportunity to alert the Police.

In an interview with the Police on 17 November 2005 attended by J's father it was clear that:

- J's father had knowledge that J had firearms in his possession
- At some point the firearms were at J's parents address and J's father knew this
- J's father had told J to remove the firearms from that address
- J's father was aware that the firearms left his house in a silver car

The Police submitted that in light of J's age, his criminal associates, his unpredictability and his propensity for criminal behaviour involving risk that J's father should have stepped in and:

- Immediately advised the Police that J was at large in the community
- Secured the firearms to the Police, which would have minimised risk and loss in relation to their use.

Particular Offending

J and another young person burgled a farmhouse near Levin on 25 October 2005. The gross losses amounted to some $70,000 to $80,000.

- J was in breach of his bail conditions
- J drove to the address of the burglary, a 30 minute drive south of Palmerston North
- J and the other young person attended the property at 2pm, but the burglary took place overnight.
- The next morning J admitted to Police the theft of a projector from an Aquarium in Napier. It was clear that J had been absent from his parents' home for lengthy periods.

J's parents failed to advise the Police of J's absence from their home. There had been no family-instigated contact between Police Youth aid and the family and they had not reported J's unexplained absences to the Police.

Decision:

The exercise of the discretion sought of the Court for parental reparation would cause no offence to the principles, purposes nor objects of the Act.

Consideration of the purpose and reason why the cut off for parental reparation was set at the age of 16 including that:

- Up to the age of 16 it will generally be the case that a parent or guardian will exercise a degree of control and supervision over their children
- A parent or guardian will be expected to have and exercise control and supervision, the more so when the young person is living with them
- There us likely to be economic and domestic dependency

It would not be too much to expect the parents to have been more active and proactive, rather that merely reactive to Police enquiry. J's parents were aware of J's problems and there was nothing to show that they lacked the wits and skills and resources as parents.

The order must be enough to underline the seriousness and importance of good parenting and the standard required in certain circumstances, yet not so much as to punish too severely these parents in the particular circumstances of the case.

Order in terms of s283(f) of the CYPFA against the parents of J in the sum of $10,000. To be paid to DP, as the owner, has personally suffered this loss.

Police v WMT YC Hastings CRI-2005-220-000053, CRI-2006-220-000007, CRI-2006-220-000060, 28 July 2006

Filed under:

Police v WMT

File number: CRI-2005-220-000053, CRI-2006-220-000007, CRI-2006-220-000060.
Court: Youth Court, Hastings
Date: 28 July 2006
Judge: Judge Watson
Key title: Orders – type: Conviction and transfer to the District Court for sentencing – s 283(o): Serious assault (including GBH), Sentencing - General Principles (e.g. Parity/Jurisdiction), Principles of Youth Justice (s 208), Orders - type: Supervision with residence - s 283(n)

Case Summary:

Sentencing of WMT (15) on charge of wounding with intent to injure and other summarily laid charges. Victim found WMT on her balcony; WMT told her he was being chased; she invited him inside to phone his father; number disconnected; victim said she would call Police for assistance; WMT hit her over head with ornament creating a 6cm wound. Whether to convict and transfer to the District Court under s 283(o). Background of recent offending including aggravated robbery and recent escape from s 283(1)(d) CYFS custody.

Section 284(1); thirteen factors from Judge Harvey in *Police v James (A Young Person)* (1991) 8 FRNZ 628 (YC) considered. Judge particularly noted seriousness of offending, history of offending, no victim empathy and that WMT had already been in a custodial situation for 4 months. Noted rehabilitative options available in the Youth Court and that WMT's age weighed heavily in his favour. Family willing but unable to offer assistance and Australian whanau's offer to have WMT live with them not feasible until after sentence served. Victim traumatised and wishing to see WMT imprisoned.

Court concerned about number of serious violent youth offenders appearing before it; where there are instances of serious gratuitous violence, sentences of imprisonment must be imposed.

Decision:

Section 4, s 208 CYPF Act principles - sentence of supervision with residence followed by structured sentence of supervision for 6 months. Rehabilitative option would produce a more positive outcome for the community in the long-term.

Attorney-General v Youth Court at Manukau [2007] NZFLR 103 (HC)

Filed under:

Attorney-General v Youth Court at Manukau [2007] NZFLR 103

Reported: [2007] DCR 243
File number: CIV 2006-404-002202
Court: High Court, Auckland
Date: 18 August 2006
Judge: Winkelmann J
Key title: Delay (s 322), Appeals to the High Court/Court of Appeal: Jurisdiction

Summary:

Unsuccessful application for judicial review by Attorney-General against dismissal of Youth Court proceedings pursuant to discretion in s 322 of the CYPFA. Proceedings related to incident in which three Young Persons who were part of a youth gang, attacked and seriously injured several complainants.

The lower court Judge used the four stage test from *Police v P and R* [2004] DCR 673 and found that there (1) had been delay; (2) the delay had been unnecessarily or unduly protracted; (3) that prejudice had been caused to the young people because, due to the passage of time, at least one of the young people had lost some of the sentencing options which only remained available up until the age of 17.5 years; and (4) that the fact that the young people had lost something permitted to them by statute was sufficiently serious to warrant what must be the extreme step of halting the proceedings.

Winkelmann J:

Four stage test from *Police v P and R* [2004] DCR 673 does not correctly articulate the provisions of s 322 [para 47]). Section 322 creates a discretion to dismiss Informations which

is only triggered if there is an undue or unnecessary protraction of the relevant period of time. In section 322, "hearing" refers to the hearing of the charge [para 48]. Thus, s 322 relates to the period between the commission of the offence and the hearing of the charge.

Meaning of "undue" delay:

Reasoning of Wild J in *Police v Turner* HC Palmerston North CRI 2005-454-000062, 3 May 2006 adopted as to meaning of "undue delay". Test for "undue delay" from Canadian Supreme Court decision in *R v Morin* (1992) 71 CCC (3d) 1 and adopted in *Martin v Tauranga District Court* [1995] 2 NZLR 419 in relation to s 25(b) of the Bill of Rights Act 1990, applicable. In Canadian Supreme Court Sopinka J articulated the following factors to be taken into account in determining whether the delay had become unreasonable:

1. The length of the delay;
2. Waiver of time periods;
3. The reasons for the delay, including
   (a) inherent time requirements of the case;
   (b) actions of the accused;
   (c) actions of the Crown;
   (d) limits on institutional resources; and
   (e) other reasons for delays; and
4. Prejudice to the accused.

Wild J considered these factors, which must be considered against the s 5(f) principle, are sensible, applicable and comprehensive.

Meaning of "unnecessary" delay:

Unnecessary delay means delay that could reasonably have been avoided. It must be more than trivial. A delay caused by resource limitations is not usually unnecessary delay. The suspected youth of an offender is one factor Police must take into account in allocating resources but not the sole factor. The Courts will not normally second guess the allocation of police resources, if satisfied that the need to investigate suspected youth offending very promptly is taken into account in allocating priorities for those resources [para 54].

At a certain point delay caused by resourcing constraints will be undue delay. The younger the child or young person the less tolerance there will be for delay because of the provisions as to fair trial rights for child and youth offenders. The lower court Judge had been entitled to conclude there had been unnecessary protraction of the relevant period as there had been avoidable delay from prosecutorial errors [para 64].

Prejudice:

If unduly or unnecessarily protracted, there is a discretion as to whether the Information should be dismissed. In following the four-part test, the Judge erred in confining matters to be taken into account in the exercise of the discretion to consideration of whether the young person had suffered prejudice by reason of the delay. *The existence of specific prejudice is a factor weighing in favour of dismissal but the existence of specific prejudice is not a pre-condition to the exercise of the discretion to dismiss* [para 56]. There is a presumption that at a certain point in time general prejudice to the young person or child has been caused by the

delay (*HM Advocate v DP and SM* [2001] SCCR 210). In case of egregious fault or neglect on the part of the police or the Crown, a Court may determine that the appropriate response is to dismiss the Informations, even though the delay may not be such as to cause prejudice.

Seriousness of Offence:

Wild J in *Turner* (supra) held that the seriousness of the alleged offending was a factor to be taken into account in the exercise of the discretion, but cautioned that the weight attached to that factor will depend on the circumstances of the case. Wild J stated: "when I refer to "justice", I mean justice for the prosecution, on behalf of the community, as well as justice for the alleged offender" [para 42]. Public interest greater where offending more serious.

First Ground of Review:

"The Judge applied a wrong principle of law in that he found instances of what he described as Police resourcing issues, and prosecutorial error, but failed to relate them to the test set out in s 322. The Judge failed to take into account as relevant considerations the inherent complexity of the investigation, the difficulties of the investigations, and the effect of having 11 adult co-accused prosecuted alongside the young persons."

First ground of review failed. The Judge should have considered the adequacy of the explanation given as to the resourcing constraints but the Judge did not err in finding unnecessary delay because he correctly identified avoidable delay arising from prosecutorial errors and related that delay to the test set out in s 322.

Second Ground of Review:

"The Judge took into account an irrelevant consideration, namely that the young persons had been prejudiced by the delay because they were about to attain the age of 17 and a half years, and therefore the Court would have reduced sentencing options should sentencing be necessary."

Second ground of review succeeded. The respondents did not suffer specific prejudice due to the provisions of s283 and s296 CYPFA as any sentence would ultimately take into account the level of the young person's maturity at the time of the offending (ss 8(a) and 9(2)(a) of the SA).

Exercise of Discretion:

If all relevant matters had been taken into account and irrelevant matters excluded from consideration, the discretion should have been exercised to decline to dismiss the Informations. However, 14 months have elapsed and a hearing would not now be likely to take place for another 6 to 9 months at which point a further s 322 application would be likely to succeed.

Decision:

Discretion exercised to decline to quash decision dismissing the Informations.

Police v V and L [2006] NZFLR 1057 (HC)

Filed under:

Police v V and L [2006] NZFLR 1057

File number: CRI-2006-404-000095, CRI-2006-404-000096
Court: High Court, Auckland
Date: 1 August 2006
Judge: Hansen J
Key title: Family Group Conferences: Timeframes/Limits: Court-ordered, Family Group Conferences: Timeframes/Limits: Intention to charge, Objects/Principles of the CYPFA (ss 4 and 5)

Case Summary:

Appeal by way of case stated against decision in *Police v TL and JV* YC Manakau, 25 November 2005 per Judge Harvey. Joint burglary charges had been dismissed in the Youth Court because *Court directed* Family Group Conferences (FGC) not convened and held, thus failure to comply with s 249 CYPFA time limits. Whether failure to comply with time limits should, in all cases, bring the proceedings to an end. Chief Executive of CYFS given leave to appear.

Objects and principles in ss 4, 5 and 208 CYPFA discussed - FGCs are the key mechanism by which these principles are given effect. Not helpful to categorise statutory obligations as mandatory or directory but should consider a 'spectrum of possibilities' from cases in which fundamental obligation so flagrantly ignored that subject may treat it as having no legal effect, to cases where defect in procedure so trivial that procedure may proceed without remedial action (*London and Clydeside Estates Limited v Aberdeen District Council* [1979] 3 All ER 876; [1980] 1 WLR 182). See also *New Zealand Institute of Agricultural Science Inc v Ellesmere County* [1976] 1 NZLR 630, 636. 'More important to focus on the consequences of the non-compliance' (*Warwick Henderson Gallery Ltd v Weston*, CA80/04, 14 November 2005 [17] – [20] in which Baragwanath J referred to *R v Secretary of State for the Home Dept, ex parte Jeyeanthan* [2000] 1 WLR 354). Nothing in the legislation suggests this approach would be misplaced here.

Hansen J noted, obiter, that s 245(2) of the CYPFA [Note: this should be s 245(1)] states 'no information … shall be laid' unless three conditions are met and this 'spells out the consequence(s) of non-compliance' *with intention to charge* FGC time limits. Hansen J further noted that the legislation is silent on the consequences of non-compliance with time limits for Court ordered FGCs and that the nature, causes and consequences of non-compliance with these FGCs may therefore be examined to determine where non-compliance lies on the 'spectrum of possibilities' [para 17]. *H v Police* [1999] NZFLR 966 (HC) distinguished.

Hansen J stated, obiter, that s 249(2) time limits are not mandatory but effect of non-compliance described by Smellie J in *H v Police (supra)* upheld - non-compliance invalidates the FGC and removes the jurisdiction of the Court to consider the information.

Failure to convene FGC may have no practical consequence but if strict compliance with time limits enforced young persons, families, victims and community may be denied CYPFA interventions due to 'administrative oversight, resourcing difficulties or other causes …' Judge reported that when cases not convened or completed in time 'judges routinely dismiss charges' [para 20].

Avoiding rigours of strict compliance with time limits by allowing charges to be re-laid is to risk an abuse of process which could inadvertently result in delays, contrary to the scheme and purposes of the CYPFA, while achieving strict compliance with time limits [para 22].

Second or further FGC not an available option to remedy non-compliance with time limits because direction to hold FGC not spent if time limits not complied with. Direction to convene FGC will remain in force even if the FGC is not convened within the time stipulated in s 249(4) [para 24].

Decision (upholding the appeal):

1. The time limits in section 249 CYPFA are not mandatory.

2. If there has been non-compliance with statutory time limits the status of the proceeding should be determined on the facts of each case and by reference to the following principles:

a) The extent of the delay;
b) Reasons for failure to convene FGC within time;
c) Consequences of non-compliance – here seriousness of offending and personal circumstances of offender of relevance.

'In each case a judgment must be made which seeks to give effect to the objects of the legislation while achieving an appropriate balance between the interests of the offender, victims and those of the wider community. If the cause and consequences of non-compliance involve an unacceptable intrusion into the rights of the offender, it will be appropriate to dismiss the charge.' [para 26]

Consequences of failure to convene FGC within stipulated time depend on when FGC is actually *held and completed*. Failure to convene in time may not result in effective delay if FGC completed within time stipulated in s 249(6).

The statute contemplates delay; s 249(6) 'unless special reasons'. If special reasons exist there will be compliance with the statute; if not, 'non-compliance may nevertheless be excused, depending (as with a failure to convene in time) on the extent of delay and its consequences.'

Question of fact and degree in each case whether non-compliance with time limits in question is sufficiently serious to justify dismissal.

3. Second or subsequent FGC cannot and need not be directed pursuant to s 246 of the CYPFA if an initial conference has not been convened or held as directed. The original direction for an FGC stands.

4. The provisions of s 281B cannot be used to direct a second (or subsequent) FGC if there has been non-compliance with the statutory time limits under s 249 of the CYPFA.

5. Section 440 can be used to remedy failure to comply with the statutory time limits under s 249 of the CYPFA.

Police v AJH (24 August 2006, YC, Masterton, CRI-2006-235-44) Judge Walsh

Filed under:

Name: Police v AJH
Unreported:
File number: 2006-235-44
Court: Youth Court
Location: Masterton
Date: 24 August 2006
Judge: Walsh DCJ
Charge: Behaving in disorderly manner likely to cause violence; theft, possession of offensive weapon, assault with intent to injure
CYPFA: s214
Key title: Arrest without warrant
Case Summary: Police called to a fight; a Police officer searched AJH under s202B CA after explaining her rights under the BORA; blood on AJH's T-shirt; AJH said this was from eczema. AJH denied having possession of a knife. Another Police officer then arrived and, as he had information that AJH was in possession of a knife, arrested AJH, used handcuffs. Whether arrest lawful. First Police officer said AJH had agreed to accompany her to the police station but had not told the other police officer this. A third police officer then gave AJH her "children's rights"; AJH later told the officer there was a knife down her top. AJH nominated her Grandmother to be present at the interview.

Held: no ground for the arrest under s214(1)(a) CYPF Act. Although AJH in possession of a knife two Police officers confirmed AJH had been co-operative and answered questions; AJH did not resist when her handbag was searched. First Police officer quite right not to conduct personal search of AJH in busy street.

Decision: Arrest unlawful and Informations dismissed.

Police v CAP (16 October 2006, YC, Lower Hutt, CRN-062320073, Walsh DCJ)

Filed under:

Name: Police v CAP
Unreported
File number: CRN-062320073
Court: Youth Court
Location: Lower Hutt
Date: 16 October 2006
Judge: Walsh DCJ
Charge: Escaping from custody

CYPFA: s238(1)(d); s362; s361(g); s385
Key title: Custody - chief executive

Summary: CAP charged with escaping from custody under s120(1)(c) CA; offence denied. Whether CAP had been "detained" under s238(1)(d) CYPFA. CAP, a "P" addict with serious offending history, remanded under s238(1)(d); signed contract with CYFS agreeing to stay at caregiver's house and only leave with caregiver, grandmother, uncle or aunt. As caregiver worked, contract changed to state that CAP only to stay at caregiver's house between 7pm and 7am. CAP entirely unsupervised during the day. Several days into the placement CAP did not return home. After several hours the caregiver rang the Police. CAP was located when Police were called to an incident in the early hours of the following morning.

Youth advocate considered meaning of "detained" in s238(1)(d); Police v T (23 November 2005, YC, Hamilton, CRI-2005-219000046, McAloon YCJ); Police v P (20 July 2004, YC, Hamilton, CRN 4219124285, McLean YCJ). High threshold to be met before s238(1)(d) order made; s239; although restrictions required for s238(1)(d) not spelt out, YA argued custody should have some controls at all times that equate to "detaining"; s362; s385. Police submit no requirement for 24-hour controls on young person; detention may be effected by the placement of partial controls such as this 12-hour curfew; s361(g).

Section 120(1)(c) limited by s385(3) which states:

(3) A child or young person to whom this section applies, **unless that child or young person was being detained pursuant to section 238(1)(d)** or (e) of this Act or section 142A of the Criminal Justice Act 1985, does not, by reason only of an act or omission referred to in subsection (1) of this section, commit an offence against section 120 of the Crimes Act 1961. (emphasis added)

Thus, if CAP was detained in the custody of the chief executive and is found to have "escaped" from that custody, liability under s120 may follow. Whether CAP "detained": dictionary definition, scheme of the CYPFA and content of s239 considered. Section 238(1)(d) imposed where young person likely to abscond, commit further offences or to prevent the loss or destruction of evidence; implicit in remand that young person must be detained in such a way that prevents these things happening. In Police v T Judge McAloon stated that "detention" and "custody" should be considered together and not split; approach upheld.

"Detained in custody of" CYFS must include an element of confinement and monitoring. Section 238 scheme includes a graduated basis for releasing a young person who appears before the Youth Court from s238(1)(a) to (d). Section 238(1)(d) is the more restrictive provision for the release of a young person from the Youth Court, given the criteria under s239(1). CAP delivered into custody of person approved by social worker; sufficient for s238(1)(c) but not for s238(1)(d); s208(d). This was a "hybrid detention arrangement" between s238(1)(c) and (d) but this has no legal basis. Sufficient confinement may exist where young person granted temporary leave for 1-2 hours but not where completely left to their own devices during day time hours.

Decision: CAP not effectively detained in custody as per s238(1)(d). Following meaning of "detention in custody" in Police v T, CAP needed to be in a controlled or supervised

placement in custody at all times. This did not occur; Judge satisfied he did not "escape" under s 120(1)(c); charge dismissed.

Hudson v Youth Court at Palmerston North HC Palmerston North CIV-2005-454-000274, 16 October 2006

Filed under:

Hudson v Youth Court at Palmerston North

File number: CIV-2005-454-000274
Court: High Court, Palmerston North
Date: 16 October 2006
Judge: Young J
Key title: Jointly Charged with Adult (s 277)

Case Summary Provided by LINX: CRIMINAL PROCEDURE - judicial review sought - applicant convicted by jury in DC on indictable charge of wounding with intent to cause grievous bodily harm - sentenced to 6 years imprisonment - no appeal of conviction or sentence - applicant charged jointly with a young person Ms S - following preliminary hearing applicant committed for trial to HC - case 'middle-banded' and trial took place in DC - Ms S offered opportunity to be tried in YC - offer accepted and she was ultimately acquitted at a hearing before a YCJ - applicant sought judicial review of decision to commit him for trial - lack of jurisdiction - failure to offer chance of being tried in YC - declarations sought that committal to HC for trial unlawful and invalid - applicant accepted no orders could be made declaring trial a nullity - applicant's main submission that s277 Children, Young Persons, and Their Families Act 1989 a 'mini code' where a young person and an adult are charged jointly - dominant provision which deals exhaustively with how a young person and adult are to be dealt with when jointly charged - no jurisdiction to hold preliminary hearing and therefore committal invalid -

HELD: declarations refused - HC rejected central submission that applicant should have been offered right of trial in YC - if applicant correct (1) s277 Children, Young Persons, and Their Families Act 1989 creates a new type of criminal charge where offence would ordinarily be categorised as indictable triable summarily or purely indictable - applicant to be tried summarily or by a jury depending on decision of a YCJ rather than on basis of how information laid - offences defined by whether a young person and adult jointly charged rather than on basis of seriousness of criminal offending - (2) right to elect trial by jury under New Zealand Bill of Rights Act 1990 compromised where young person and adult jointly tried - dependent on exercise of discretion by YCJ - (3) would remove advantages ordinarily available to a young person under s275, s276 Children, Young Persons, and Their Families Act 1989.

CK v Police (17 October 2006, HC, Wellington, CRI 2006-485-41, Miller J)

Filed under:

Name: CK v Police
Unreported
File number: CRI 2006-485-41
Court: High Court
Location: Wellington
Date: 17 October 2006
Judge: Miller J
Charge: Assault with intent to injure; Wounding with intent
CYPFA: s247(b); s245; s250; s253
Key title: Family Group Conferences - Convened/Held
Summary: Unsuccessful appeal against Youth Court decision on grounds that Youth Court lacked jurisdiction to hear the charges as FGC not properly convened under s253 CYPFA, the Judge wrongly admitted CK's statement to the police, and there was insufficient evidence from which the Judge could find that the wounding and assault charges were proven.

On 27 July 2005, the YJC received a referral and a summary of facts in relation to the case. On 2 August 2005 the YJC spoke with the mother of one of the victims describing his role and explaining the FGC process. He advised that there was a possibility that the charges may be denied by CK and SL. The YJC advised that it was not necessary to attend the FGC where a denial of the charge was likely to be recorded. On 12 August 2005 the YJC spoke with the second victim. Again, he explained the FGC process and stressed that there was no need for the victim to attend to hear a denial of the summary of facts. The victim advised that he would not attend the FGC. YJC called CK's mother to explain that a FGC conference would be held and its purpose; CK's mother adamant that issue of whether CK would deny the charges was not discussed. YJC believed that CK and co-accused intended to deny charges.

At FGC process and summary of facts discussed; CK denied the charges and disagreed with the summary of facts. YJC convened FGC under s247(b); s245(1) CYPFA applied. YJC maintained he had applied s250 and that he had consulted CK and his family about the date, time and place of the FGC, who should attend, and the procedure to be adopted. YJC intended a two-stage process – if CK admitted responsibility the FGC would be adjourned and reconvened with the victims present if they wished to attend.

Police v BM [1993] 11 FRNZ 29; *Police v N* [2004] NZFLR 1009 distinguished. **A YJC cannot conduct a two-stage FGC** in which a conference is held with the young person and family group alone to determine whether offence is admitted before victim invited to second conference. FGC provisions in CYPFA envisage a single conference will be convened – they do not envisage that a conference of some eligible participants will be convened, then adjourned so that other eligible attendees can be invited to attend. Section s253(4) available; speculative to submit that different outcomes may have resulted had the victims attended; the victims chose not to attend and one victim's mother had made it clear that the maximum penalty was sought. FGC important but it does not follow that every prosecution must fail where the procedures for convening a conference have miscarried. It cannot be said that in the circumstances failure to attend was likely to have materially altered the outcome of the conference.

Decision: FGC ground of appeal fails. Appeal also unsuccessful as to admissibility of CK's statement to Police and sufficiency of evidence as to the charges.

Police v CAP [2007] DCR 219

Filed under:

Name: Police v CAP
Reported [2007] DCR 219
File number: CRN-062320073
Court: Youth Court
Location: Lower Hutt
Date: 25 October 2006
Judge: Judge A P Walsh
Charge: s120(1)(c) Crimes Act 1961
CYPFA: s238(1)(d)
Key title: Custody, Chief Executive
Case Summary:
An order had been made under s 238(1)(d) of the Children, Young Persons, and Their Families Act 1989 that the young person CAP (aged 16 years, 11 months) be detained in the custody of the Chief Executive of Child, Youth and Family Services (CYFS). CAP was placed with a CYFS caregiver who, because she worked during the day, was unable to supervise CAP from 7.00 am to 7.00 pm each day and in fact required that he vacate the house during that period. CAP went missing from the home for more than a day and a night, when he was found by the police and arrested. He was charged with breaching s 120(1)(c) of the Crimes Act 1961 in that, while being in lawful custody, he escaped from that custody. The issue for the Court was whether, given that he was required to be away from the house during the day and could not be supervised, he had been detained in the custody of CYFS.

CAP had advised the Court he had a serious drug addiction and was using the drug "P". He sought help to gain entry to a residential drug and alcohol facility. He had a history of offending and his risk of committing further offences was extremely high.

CAP was placed in the care of a CYFS caregiver. He discussed with CAP an agreement entitled "Agreement and Conditions for CAP/M". Clause 4 of that agreement read

4. I will not leave (caregiver's address), unless I am with my caregiver [TM] or grandmother [MS], uncle and aunt [P and TS].

In cross–examination the social worker was aware of addiction issues for CAP as he had been assigned to him in November 2005. He acknowledged cl 4 of the agreement did not address the reality of the placement at TM's home.

Counsel for CAP argued that detention could not be effected by the placement of partial controls such as the imposition of the 12–hour curfew. Such a proposition failed to take into account the legislative reasons CAP had been remanded under s 238(1)(d). He was denied bail to prevent further offending. It was not to reduce the chance or minimise the risk or any other such notion. In those circumstances it was illogical to suggest a young person, accepted as being one of the most high–risk young people in the youth justice system, who had told the Youth Court he could not control his P addiction, would be prevented from offending by night–time curfew alone. If an arrangement like this had been considered safe CAP would have been admitted to bail or placed under an agreement pursuant to s 238(1)(c). The whole purpose of the remand under s 238(1)(d) was because he needed to be detained and the order under s 238(1)(d) was the most powerful and restrictive order available to the Court.

The Court agreed, holding that it is implicit in a remand under s 238(1)(d) the young person is confined or detained in such a way as to prevent any of the matters specified in s 239(1)(a) – (c) occurring.

The judge held that where a young person has been "detained in the custody of" CYFS, there must be an element of confinement which must be monitored or controlled at all times by the person so appointed under s 362. Section 238(1)(d) clearly is the most restrictive provision pertaining to the release of a young person from the Youth Court given the criteria under s 239(1) which must be satisfied. As noted in Police v T (Youth Court, Hamilton CRI 2005-219000046, 23 November 2005, Judge A E McAloon), there is a clear difference between s 238(1)(c) and (d). The Court also noted that, while CAP entered into a contract with CYFS, it was unaware of any legal basis for such a contract in terms of the CYPF Act.

The judge commented that the Court which made the original order was entitled to expect CAP would be confined on a fulltime basis and not partially confined as happened in this case. This could be termed a "hybrid detention arrangement" somewhere between ss 238(1)(c) and 238(1)(d), and such an arrangement has no legal basis.

R v ZF YC Napier CRI-2006-241-000113, 26 October 2006

Filed under:

R v ZF

File number: CRI-2006-241-000113
Court: Youth Court, Napier
Date: 26 October 2006
Judge: Principal Youth Court Judge Becroft
Key title: Orders – type: Conviction and transfer to the District Court for sentencing – s 283(o): Aggravated robbery, Principles of Youth Justice (s 208)

Case Summary:

Z and two 17-year-olds jointly charged with aggravated robbery of dairy with replica firearm. Z indicated desire to plead guilty; Family Group Conference; Youth Court jurisdiction offered and accepted. Whether s 283(o) Order to be imposed. Sections 4; 5; 208 and 290 considered; *Police v Rangihika* [2000] DCR 866, 872; *S v Police* [2000] NZFLR 380 considered. Difference between decision for s 283(o) order and supervision with residence order often one of degree, seriousness, background family circumstances and public interest.

Z's unblemished character, that he is a capable and talented person (had saved a swimmer from treacherous seas), family support and Youth Justice principles dictated that Z be given a second chance. This must be balanced against seriousness of offending, pre-meditation, effect on victim; parity, fairness, consistency with other offenders and fact that Z intimately involved and the public interest.

Decision:

Z to be convicted and transferred to the District Court but as per *X v Police* (2005) 22 CRNZ 58 (HC), three comments made for the DC's information -

i. strong mitigating factor that all 3 offenders had no offending history,
ii. High Court conflict as to application of youth justice principles in the District Court but Judge's view that it is insufficient for Z to be sentenced using adult tariff and subtracting additional prison time because of youth. Adult courts must grapple with developmental immaturity of young people; teenagers must be dealt with in qualitatively different way: *Roper v Simmons* (1 March 2005) 543 US;
iii. if sentenced to a period of imprisonment of under 2 years may be eligible for home detention.

R v Torstonson and Ham DC Hamilton CRI-2006-219-000233, 24 November 2006

Filed under:

R v Torstonson and Ham

File number: CRI 2006-219-000233
Court: District Court, Hamilton
Date: 24 November 2006
Judge: Judge McAloon
Key title: Sentencing in the adult Courts - Application of Youth Court principles; Sentencing in the adult Courts - Arson

Case summary

Sentencing of the defendants following convictions and guilty pleas to two charges of arson. Both defendants were originally charged in the Youth Court. Both defendants were aged 15 at the time of the offences.

On 4 July 2006 at 11:15pm the alarm at Melville High Scholl was activated. The caretaker and Police arrived at the school to find that the technology centre, D block was on fire. A small area of carpet had been burnt and it was clear an accelerant had been used. The next morning at 2:45am the alarms were activated again in the computer wing of the school. The fire brigade attended, but the computer wing was completely destroyed, the damage being estimated at $750,000.00. The defendant Ham (H) went to the Police the next day and admitted being in the school grounds lighting fires the previous evening with school friends, including the defendant Torstonson (T). When interviewed by the Police, T admitted being at the school, but denied lighting any fires. At the next interview both T and H admitted being involved in lighting both fires.

Issues

Whether Youth Court Principles apply on a transfer to the District Court for sentencing?

In sentencing the Judge took into account all matters relevant to the sentencing exercise and those matters which are particularly relevant to young people.

Aggravating features were the seriousness of the offending and the amount of damage caused and premeditation. The fact that the defendants had 'two goes' at starting a fire was considered a very serious aggravating factor.

A mitigating feature was the defendants' ages. Discussion that it is now accepted that young people of the defendants' ages are immature and that their cognitive development does not necessarily equip them to have a complete understanding of the consequences of their actions. Another mitigating feature was the guilty pleas. T pleaded guilty on the first day in he appeared in Court and H pleaded guilty only after the depositions hearing. The defendants' remorse and absence of prior offending were mitigating features.

The Judge considered s16 of the Sentencing Act 2002, and considered that the principles of sentencing could be followed and the purposes achieved by the imposition of community based sentences.

Decision

1. H was sentenced to two years supervision, subject to the standard conditions and that H attend at and complete vocational as educational training as directed. In addition, H was sentenced to 350 hours community work.
2. T, taking into account his very early guilty plea and co operation with Police, was sentenced to 300 hours community work and 18 months supervision with the same conditions imposed as for H.
3. The Judge declined to order that the interim name suppression continued.

New Zealand Police v L (4 December 2006, Youth Court, Porirua, CRI –2006-291-207 Judge Becroft

Filed under:

Name: Police v L
Unreported:
File number: CRI-2006-291-207
Court: Youth Court
Location: Porirua
Date: 4 December 2006
Judge: Judge Becroft
Charge:
CYPFA: s283(1)(d)
Key title: Bail

Case Summary:

Successful application for bail by the defendant, L a young person (16), facing two charges, one of injuring with intent to cause grievous bodily harm and a second of aggravated robbery two days later, for which he was remanded under s283(1)(d) in a CYFS residence. Bail was opposed by the informant, Police on the grounds that the offences were serious and caused actual bodily harm in each case. The second offence was committed while the defendant was on bail for the first offence and in breach of a non-association bail condition. The defendant had previously appeared in the Youth Court, largely on property related matters. There was no previous offending while on bail or breach of bail conditions.
The informant submitted that the defendant had been known to roam the Canons Creek area with associates in the manner of a street gang. The informant claimed it was in the interests of

public interest and safety that the defendant remained in custody.
Counsel for the defendant submitted that the evidence against the defendant was 'thin'. The defendant strongly denied the charges, and if Youth Court jurisdiction was not offered, it would be over a year before the matter could be resolved before a jury trial. The defendant had an address available for him in Hawkes Bay and an offer of employment. There had been no previous offending in Hawkes Bay.

Decision:
Held; Granting bail. The decision was finely balanced. While there was some evidence of the defendant's involvement, it was not strong, especially in respect of the aggravated robbery. On the other hand, the Courts need to be careful to ensure that street violence is not permitted to take place. The offending only took place in Porirua and the defendant has a stable environment and job offer in Hawkes Bay.
The Judge was influenced by the fact that there were insufficient residential beds in the country and too may young offenders in police cells as a result. Given these factors bail was granted by a very fine margin.

The Judge was informed of an assault charge against the defendant in Napier on 5 April 2006.
Conditions imposed: The defendant reside at a stated address. A curfew was imposed from 6pm to 5am, unless in the presence of Ms P. The defendant was ordered to present to the police when curfew checked and to appear at the front door. When released from police custody on 4 December 2006 to travel to the address. Not to consume alcohol. Non-association orders. Not to travel south of Hastings or North of Eskdale unless travelling to the Porirua Youth Court or to see a Youth Advocate.

New Zealand Police v SMT 11 December 2006, Youth Court, Porirua, CRI-2006-291-222 Judge Becroft

Filed under:

Name: New Zealand Police v SMT
Unreported:
File number: CRI –2006-291-222
Court: Youth Court
Location: Porirua
Date: 11 December 2006
Judge: Becroft, J PYCJ
Charge:
CYPFA: s280
Key title: Care and Protection order

Case Summary:

Reasons for a care and protection order pursuant to s280 of the CYPFA as required by s19(1A) of the CYPFA. The defendant's mother and step father were both 'P' users. There was violence in the home and the defendant was developing a habit of lying and was a truant. The referral was made with the consent of the defendant's mother and birth father.

Recommendation that Care and Protection take over the matter following a Care and Protection family group conference as a matter of urgency. Judge Becroft suggested the referral be made under s14(1)(b) and (d) of the CYPFA.

The Crown v JT YC Auckland CRI-2006-204-000750, 21 December 2006

Filed under:

The Crown v JT

File number: CRI-2006-204-000750
Court: Youth Court, Auckland
Date: 21 December 2006
Judge: Judge Rota
Key title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH)

Case Summary:

Successful application by the Crown for an order that the defendant, a YP be transferred to the DC for sentencing. The defendant was aged 15 at the time of the offending and faced four charges of aggravated robbery, assault with intent to rob, burglary, and wounding with intent to injure on two occasions. The aggravated robberies are purely indictable. The YC considered the provisions of ss 280(o) and 290 of the CYPFA.

The Court took into account the general history of offending of the defendant (being over three years), and the alarming conduct of the defendant while on bail. The Court considered the preconditions of s 290 were met and that a non-custodial sentence would be inadequate. The Court preferred the approach of *Police v S and M* [1993] DCR 1080 and *Police v James* (1991) 8 FRNZ 628 (YC) over *Police v P* [2006] DCR 120, the latter being relied on by counsel for the defendant. *Police v P* was distinguishable as the defendant in that case had an absence of offending history and an otherwise impeccable record and a real likelihood of no further offending.

Decision:

The defendant was convicted and transferred to the DC for sentencing. On each charge the defendant was remanded in custody to 19 January at 9am for a full probation Officers Report and for sentence.

R v M and HM DC Gisborne CRI-2006-216-000031, 30 August 2006

Filed under:

R v M and HM

File number: CRI-2006-216-000060
Court: District Court, Gisborne
Date: 22 December 2006
Judge: Judge Thorburn
Key title: Sentencing in the adult courts – Aggravated Robbery; Sentencing in the adult courts – application of Youth Justice Principles

Summary

M (now 19) and HM (now 15) jointly charged with aggravated robbery after attack on two elderly, frail sisters. Attacked the elderly women in their home and stole $180. Both young women have strong family presence and support but culture of violence in parts of family.

M:

Just prior to offending M had suffered serious abuse by gang members and used "P" to cope. Has made significant rehabilitative progress, intensive drug rehabilitation programme. *R v Mako* [2000] 2 NZLR 170 (CA)*; R v Taueki*; starting point of 5 years imprisonment. Credit for guilty plea and demonstrated progress.

Decision re M:

2 years, 3 months imprisonment plus three months imprisonment to be served concurrently on further using a document charges.

HM:

Youth Court jurisdiction had been declined; s 153A guilty plea. *R v Mako* [para 60 –65]; prospect of rehabilitation for person as young as HM a mitigating factor. Youth justice principles relevant in the adult Courts: *X v Police* (2005) 22 CRNZ 58 (HC) per Heath and Courtney JJ. SA s 7 rehabilitation; HM has also made significant progress on remand.

Decision re HM:

18 months imprisonment, leave reserved for home detention application. Commencement of sentence deferred for 2 months (s 100(1) SA) due to exceptional circumstances, YP integrated into good education programme. Further conditions as to counselling and education programmes.

Police v FG YC Auckland CRI-2006-204-000786, 7 December 2006

Filed under:

Police v FG

File number: CRI-2006-204-000786
Court: Youth Court, Auckland
Date: 7 December 2006

Judge: Judge Thorburn
Key title: Orders – Conviction and transfer to the District Court for sentencing – s283(o): Aggravated robbery, Principles of Youth Justice (s 208)

Case Summary:

Application for transfer to District Court (DC). FG and others committed two thefts of alcohol from liquor stores and aggravated robberies of a superette, a service station and a taxi driver. FG admitted involvement.

Serious offending of a 'spree' nature warrants a powerful denunciating sentence; one co-offender sentenced to over 6 years imprisonment; Crown have powerful point to argue transfer to DC should take place. Further, FG turning 17 tomorrow and Youth Court orders cannot operate after age 17.5yrs.

However, transfer to DC will not be granted. Section 283(o) CYPF Act transfer requires s 290 criteria to be considered. Under s 290 there is a presumption against transfer unless Judge satisfied that no alternative under the youth justice legislation is appropriate. Suitable alternatives exist here.

Section 284 factors; personal history; social circumstances, personal characteristics, offender's good attitude; good response from family; ss 4(f); 208(c), 208(d) and 208(e) of the CYPF Act considered.

Family from Ethiopia; waiting process has been a strengthening one for family; FG presents no threat to community; is very gifted and intelligent; has begun making progress towards law-abiding life; genuinely remorseful. To transfer FG and expose him to 2-3 years imprisonment would "torpedo" the seeds of development already laid consistent with the CYPF Act.

Decision:

Supervision with residence with shortened period of supervision to follow plus further conditions as to residence, education, mentoring and drug and alcohol services assessment.

R v HR, MW & WT (22 December 2006, YC, Gisborne, 2006-216-60) Judge Thorburn

Filed under:

Name: R v HR, MW & WT
Unreported:
File number: 2006-216-60
Court: Youth Court
Location: Gisborne
Date: 22 December 2006
Judge: Thorburn DCJ
Charge: Aggravated Robbery
CYPFA: s275

Key title: Jurisdiction of the Youth Court – s275 offer/election
Case Summary: Three young persons jointly charged with adult; aggravated robbery; adult pleaded guilty. Whether to exercise s275(1) CYPF Act discretion for young persons.

Youth Court jurisdiction opportunity given because offending in lower range of seriousness within category; no history of offending for all three (R v H [2004] DCR 97 referred to). Counsel had indicated 3-3.5 years imprisonment a possibility if convicted but YC jurisdiction leaves open possibility of s283(o) transfer with up to 5 years imprisonment possible. Adult jurisdiction would deprive young people of treatment in line with objects and principles of CYPF Act.

Young persons ought usually to be offered the election of YC jurisdiction unless some good reason is demonstrated for not doing so (*Police v D* (Youth Court, Levin CRN 5254003780 13 May 1995, Judge Inglis QC). Offer of YC jurisdiction should be made as ultimate sanction still possible but other available CYPF Act outcomes should not be thwarted in advance before proper consideration given to them.

Decision: HR, MW and WT granted YC jurisdiction.

R v Feki DC Auckland CRN 06204005792, 27 September 2006

Filed under:

R v Feki

File number: CRN 06204005792
Court: District Court, Auckland
Date: 27 September 2006
Judge: Judge Thorburn
Key title: Sentencing in the adult courts: Serious assault (including GBH), Sentencing in the adult courts: Application of Youth Justice Principles

Summary

Sentencing in the District Court, the young person having been previously convicted and transferred to the District Court for sentencing under s 283(o) Children, Young Persons and Their Families Act 1989.

Feki, as part of a group of young men loosely formed as a gang called JTK, smashed the face of the victim with a golf club, in the mistaken belief that the victim was responsible for the stabbing of a member of the gang. The Court described the offending as "an alarming and most appallingly violent and unacceptably arrogant event in which group mentality was prevailing and a large group of young men simply degenerated to primitive primeval violent behaviour from which death could easily have ensued".

The co-offenders, jointly charged, were mostly adults. There was no suggestion that Feki was the ringleader, or motivator or activator, but he admitted a level of involvement with a golf club. Feki was the only offender who admitted his involvement.

The Court briefly discussed the conflict between *X v Police* (2005) 22 CRNZ 58 (HC) and *R v Patea-Glendinning* [2006] DCR 505, and implied that whichever case was to be favoured, it would make little difference to the outcome in this case.

The Court stressed the importance of denunciation of this type of behaviour, that required a prison term. It also noted the guilty plea (indicating, perhaps, some level of integrity), Feki's youthfulness, and a reparation payment of $1000.

Decision

Sentenced to 21 months imprisonment (with leave reserved to make application for home detention), with numerous release conditions, and order for reparation payment of $1000. (Note: this is an older case, before the new Sentencing Act.)

2005

R v Semmens (27 January 2005) DC, Gisborne, CRN 2004-216-65, Judge Gittos DCJ

Filed under:

Name: R v Semmens
Unreported:
File number: CRN 2004-216-65
Court: District Court
Location: Gisborne
Date: 27 January 2005
Judge: Gittos DCJ
Charge: Indecent Assault; Sexual Violation
CYPFA: s213
Key title: Youth Court procedure

Summary: Whether admissions previously made in the YC may be admitted into evidence in relation to later offending. Semmens faced indictable charges of indecent assault and sexual violation. The Crown sought to lead evidence of three similar offences – two had been dealt with in the YC on the basis that they were not denied, and no formal prosecution had ensued concerning a further matter. Defence counsel argued that to allow this material could inhibit parties from taking the frank and pragmatic approach that characterises the YC. Judge Gittos found that s213 CYPFA, which states that evidence of warnings and formal Police cautions are inadmissible, implies that the statutory prohibition against leading similar fact evidence against young people is limited to that situation and does not extend to more grave circumstances where charges are laid and the matter proceeds to the YC, or where no charges are laid but a complaint is made. Judge Gittos approached the question of admissibility as he would in any other case and, given the similarity of the foregoing offences to the matter currently before the Court, admitted the evidence.

R v Slade [2005] 2 NZLR 526 (CA)

Filed under:

R v Slade [2005] 2 NZLR 526 (CA)

Court of Appeal
File number: CA245/04, CA266/04,
Date: 28 February 2005
Judge: Anderson P, Hammond and William Young JJ
Key title: Sentencing in the adult Courts – Murder/manslaughter; Sentencing in the adult Courts – application of Youth Court Principles.

The Court of Appeal ruled that a minimum non-parole period of 17 years under s 104 Sentencing Act 2002, could be so crushing for a young person that it would be manifestly unjust to impose it.

In *R v Slade* two youths appealed against sentences of life imprisonment with a minimum 17-year non-parole period for murder. The pair (then 16), along with a third youth, had viciously attacked and robbed a passer-by who later died of massive head injuries. Section 104 requires that the 17 year minimum be imposed where certain factors are present during the murder unless the Court is satisfied that 'it would be manifestly unjust to do so'. The Court of Appeal held that this was a case where s104 applied and then considered whether a 17 year sentence of actual imprisonment would fall so heavily on the young men that it would be 'genuinely crushing and destructive of their lives and therefore manifestly unjust'.

The ringleader in the offence, Hamilton, was particularly brutal and lacking in remorse, and the Court had little difficulty in dismissing his appeal. Slade, whose involvement had been more peripheral, although not minimal, and who nevertheless faced the full 17-year sentence, presented a greater challenge to the Court.

The Court stressed that there is no youth exemption to s104 but noted evidence showing that adolescents' developmental levels are different to those of adults. Statistics show a high degree of violent offending amongst youths but offending tails off once offenders reach their twenties. Registered consultant psychologist, Dr Ian Lambie, set out the reasons for this in a report for the defence:

It is widely accepted that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults (Steinberg & Scott, 2003). Adolescents have difficulty regulating their moods, impulses and behaviours (Spear, 2001). Immediate and concrete rewards, along with the reward of peer approval, weigh more heavily in their decisions and hence they are less likely than adults to think through the consequences of their actions. Adolescents' decision-making capacities are immature and their autonomy constrained. Their ability to make good decisions is mitigated by stressful, unstructured settings and the influence of others. They are more vulnerable than adults to the influence of coercive circumstances such as provocation, duress and threat and are more likely to make riskier decisions when in groups. Adolescents' desire for peer approval, and fear of rejection, affects their choices even without clear coercion (Moffitt, 1993). Also, because adolescents are more impulsive than adults, it may take less of a threat to provoke an aggressive response from an adolescent.

Dr Lambie's report also referred to the high levels of depression, anxiety, suicidal ideation and self-injurious behaviour, and victimisation from other inmates that adolescents experience in prison. Further, adult institutions offer fewer health and mental health services for adolescents than for adult prisoners. The Court noted the policy implications arising for the criminal justice sphere from this evidence, particularly in addressing the causes of offending.

The Court stated that cases such as the present can only turn on their own facts, having regard particularly to the intent of the perpetrator, their actual participation in the wrongful event, and their "attitude" to what occurred. In this case, Slade showed some empathy and awareness and, although his involvement was not minimal, he was not the principal perpetrator and could not be considered to be on all fours with Hamilton for the purposes of s 104.

Result:

Considering his age, abusive and deprived upbringing and the crushing nature of a sentence such as this for a 17 year old, the Court decided that this would be a case where manifest injustice would result from the lengthy non-parole period. Consequently, Slade's appeal was allowed and the 17 year minimum non-parole period was set aside. His sentence of life imprisonment remained.

X v Police (2005) 22 CRNZ 58 (HC)

Filed under:

X v Police (2005) 22 CRNZ 58 (HC)

File number: CRI 2004-404-000374
Date: 11 February 2005
Court: High Court, Auckland
Judge: Heath and Courtney JJ
Key Title: Sentencing in the adult Courts: Application of Youth Justice principles; Sentencing in the adult Courts: Sexual violation by unlawful sexual connection.

Summary

This case considered whether youth justice principles (set out in s 208 of the CYPFA) apply in an adult tariff Court, and if so, to what extent should those principles be taken into account. X was charged with several counts of unlawful sexual connection and indecent assault with two young males (one under the age of 12 and one aged between 12-16). X was aged between 14 and 15 at the time of the particular offending with which he was charged. He came before the Youth Court at the age of 17. X admitted the charges in the Youth Court. The Court entered a conviction on each charge and ordered that X be transferred to the District Court for sentence under s 283(o) of the CYPFA. The District Court sentenced X to three years imprisonment on each of the sexual violation charges, to be served concurrently. X appealed against his sentence on the ground that the sentence imposed by the District Court Judge was manifestly excessive, inappropriate, and did not take into account youth justice principles relevant to the sentencing decision.

Held: The District Court must take into account youth justice principles in determining the length of the sentence of imprisonment to be imposed for a youth offender following a transfer for sentence from the Youth Court. Several factors should be taken into account when sentencing young offenders, including:

- The age of the offender and their particular vulnerability and immaturity;
- Findings in the Youth Court as to chances of rehabilitation and support groups;
- The reasons why the Youth Court Judge transferred the case to the District Court; and
- The principles and purposes of sentencing reflected in the goals of s 208 of the CYPFA.

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Outcome

- Appeal allowed. Sentences imposed by District Court Judge set aside.
- X sentenced to 2 years on each sexual violation charge, terms to be concurrent. 50% discount to sentence due to acceptance of early responsibility, remorse, and age of offender. Age was an important factor: "The age of the offender takes account of his vulnerability and immaturity which in turn operate to lessen (at least to some degree) the weight to be given to premeditated offending." [109]
- Leave to apply for home detention granted.
- Section 14(1) of the Parole Act 2002 conditions apply with other conditions specified in judgment.

The High Court's Analysis

The Statutory Scheme

There are important differences in procedure and the consequences of any finding that a charge has been proved between the youth and adult courts.

The CYPFA governs youth justice in New Zealand. The law recognises that youth offenders ought to be treated differently from adult offenders. The particular features of the youth justice system highlighted in the High Court case were:

- The Youth Court operates using age-related controls, sanctions and procedures that recognise the limited understanding and particular vulnerability to influence of young people (*Police v Edge* [1993] 2 NZLR 7 (CA)).
- The Youth Court applies "youth justice principles" set out in s208 of CYPFA (*E v Police* (1995) 13 FRNZ 139 (HC)) that reflect the objects of the Act.
- The consequences of electing trial by jury are significant as to potential sentence. The maximum sentence that can be imposed by a District Court following a transfer for sentence from the Youth Court is 5 years for the reasons given by the Court of Appeal in *R v P* CA59/03, 18 September 2003 per Keith, Hammond and Patterson J).
- The method of disposal of criminal proceedings in the Youth Court is unique. The Youth Court does not have to enter convictions after proof that the offence has been committed. Rather, the Court may make one or more of the orders set out in s 283 of the CYPFA.

In this case, the Youth Court made an order for transfer to the District Court under s 283(o) of the CYP Act. Section 290 restricts the making of a s 283(o) order:

The High Court stated that this process was of some importance as "In effect, an order for transfer is a recognition that sanctions available solely in the Youth Court are inappropriate to respond to the particular offending in issue." [38] A transfer order indicates that a wider range of sentencing options ought to be considered. It removes the option of purely Youth Court sanctions being imposed for the offending. [41]

In making sentencing decisions the Youth Court is guided by:

a. the principles of youth justice (s 208 of the CYPFA);

b. The objects of the CYPFA;
c. The principles to be applied generally in the exercise of powers conferred by the Act; and
d. The long title to the Act.

When a decision is transferred to the adult tariff court the provisions of the Sentencing Act 2002 apply. The High Court therefore had to consider whether and how youth justice principles would apply in the District Court. The authorities on the applicability of youth justice principles outside the Youth Court have developed in an ad hoc manner:

- A detailed history of the case law is at paras [46] to [56]. Only one case dealt with the interface between the CYPFA and Sentencing Act 2002 in the context of a transfer for sentence in the District Court under s 283(o) of the CYPFA: *R v M T-J* (2002) 20 CRNZ 1051 (DC) .
- *R v M T-J* was a case that involved an aggravated robbery where the tariff case of *R v Mako* ordinarily applied. In his judgment, Judge Harvey held that the sections in the CYPFA continued to be available in the District or Sentencing Court. The High Court quoted extensively from his judgment, citing in full paras [25] to [30].

Reasoning

The Court's analysis is set out at paras [68] to [85].

(a) Applicability of youth justice principles

- The starting point for analysis is s283(o) of the CYPFA. "In effect an order for transfer has the effect of removing a young offender from the youth justice regime." [68] Once in the adult tariff court, the provisions of the Sentencing Act 2002 apply.
- The Sentencing Act 2002 provides a framework for analysis when imposing a sentence. Nothing in either s 9(1) or (2) of the Sentencing Act 2002 (which list aggravating and mitigating factors to be considered by a sentencing Court) prevents the Court from taking into account other aggravating or mitigating factors.
- When a Youth Court determines if a young offender should be sentenced in the District Court it must apply the criteria set out in s 290 of the CYPFA. The factors of particular importance relate to the likelihood of a custodial sentence being imposed (s 290(1)(b) and (c)). When the Youth Court makes that assessment, ss 16 and 18 of the Sentencing Act 2002 are also relevant.
- In determining whether a District Court is obliged to have regard to youth justice principles the wording of s 208 of the CYPFA assumes importance. The first two principles are only relevant to the youth court "*[p]rima facie*, the balance of the principles set out in s 208 are relevant to sentencing, whether in the Youth Court or the District Court" (i.e. s 208(c) to (h)).
- Section 5 of the CYPFA, to which s 208 is expressly subject - refers to principles to be applied by **any Court exercising powers conferred by or under the Act (**i.e. s 5(a)-(f)). There was some discussion about the meaning of the underlined words. The High Court held:
    a. The words "any Court" are not limited to the Youth Court [76].
    b. When the District Court sentences a young person pursuant to a s 283(o) order the DC exercises a power conferred by or under parts 4 or 5 of the CYPFA, and so is exercising a power "conferred by or under the Act".
- The High Court addressed "whether this construction causes an inconsistency between those cases in which the young person is tried summarily in the Youth Court (whether in respect of summary or indictable offences) and those in which trial by jury is elected and the

option to revert to the Youth Court jurisdiction is not offered or not accepted". It held at [80]:

"We accept the argument that sentencing exercised after trial by jury is a power "conferred by or under [Part 4] or Part 5" of the CYPFA (for the purposes of s 208) is more tenuous. But, we have come to the view that it is a valid interpretation given that, even in the most serious offence of murder, a modified preliminary process is mandated by the CYPFA. For that reason we hold that the CYPFA empowers the sentencing Court by providing for the way in which different Courts deal with particular charges in specified circumstances."

[81] As ss 4, 5, and the Long Title to the CYPFA are located within earlier parts of the statute, there is nothing in s 208 of the CYPFA that could preclude a sentencing Court, other than the Youth Court, from taking those objectives, purposes and principles into account." [81]

- The effect of this obiter statement is that where a case has only passed through the Youth Court as a matter of procedure any sentencing decision in the adult tariff courts will have to consider youth justice principles.
    - The High Court stated that their interpretation was consistent with that of Judge Harvey in *R v M T-J* except in three important aspects, set out at para [83] from (a) to (c).

Some Important Principles

The Court outlined at [85] "some important principles which we consider ought to be followed when District Court Judges are asked to sentence under s 283(o) of the CYPFA":

a. In many cases the Youth Court will have inquired, both through the receipt of specialist reports and at a Family Group Conference, whether adequate family support groups exist to assist an offender to rehabilitate. Findings on that issue ought to be included in the reasons for transferring the young offender to the District Court for sentence because a finding, one way or the other, may influence the District Court on sentence. Similarly, any findings as to the nature of such a support group are also likely to be helpful.
b. The extent to which the youth justice principles set out in s208 and the purposes of the CYPFA can be taken into account will fall for consideration on a case by case basis. A District Court Judge will need to be reasonably specific in his or her analysis of the weight to be given to particular factors so that an appellate Court can understand the reasons why the sentence was chosen. In particular, it is important that the District Court Judge take account of the reasons for transfer given by the Youth Court because the decision to transfer necessarily means the case is too serious for Youth Court sanctions alone.
c. In cases of sexual violation, non-custodial sentences can rarely (if ever) be justified because of the existence of s 128B of the Crimes Act 1961 and the dicta of the Court of Appeal in *R v N*. Nevertheless, the principles of youth justice are still relevant in fixing the length of the appropriate term of imprisonment. Often, the youth justice principles will be relevant to the sentencing goal of imposing the least restrictive outcome available in the circumstances: s 8(g) of the Sentencing Act 2002.
d. Many of the principles and purposes of sentencing reflect goals set out in s 208 of the CYPFA. For example, s 8(h) and (i) and the mitigating factor of age (s 9(2)(a)) can be seen as directly relevant to the principles in s 208(c), (d), (e) and (f).

[85] Finally, and most important of all, we reinforce what was said by Judge Harvey in *R v M T-J*. The application of youth justice principles does not prevent the District Court from imposing a sentence of imprisonment. Nor does it they prevent the District Court, in appropriate circumstances, from holding that sentencing goals of accountability for harm done, denunciation and deterrence require a longer custodial sentence because those factors assume primacy over the youth justice principles. Each case must be determined on its own facts. The point is that the sentencing of a young person must take account of youth justice principles.

Police v Clarke DC Christchurch CRN 5209003016, 25 February 2005

Filed under:

Police v Clarke

File number: CRN 5209003016
Date: 25 February 2005
Court: District Court, Christchurch
Judge: Doherty DCJ
Key Title: Sentencing in the adult Courts: Other; Sentencing in the adult Courts: Application of Youth Justice principles

Notes on Sentencing. Clarke transferred to adult Court on aggravated wounding charge; 10 or 11 charges still in YC from a crime spree that included car conversion and stealing from cars and shops. During one car conversion attempt, Clarke (then 14) was confronted by the car's owner; a struggle ensued and Clarke stabbed car owner in the arm twice with scissors leading to aggravated wounding charge; victim suffered permanent injuries. Mitigating factors: unfortunate upbringing; Clarke engaging and bright; family supportive but desperate; remorse. Aggravating factors: drug and alcohol abuse, violence issues; Clarke intended his actions; prior criminal record. Need for deterrence but also rehabilitation; Starting point is 3-5 years (*R v Hereora* [1986] 2 NZLR 164), no "positive or redeeming feature currently in your make-up". Bearing in mind guilty plea and age, credit of one half of sentence.

Decision:

Sentenced to two and a half years imprisonment.

Police v E & T (15 February 2005) YC, Wanganui, Callinicos DCJ

Filed under:

Name: Police v E & T
Unreported
File number:
Date: 15 February 2005
Court: Youth Court

Location: Wanganui
Judge: Callinicos DCJ
CYPFA: s276
Charge: Aggravated Robbery
Key Title: Jurisdiction of the Youth Court - s276 offer/election

Summary: E & T (15.5 yrs) charged with aggravated robbery; both indicated a desire to plead guilty. Whether YC jurisdiction should be offered. E & T planned and carried out an aggravated robbery on a shop, with the assistance of two associates. E threatened the victim with a craft knife in the presence of victim's three-year-old child. T advised the Police of her involvement prior to any contact having been made with her by Police; neither E nor T had previously appeared before the Courts. Leading cases considered: *Police v P & T (Young Persons)* (1991) 8 FRNZ 642; *S v DC at New Plymouth* (1992) 9 FRNZ 57; *Solicitor General v Wilson and Paul* (Harrison J, HC, Auckland, A9/02 and A13/02, 10 May 2002), *X v Police* (Heath and Courtney JJ, HC, Auckland, CRI 2004-404-374, 7 February 2005) and particularly *W v Registrar of Tokoroa Youth Court* (1999) 18 FRNZ 433 and *Police v James (A Young Person)* (1991) 8 FRNZ 628; factors relevant to the exercise of the discretion listed; each factor discussed in relation to this case. Here, T less involved in offence than E; T gave herself up to Police immediately; E less accepting of responsibility; both E & T turning 17 later in 2005; victim supports a rehabilitative attitude; no previous offending; public interest may be accommodated within the YC; s208 CYPFA. Held: T offered YC jurisdiction as objects of CYPFA can be met in the time available. E not offered YC jurisdiction as time available not sufficient to deal with her lesser appreciation of her situation and public interest concerns; further, E more involved in the offending at a more aggressive level. However, remitting of E's jurisdiction does not indicate the only outcome is one of the most severe kind: para [22] of *W v Registrar of Tokoroa Youth Court* emphasised.

Decision: YC jurisdiction offered to T but not to E.

R v Patea-Glendinning [2006] DCR 505 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

R v Patea-Glendinning [2006] DCR 505

File number: CRI-2005-483-000017
Court: High Court, Wanganui
Date: 29 March 2005
Judge: Miller J
Key title: Sentencing in the adult courts: Application of Youth Justice Principles; Sentencing in the adult courts: Aggravated robbery, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Principles of Youth Justice (s 208)

LexisNexis Case Summary:

Criminal law – Youth justice – Appeal by Crown against sentence for aggravated robbery – Statutory sentencing jurisdiction following transfer of defendant to District Court for sentencing – Relevance of youth following transfer of defendant to District Court for

sentencing – Youth as mitigating factor – Starting point for sentence – Whether sentence imposed by District Court manifestly inadequate – Summary Proceedings Act 1957, s 173A – Children, Young Persons, and Their Families Act 1989, ss 2, 5, 6, 208, 272, 282, 283(o), 284, 290(2), 351, 352, 353, 354, 355, 356, 357, 358, 359, 360 – Interpretation Act 1999, s 5 – Sentencing Act 2002, ss 7, 8(h), 9(2), 16, 18, 104.

Sentencing – Young offender – Starting point for sentence – Whether sentence imposed by District Court manifestly inadequate – Sentencing Act 2002, ss 7, 8(h), 9(2), 16, 18, 104.

Appeal

The Crown appealed against the sentence imposed upon the respondent, Ira Patea-Glendinning, for aggravated robbery.

The respondent, Patea-Glendinning, was sentenced to 300 hours' community work, reparation, and two years' supervision with special conditions for the aggravated robbery of a dairy in Wanganui in February 2005 when he was 16 years old. The Crown appealed that sentence, maintaining that, having transferred the respondent to the District Court for sentencing under s 283(o) of the Children, Young Persons, and Their Families Act 1989 (the CYPF Act), the Judge was required to impose a sentence of not less than 18 months imprisonment under the Sentencing Act 2002.

Held

(dismissing the appeal)

1. The CYPF Act ceased to apply once the qualifying young person, in this case the respondent, was transferred to the District Court for sentence under s 283(o) of the Act (see paras [45], [46], [47], [48], [49]).
   X v Police (2005) 22 CRNZ 58 (HC) per Heath and Courtney JJ not followed.
2. Youth was properly to be considered a mitigating factor, and the allowance made as such a factor could be a substantial one, depending of course on age and the characteristics of the individual offender and the circumstances of the offence. In this case, therefore, a sentencing starting point of around four years was required (see paras [59], [60]).
   R v Mako [2000] 2 NZLR 170 (CA) followed.
3. The respondent received a substantial sentence of community work and two years' supervision with onerous conditions. That could not be seen as a light sentence or discounted as a real alternative to a short term of imprisonment with leave to seek home detention. When allowance was made for the need to preserve the flexibility of the sentencing Judge to take a rehabilitative approach when dealing with young offenders, it could not be said that the sentence was manifestly inadequate (see para [64]).

Police v DJT (7 April 2005) YC, Manukau, CRN 04292067113, Judge Simpson DCJ

Filed under:

Name: Police v DJT
Unreported:

File number: CRN 04292067113
Court: Youth Court
Location: Manukau
Date: 7 April 2005
Judge: Simpson DCJ
Charge: Unlawfully Taking a Motor Vehicle
CYPFA: s5(f); s322
Key title: Delay

Summary: DJT (16 yrs, 5 months at time of alleged offending) charged with unlawfully taking a motor vehicle; delay of over 10 months between the alleged offending and the first call of the matter; DJT was 17 yrs, 2.5 months at time of laying of Information and 17 yrs, 7 months at date of decision. Counsel argue undue delay contrary to s322 CYPFA, s5(f) CYPFA; prejudice caused because, due to the delay, DJT denied opportunity to be dealt with as a youth, denied rehabilitative options of the Youth Court; also DJT denied recognition of vulnerability of young persons entitling them to special protection during any investigation of alleged offending (s208(h) CYPFA). Police argue delay due to insufficient Police resources but that nevertheless the case had been given some priority; length of delay similar to amount of time routinely taken by Christchurch Youth Drug Court to deal with matters. *BGTD v Youth Court Rotorua* (Unreported, 15 March 2000, Robertson J, High Court, Rotorua, M119/99) distinguished. *Police v AT* (Unreported, Wellington Youth Court, 3 March 2004, Judge A P Walsh); and *Police v P & R* [2004] DCR 673 applied. Held: Delay found; delay was unduly protracted. Public interest in having offenders held accountable and the rights of the victim to have matters dealt with in a sensitive and timely manner recognised; delays must be set against clear statement of principle in s5(f); Police resourcing issues do not justify the delay; case not analogous to therapeutic programmes in the Christchurch Youth Drug Court where young persons are before the Court because an Information has been laid. Delay was prejudicial to DJT as he is now 17 and this prejudice is sufficiently serious to justify the extreme step of halting the proceeding.

Decision: Information dismissed.

Police v TJV (7 April 2005) YC, Manukau, CRN 05292007792; CRN 05292007793, Judge Simpson DCJ

Filed under:

Name: Police v TJV
Unreported:
File number: CRN 05292007792; CRN 05292007793
Court: Youth Court
Location: Manukau
Date: 7 April 2005
Judge: Simpson DCJ
Charge: Robbery; Aggravated Assault
CYPFA: s5(f); s322
Key title: Delay

Summary: T (14 yrs, 5 months at date of alleged offending on 21/5/04) charged with robbery

and aggravated assault; Informations sworn on 2/2/05; T appeared in Court for first time in connection with these matters on 8/2/05. Counsel argue undue delay contrary to s322 CYPFA, s5(f) CYPFA; prejudicial to T's schoolwork. Police argue delay due to insufficient Police resources but that nevertheless the case had been given some priority; length of delay similar to amount of time routinely taken by Christchurch Youth Drug Court to deal with matters. *BGTD v Youth Court Rotorua* (Unreported, 15 March 2000, Robertson J, High Court, Rotorua, M119/99) distinguished. *Police v AT* (Unreported, Wellington Youth Court, 3 March 2004, Judge A P Walsh); and *Police v P & R* [2004] DCR 673 applied. Cannot apply rule differently on basis of seriousness of the offence: *Police v P & R*. Held: Seriousness of offending put aside; therapeutic programmes in Youth Drug Court not analogous to this situation and in that Court the young persons are before the Court because an Information has been laid, here no Information laid for 9 months despite the fact that the identity of the offender was known. Delay found, delay was unduly protracted - Police resourcing issues not a justification for the delay and the public interest in holding a young person accountable for wrongdoing should not take precedence over the clear statement of principle in s5(f) CYPFA. The delay was prejudicial to T who is moving into an important stage of his education; prejudice sufficiently serious to warrant the extreme step of halting the proceedings.

Decision: Information dismissed.

The Queen v Randall Jeremy Blade, Police v Ricky Lee James Tuhikarama DC Christchurch CRI-2007-454, 6 May 2005

Filed under:

The Queen v Randall Jeremy Blade, Police v Ricky Lee James Tuhikarama

File number: CRI 2007-454
Court: District Court, Christchurch
Date: 6 May 2005
Judge: Judge Abbott
Key title: Sentencing in the adult courts: Aggravated burglary, Youth Court procedure

Case Summary:
B appeared for sentence (21) on one charge of aggravated burglary and three of injuring with intent to cause GBH. T (17) appeared on one charge of aggravated burglary and one charge of burglary.

T pleaded guilty to the aggravated burglary charge at the conclusion of the preliminary hearing prior to committal for trial.

T did not face the three injuring charges because of the 'unsatisfactory procedural provisions' in the CYPFA, in particular the prohibition in s 273 on a charge being laid indictable unless it relates to a purely indictable offence. T as part of a group travelled from Rangiora to Culverden and entered a house without warning. Three young people in the house were subjected to a prolonged and viscous, beating with weapons being used in the attack. The house and three vehicles were also damaged.

T admitted his involvement to the Police on the night of the incident.

Decision:

Judge Abbott referred to principles of sentencing when co-offenders are sentenced by different Judges on different occasions. The starting point adopted for other members of the group was two and a half years imprisonment, which was reduced by one year for mitigating factors. Judge Abbott, citing *R v Mako* [2000] 2 NZLR 170, where the CA considered that a starting point of seven years would be justified for aggravated robbery involving forced entry. By analogy, the appropriate starting point in this case would be 6 years imprisonment, but that would cause inconsistency problems with the sentences already imposed on co-offenders.

The appropriate starting point for B and T was four years. B was sentenced to 2 years and nine months imprisonment. T was allowed a reduction of 2 years for his age (16) at time of the offence. T had had previous YC appearances, and had committed a burglary offence while on bail.

T's Sentence

1. Two years imprisonment on the aggravated robbery charge
2. On the separate burglary charge, 6 months' imprisonment, cumulative on the aggravated robbery charges.
   Total term two and a half years

Comment
The case highlights the potential problems when a purely indictable charge and related charges, which are indictable but triable summarily, could be laid in respect of a single incident. Judge Abbot considered that s 273 of the CYPFA should be amended to allow for a charge which is not purely indictable to be laid indictably if a purely indictable charge is laid concurrently or has already been laid in respect of the same incident.

Police v CMT YC Wanganui CRI-2004-283-000044, 6 May 2005

Filed under:

Police v CMT

File number: CRI-2004-283-000044
Court: Youth Court, Wanganui
Date: 6 May 2005
Judge: Callinicos DCJ
Key title: Orders - type: Supervision with activity - s 283(m), Orders - type: Supervision - s 283(k), Sentencing - General Principles (e.g. Parity/Jurisdiction)

Reasons for Orders made. CMT ('T' in *Police v E and T* YC Wanganui 15 February 2005 per Callinicos DCJ on YC Database under Jurisdiction – s276 offer/election) had breached her bail curfew three times; victims who formerly wished the offenders to be rehabilitated now asked that the youth offenders be dealt with firmly – Judge does not see these goals as inconsistent. Police argue that Supervision with activity and Supervision is inadequate with regard to public interest factors and rehabilitation necessary under a Supervision with

residence order. CMT embarrassed by her lack of educational ability and not wishing to stand out from her peers by making an effort at school.

Held: CMT genuinely remorseful; admitted her offending before her older co-offenders; advised Police who the co-offenders were; bail curfew breached but awaiting resolution of these matters for 10 months – delay necessary to obtain background information, consider jurisdictional matters and formulate comprehensive plan. Placement in formal residence will not enhance CMT's rehabilitative capacity to any measurable degree; residences not seen as a rehabilitative tool, regardless of the original intentions of the Act; if SWR order made CMT would probably spent first few days of that in Police cells – not rehabilitative. Plan prepared by Chief Executive of CYFs will assess CMT's educational situation with a view towards one-to-one tutoring to move her towards a mainstream environment. The objects of the CYPFA, the individual and public interests in this case will be far better enhanced by giving CMT the rehabilitative tools she needs within a community environment rather than in a supervised residential situation.

Decision:

Supervision with Activity order made pursuant to s283(m) CYPFA and a Supervision Order under s283(k) CYPFA, each order for a period of three months, with conditions.

Police v WR (2 May 2005) YC, Rotorua, CRI 2005-265-57, Judge Geoghegan DCJ

Filed under:

Name: Police v WR
Unreported:
File number: CRI 2005-265-57
Court: Youth Court
Location: Rotorua
Date: 2 May 2005
Judge: Geoghegan DCJ
Charge: Possession of a Class C drug; Burglary (2); Receiving; Unlawfully Taking a Motor Vehicle
CYPFA: s249
Key title: Family Group Conferences – Timeframes/limits; Family Group Conferences – convened/held

Summary: WR charged with possession of a Class C drug, burglary (2), receiving, unlawfully taking a motor vehicle. WR's advocate applied for an order to dismiss the charges because of a breach of the requirement to convene a FGC within the specific CYPFA timeframe. Police and YJC accept that there had been a breach; due to work pressures; WR had not been left to "wither on the vine". Issue as to the effect of the breach and whether the Informations should be dismissed or whether some cause of action may be taken short of dismissal. *Police v S* (12 February 2004, Youth Court, Lower Hutt, Walker DCJ) followed; failure to convene an FGC has the effect that the Court cannot receive recommendations upon which it can rely in the final disposition of the case; s281B CYPFA not in existence to remedy situation where strict time limits not complied with. Court may take a disciplinary approach to register its concern

at the breach or, in other situations, an approach short of dismissal may be appropriate, for example, enabling the prosecuting authority to seek leave to withdraw the Informations. Disciplinary approach inappropriate here as time limits usually observed in this Court and professionals within it working in co-operative manner. Any outcome must take account of victims and community interests, matter should be promptly re-layed to avoid contravening s5(f) CYPFA. Appropriate to invite the Police to seek leave to withdraw these Informations.

Decision: Leave granted and Informations are withdrawn by leave.

Police v KF (22 June 2005) YC, New Plymouth, CRI 2001-221-000012, Judge Becroft DCJ

Filed under:

Name: Police v KF
Unreported:
File number: CRI 2001-221-000012
Court: Youth Court
Location: New Plymouth
Date: 22 June 2005
Judge: Becroft DCJ
Charge: Sexual Violation; Abduction for Purpose of Sexual Connection
CYPFA: s275; s354
Key title: Admissibility of evidence; Jurisdiction of Youth Court - s275 offer/election

Summary: KF (15) charged with sexual violation and abduction for purpose of sexual connection; complainant an 82-year-old rest home resident suffering from dementia and Alzheimer's disease with absolutely no memory of the incident. Whether to offer Youth Court jurisdiction to KF; relevant considerations: (1) likely length of sentence of imprisonment if imprisonment imposed – here five year sentence "cap" if KF convicted and transferred to DC under s283(o) CYPFA sufficient; (2) nature and circumstances of offending – serious offending, significant public interest and these factors weigh against YC jurisidiction; (3) age - 15; (4) sufficient time remains for top end YC sentences; (5) personal and offending history - indecent assaults against girls under 12; (6) social and personal circumstances; (7) victim's interests – victim suffers from dementia and will not be giving evidence, her interests can be equally well protected in the jury trial or YC forum; (8) rehabilitative provisions of CYPFA – if these charges are proved prime consideration must be that of punishment and imprisonment in the DC; (9) matter could be heard and finally determined very quickly in YC but if YC not offered, Crown to seek matter to HC leading to significant delays; (10) public interest.

Whether statements made by the elderly woman to others after the incident, otherwise hearsay, should be admitted against KF. If jury trial held, s344A Crimes Act 1961 application possible but no provision for such an application in YC. If in YC, summary hearing with "voir dire" hearing would be needed. If evidence ruled inadmissible in YC, would admissibility be considered a point of law under s354 CYFPA that could found an appeal? Here it was held the evidence admissibility issue, the same issue as in R v Manase (2000) 18 CRNZ 378, would be a point of law not of fact and would clearly be appealable under the CYPFA.

Decision: YC jurisdiction offered as less delay, no significant disadvantages to the Crown and public interest may be adequately protected even if charges heard in first instance by YC. YC jurisdiction accepted; charge denied. Upon any finding of guilt, conviction and transfer to DC likely.

Police v T YC Wanganui CRI-2005-283-004277, 17 June 2005

Filed under:

Police v T

File number: CRI-2005-283-004277
Court: Youth Court, Wanganui
Date: 17 June 2005
Judge: Judge Callinicos
Key title: Orders - type: Reparation - s 283(f), Supervision; Order – type: Supervision – s 283(k); Family Group Conferences: Plan, Access to Reports (s 191)

Summary:

Reasons for Supervision Order.

T caused $111,000 worth of damage to the Wanganui Soccer Stadium. T and friends were sheltering from rain in the Grandstand when T started a fire to dry wet clothes and failed to ensure that it was put out before leaving the site. A reparation plan had been developed whereby the Soccer Association was to be reimbursed of $2,500 and the whanau would try to pay $2,500 to the Regional Council. T would offer to pay $10 per week. Section 334 report ordered to ascertain whether more reparation could be paid by T and her family towards the significant loss. T and her whanau in dire financial situation; on benefits. T truly remorseful; T has had a difficult life but remains committed to try to pay $10 per week but T now pregnant. Reparation entirely impracticable, if order were made the victims would not receive anything and this would make them feel more aggrieved. This would not meet the Objectives of the Act.

Decision:

Supervision order made under s 283(k) of the CYPFA to monitor Family Group Conference plan: includes education and mentoring, punishment. Victims to receive copy of decision.

Police v SF YC Wellington CRI-2004-285-000133, 15 June 2005

Filed under:

Police v SF

File number: CRI-2004-285-000133
Date: 15 June 2005

Court: Youth Court, Wellington
Judge: Becroft DCJ
Key Title: Orders - type: Discharge - s 282; Orders - type: Discharge - s 283(a)

SF (16) faced a charge of injuring with intent to injure and robbery. Whether the Judge should impose a discharge under s 282 of the CYPF Act, which is an absolute discharge as if charges had never been laid, or a discharge under s 283(a), which involves no further penalty but the order would remain on SF's record.

SF carried out a vicious and apparently unprovoked attack on another young man; victim suffered on-going physical and mental problems from head injury; panic attacks; whole family adversely affected. FGC held; comprehensive plan agreed on; plan completed under sufferance; unwilling compliance necessitated the reconvening of the FGC at one stage; bail breaches. Police argued that no remorse shown or, at best, SF very slow to demonstrate remorse. Youth Advocate argued that from a cultural perspective SF must be embarrassed or ashamed to show remorse but insisted that he did feel remorseful. Psychological report reveals that SF has 'an intermittent explosive disorder'; some 'post-traumatic stress syndrome' symptoms and difficulty controlling his anger. This was considered in the judgment and the Judge noted that it was something SF had been battling with 'over and above what most young boys face' (para [18]). No previous or subsequent offending; s208 and s284 considered. The need for the least restrictive sanction (as per s 208(f)(ii) CYPF Act) is recognised in the judgment ([para 24]) and the support offered by the CYPF Act for second chances is noted. Held: Given seriousness of offending there is a need for a record against SF's name; it would be unfair to those who complete their plans faithfully and get a s 282 to give SF a s 282. The Judge stated that SF is getting a 'second chance' in that he is getting no more than a record against his name for serious offending.

Decision:

Order - s283(a) –This decision was upheld on appeal: see *Feao (Sam) Junior Fapuiaki v Police* (HC Wellington CRI-2005-485-000097 per Young J).

Police v VM and CC YC Rotorua CRI-2005-263-000074, CRI-2005-263-000071, 17 June 2005

Filed under:

Police v VM and CC

File number: CRI-2005-263-000074; CRI-2005-263-000071
Court: Youth Court, Rotorua
Date: 17 June 2005
Judge: Judge Hikaka
Key title: Evidence (not including admissibility of statements to police/police questioning)

Summary:

VM (15) and CC (16) jointly charged with injuring with intent to injure; Police applied for (1) a support person, where relevant, for the witnesses, (2) exclusion of two people who were

in Court as supporters of the defendants and (3) a screen for the witnesses while they were giving evidence. Reasons advanced by Police included that the defendants were gang associates, the offence involved serious violence and there had been intimidation of witnesses.

Youth Advocates argued, as to (2) and (3) above, that intimidating behaviour allegations based on hearsay and without sufficient foundation.

Decision:

Judge adjourned proceedings, released defendants on bail and made directions that screens should be provided for all witnesses, that support persons may be in Court on behalf of any witness while that witness gives evidence and that the two people in question should be excluded from the Courtroom. Judge satisfied that the Court has the inherent power to regulate its own processes and ensure fairness of trial procedures. The evidence before the Court was that there was intimidating behaviour and the screens were authorised as a consequence. In order to properly administer justice and ensure that all the evidence can be properly put before the Court, witnesses are to be entitled to be protected from threats or other such behaviour that might divert them from doing their public duty and giving evidence.

Police v MJL DC Invercargill CRN 4225018618, 16 June 2005

Filed under:

Police v MJL

File number: CRN 4225018618
Court: District Court, Invercargill
Date: 16 June 2005
Judge: Judge O'Driscoll
Key title: Media Reporting (s 408); Sentencing in the adult courts - Indecent assault/indecent act

Summary:

Notes on Sentencing. MJL sentenced on a charge of indecently assaulting a girl under the age of 12, offence occurred more than 12 months ago. CYF and Police recommended convict and transfer to District Court (s 283(o) of the CYPFA); victim's mother thought MJL should complete a Stop Adolescent Programme or be transferred to the District Court; MJL desperately in need of help; pre-sentence report recommends supervision for 2 years with special conditions. MJL sentenced to supervision for 2 years with 5 conditions:

1. attend Stop Programme for 18 months and adhere to strict safety guidelines as advised by the programme clinician;
2. to be assessed for a Straight Thinking Programme and attend as directed by the probation officer;
3. no contact with people of, or under, the age of 16 years;
4. no contact with victim or victim's family without written approval of the probation officer; and

5. to take counselling or treatment as directed by the probation officer.

Whether to grant name suppression. Victim seeks that name not be suppressed. MJL argues

1. disclosure of name may inhibit the rehabilitative nature of the sentence imposed;
2. MJL is vulnerable and currently in employment, publication may affect any progress the Stop Programme is designed to achieve;
3. Delay – if matter had been dealt with quickly, MJL would have been 16 when dealt with and would have had the benefit of anonymity and Youth Court jurisdiction.

Difficult balancing matter. Public interest in name being published; serious offending and matter is now in the District Court; condition that no contact with person under 16 difficult to enforce if name not published. Public interest in favour of publication of name.

Decision:

Two years supervision with conditions including attendance at a Stop Programme. Order for name suppression refused.

Police v RJM (13 June 2005) YC, Invercargill, CRN 5225005848, Judge Walsh DCJ

Filed under:

Name: Police v RJM
Unreported:
File number: CRN 5225005848
Court: Youth Court
Location: Invercargill
Date: 13 June 2005
Judge: Walsh DCJ
Charge:
CYPFA: s238
Key title: Bail

Summary: Application for bail; RJM and companions drove repeatedly past a church abusing youth group members; stopped vehicle; intoxicated RJM got out and urinated on church; RJM threatened two church members with a jemmy. No youth justice bed available or RJM would be placed in one; potential employer and another capable person in Court to support RJM; RJM has written to the Court to say he is motivated to change.

Decision: RJM remanded on bail on conditions including curfew; to work where employer directs and to attend such counselling as social worker directs.

Police v SG YC Tokoroa CRI-2005-077-000485, 13 June 2005

Filed under:

Police v SG

File number: CRI-2005-077-000485
Court: Youth Court, Tokoroa
Date: 13 June 2005
Judge: Geoghegan DCJ
Key title: Orders – type: Supervision with residence – s 283(n), Family Group Conferences: Agreement

Notes on Sentencing; SG charged with theft (5); unlawfully taking a motor vehicle; intentional damage; burglary (2) and using a document, many of the offences committed while SG on bail. Three FGCs held; SG on remand in residential centre, SG agreed to plan. SG suffers from bi-polar and conduct disorders, drug and alcohol addiction; care and protection issues. Section 290 CYPFA criteria satisfied.

Decision:

Sentence of supervision with residence for 3 months imposed to be followed by 6 months supervision. Supervision with residence imposed on condition that if SG absconds, CYFS may make an application that the matters be referred back to the YC under s 316 of the CYPFA. Additional conditions added to supervision order including drug and alcohol counselling, to attend training centre, curfew, not to re-offend while the subject of a supervision order.

Police v HK YC Nelson CRI-2005-242-000032, 13 June 2005

Filed under:

Police v HK

File number: CRI-2005-242-000032
Court: Youth Court, Nelson
Date: 13 June 2005
Judge: Whitehead DCJ
Key title: Orders - type: Supervision with residence - s 283(n); Orders - type: Supervision - s283(k)

Notes on sentencing; HK charged with failing to stop to ascertain injury; operating a motor vehicle on a road causing injury and driving whilst disqualified. HK drove an unregistered and unwarranted car; collided with cyclist; failed to stop and offer assistance to cyclist who was lying unconscious on the highway. Order before Court for declaration of non-compliance with a supervision order and a community work order in relation to further charges including theft (4) and burglary (4). Family Group Conference agreed only appropriate sentence is supervision with residence, followed by supervision. Due to multiplicity of offences involved it would be likely that if HK was an adult facing these charges he would be sentenced to a term of imprisonment.

Decision:

Supervision with residence for 3 months followed by supervision for 6 months.

Police v IG 19 September 2005, Youth Court, Wanganui, Judge Callinicos

Filed under:

Name: Police v IG
Unreported
File number:
Court: Youth Court
Location: Wanganui
Date: 19 September 2005
Judge: Judge Callinicos
Charge: aggravated robbery
CYPFA: s283(o)
Key title: sentencing
Case Summary:
IG, aged 15 yrs 11 mths at the time of the offence, admitted charge of aggravated robbery (purely indictable) of dairy with 3 others. YC jurisdiction offered and accepted. CYF initially proposed Supervision with Activity, but later advised that a suitable programme was not available. CYF then proposed Supervision with Residence (CYPFA s283(n)), but Police argued for conviction and transfer to DC.

Judge considered s208 principles, and other YC cases, also *W and Others v Registrar of Tokoroa Youth Cour*t (1999) 18 FRNZ 433 NZFLR 1000, and *X v Police* (11 February 2005) HC, Auckland, CRI 2004-404-374, Heath and Courtney JJ.

IG claimed there were threats from co-accused to take part in robbery, yet Judge described his culpability as moderate to high. IG is described as intelligent, with a supportive whanau, and community, yet he has not stuck to bail conditions. Impact on victims was considerable.

Judge doubted whether Sup with Activity would achieve YC sentencing goals, and other YC options not appropriate due to time and attitude. Hope that a s283(o) transfer would better achieve a community wrap-around sentence and a long period of supervision (only available in DC).

Decision:
IG convicted and transferred to DC for sentence.

Police v P [2006] DCR 120 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v P [2006] DCR 120

File number: CRN 05004012776-83
Court: Youth Court, Auckland
Date: 19 September 2005
Judge: Thorburn DCJ
Key title: Jointly charged with adult (s 277), Orders – type: Convict and transfer to the District Court for sentence – s283(o): Aggravated robbery

LEXISNEXIS Case Summary:

Sentencing – Jurisdiction – Youth offender – Offences of aggravating nature – Whether to transfer to District Court – Parity with co-offenders – Principles of youth justice – Children, Young Persons, and Their Families Act 1989, ss 4, 4(f), 5, 5(a), 6, 208, 208(c), 208(d), 208(f), 283(o), 290, 290(2).

P was charged with six aggravated robberies, which he had not denied. He also committed several other offences while on bail for the robberies. The issue before the Court was whether to transfer P to the District Court for sentencing. No agreement was reached at the family group conference about what jurisdiction the sentencing for the aggravated robberies should occur in. However the police later indicated they did not oppose the Youth Court jurisdiction.

P's offending was described as terrible. In each aggravated robbery a degree of violence or force was used. There was opportunistic offending, with people at such locations as ATM machines being targeted. A taxi driver and a bus driver were also targeted in planned offending. Another person was involved in the offending, and there was a suggestion that P might have taken a lesser role in the offending. However, in the sentencing of the co-offender in the District Court, the co-offender claimed that he had played the lesser role.

The police were seeking the matter to be transferred to the District Court for sentencing. They claimed parity with the co-offender was important and stressed the aggravating nature of the crimes. It was submitted that this was violent offending that had escalated and that given the serious nature of the offending the matter should be transferred to the District Court.

For P, it was submitted that there was a presumption against transfer in s 290(2) of the Children, Young Persons, and their Families Act ("the Act").

Held (declining to transfer the matter to the District Court)

1. Parity with the co-offender who was sentenced in the District Court was not pivotal. If the other person had been a young person who had been transferred to the District Court, then parity would have been more relevant (see para [11]).
2. The decision whether to transfer the case was guided by s 290. No transfer could occur unless the charges were purely indictable. The principles in ss 4 and 5 of the Act were also important (see para [12]).
3. In youth justice the principle of paramountcy of the welfare of the young person was set aside. When criminal offending was involved, there were other issues such as public interest, denunciation and deterrence that usurped the emphasis on the welfare of the young person (see paras [14]).
4. Section 208 of the Act dealt with the principles relating to young people who offended. One of those principles was that young people should be kept in the community as far as that was consistent with the safety of the public. P had no previous convictions and had the

benefit of a strong and supportive family. Those factors weighed against transferring the case to the District Court. The prosecution had to overcome those principles, which recognised the rehabilitation and development of young offenders (see para [17], [20]).

5. The offending all occurred within one month, and his family had since brought P into line. What he did during that month was out of character, and the risk of him offending again was minimal. The principle of the least restrictive intervention was therefore important (see para [25]).
6. The sentencing would occur in the Youth Court, with P facing a sentence of supervision with residence, followed by supervision (see para [29]).

Cases mentioned in judgment

- *Police v Rangihika* [2000] DCR 866.
- *RE v Police* [1995] NZFLR 433.
- *S v Police* [2000] NZFLR 380.

Trifilo v Police (30 November 2005) HC, Auckland, Simon France J

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Trifilo v Police
Reported: [2006] DCR 796
File number: CRI 2005-404-340
Court: High Court
Location: Auckland
Date: 30 November 2005
Judge: Simon France J
Charge: Sexual Violation
CYPFA: s322, s351
Key title: Delay

LEXISNEXIS NZ Summary: The appellant was convicted in the Youth Court of sexual violation. The matter was set down for a family group conference and then a disposition hearing under s 283 of the Children, Young Persons and Their Families Act 1989 (the Act) at which time the Court would determine whether to deal with the matter within the Youth Court jurisdiction or transfer the appellant to the District Court for sentencing. Prior to the disposition hearing counsel for the appellant indicated that she wished to pursue an application under the Act which allows an information to be dismissed if the Youth Court is satisfied that a hearing has been unnecessarily or unduly protracted due to delay. The application was heard at the same time as the s 283 hearing. The defended hearing Judge took three months to deliver his findings and then the disposition hearing took another three months. Counsel for the appellant considered that this extra period "more than tipped the scales" so she pursued the application. The Judge who presided over the s 283 hearing was doubtful as to whether it was permissible to bring such an application at that point, or to base it on delay occurring after the defended hearing, but heard and declined it on the merits. Counsel for the appellant then filed a conviction appeal a few days after the Court's decision

under s 283 to transfer the appellant to the District Court for sentencing. A hearing was set down to be heard on 11 November 2005. Both parties filed written submissions and it was clear that at that stage the second ground of appeal was being seen by counsel as a direct appeal from the decision of the District Court on the s 322 application. By the time of the hearing, the Crown had reached the view that there was no jurisdiction to appeal a ruling given under s 322 of the Act. Objection was taken and the Judge agreed. By consent the appeal proceeded on ground (i). Judicial review was considered to be the appropriate route to challenge ground (ii) and counsel for the appellant immediately filed that application. Prior to the Judge issuing his ruling on ground (i), counsel for the appellant indicated that she wished to further litigate the jurisdiction point about appealing a s 322 ruling. Prior to this hearing, the previous Judge dismissed the appeal on ground (i) and noted that ground (ii) had not been considered. Written submissions were filed in advance of the ground (ii) jurisdiction hearing. At the commencement of that hearing, France J indicated a firm view that there was no capacity to appeal a decision made under s 322 but that it was possible to advance delay arguments and a s 25(b) New Zealand Bill of Rights Act breach, in the context of a general conviction appeal. Counsel were in a position to immediately argue the substantive merits so, by consent, that is what happened.

Held (appeal dismissed)

1 The decision to decline a stay is not operative. The information has been determined. It is the finding of guilt that is operative, and the appellant was in custody by reason of that conviction and subsequent sentence. The s 322 application was an attempt to prevent the information being determined; once the information is determined, the stay application becomes merely part of the historical landscape.
Herewini v Ministry of Transport [1992] 3 NZLR 482 cited.

2 The plain meaning of s 351 of the Act was that "finding" refers to the hearing at which the young person was found to have committed an offence. Subsection (1) refers to the finding and an order based on that finding. Further, subss (2) and (3) discuss delay between the finding of the Court and the s 283 disposition hearing. Section 283 hearings occurring after a person has been found guilty of the offence. This further strengthens the inference that s 351 provides an appeal from the finding of guilt. A stay application under s 322 was not an order (or refusal of one) based on that finding. The fact that the present appellant made his application after the determination of guilt (which along with the Youth Court the Court doubted was possible) did not alter this. It was the nature of the application that is pivotal, and an application to dismiss the informations for delay was, in the Court's view, subsumed into a determination of those informations (see paras [11], [12], [13], [14]).

3 If the delay arose prior to the defended hearing, then obviously s 322 was the appropriate vehicle. If that claim was made and was unsuccessful, the Court was not suggesting that later events (other than a conviction appeal) provided an opportunity to relitigate an unsuccessful application. However, if there had been further delay since the defended hearing there were opportunities outside s 322 – for example, the sentencing or a conviction and sentence appeal, or, the Court suggested, the s 283 disposition hearing. Whilst each occasion had its own inherent limits in terms of the options available to the Court to remedy delay, there remained considerable scope for a Court to give relief if a breach has arisen subsequent to the verdict (see paras [17] and [18]).

4 An issue as to whether it was permissible to consider pre-charge delay arises since the wording of s 25(b) talks of everyone "charged with an offence" and the "determination of the charge". Both suggest that the relevant period of delay must be after a charge has been laid. *Holland v District Court of Whangarei* (High Court, Auckland, M1107/00, 20 September 2000, Randerson J) followed. (see para [20]).

5 Concerning post-conviction delay, the issue of whether s 25(b) extended beyond verdict was recently determined in *Taito v R*.
If s 25(b) incorporated delay in the hearing of an appeal it followed that it must also incorporate delay in the period between conviction and sentence. Each was an integral step in the "fair trial" process as the term has been interpreted in Taito. No doubt when the particular period of delay arises will be relevant to the appropriate remedy, but that is a separate issue from whether there has been a breach (see paras [21], [22]).

6 The Court was of the view that the same assessment as was made in *Police v Waitohi et al* (High Court, Whangarei, AP 36/03, 28 September 2003, Frater J) could be made of the period here from defended hearing judgment to sentence. Accordingly, the Court considered none of the periods standing in isolation were of undue length.
Nor did the Court consider the overall period in itself, amounted to a breach. The Court was conscious the period in *Waitohi* was 19 months from start to appeal, and this was considered undue. However, the Court considered it was quite different when part of that period related to a Crown sentence appeal for which there had been unnecessary delay. A sterner assessment of the reasonableness of that period was to be expected. Further, unlike *Waitohi,* the present case included a defended hearing (see paras [44], [45]).

7 The Court concluded that there had been no breach of s 25(b) of the New Zealand Bill of Rights Act. It was apparent that the Court's primary concern had been the combination of time period plus conditions on remand. Whether the conditions made an otherwise reasonable period unreasonable could only be a matter of general assessment. The Court was influenced in its final assessment by the particular age of the appellant. Had he been young there would have been a different outcome (see para [49]).

Obiter
For completeness, the Court recorded that there had been a breach it would not have considered that quashing the conviction was an appropriate response. The worst period of delay occurred after the defended hearing and did not prejudice the fairness of the determination of guilt. The overall delay was not so excessive as to merit quashing the conviction absent actual prejudice to a fair trial. The Court would instead have invited counsel to further address it on the issue of sentence reduction. *Du v District Court at Auckland* referred to (see para [50]).

Other cases mentioned in judgment
Dyer v Watson [2004] 1 AC 379 (PC).
HM Advocate v D P and S M [2001] SCCR 210.
Martin v Tauranga District Court [1995] 2 NZLR 419 (CA).

Appeal
This was an appeal against conviction in the Youth Court for sexual violation.

Police v T (23 November 2005) YC, Hamilton, CRI 2005-219-000046, McAloon DCJ

Filed under:

Name: Police v T
Unreported:
File number: CRI 2005-219-000046
Court: Youth Court
Location: Hamilton
Date: 23 November 2005
Judge: McAloon DCJ
Charge:
CYPFA: s238(1)(d)
Key title: Custody – Chief Executive; Custody - CYFS

Case Summary: T remanded in custody under section 238(1)(d) and handed over to community provider; no placement available, T placed with his father. T absconded and was found some distance away in circumstances that suggested more offending was likely. The issue arose as to whether the charge of escaping may be brought in circumstances where a young person, subject to section 238(1)(d), is placed with a parent; meaning of "detained" in section 238(1)(d) CYPFA.

Judge McAloon refused to accept the submission that the aspects of detention and custody in s238(1)(d) could be separated. The words: "... the Court may order that the child or young person be detained in the custody of the Chief Executive" are to be read together, not split. The Judge further considered that the use of the word "detained" is intentional and has elements of restriction of movement and deprivation of liberty and being confined.

Although there is no authority for either the view that the words should be read together or that they should be split, the Judge compared the wording of section 238(1)(d) and section 238(1)(c) and interpreted the difference in the wording as being a reference to two separate concepts – despite the definition of custody in the Act; s362 CYPFA; s385 CYPFA.

Decision: A charge of escaping may be brought in circumstances where a young person, who is subject to section 238(1)(d) CYPFA, is placed with a parent although, of course, the fact of escaping must still be proven

Police v TL & JV (25 November 2005) YC, Manukau, Judge D J Harvey

Filed under:

Name: Police v TL & JV
Unreported:
File number:
Court: Youth Court
Location: Manukau

Date: 25 November 2005
Judge: Harvey DCJ
Charge: Burglary
CYPFA: s5; s208; s249; s440
Key title: FGC timeframes/limits

Summary: JV and TL charged with burglary; charges not denied; FGCs not convened and held within statutory timeframes. Whether this failure to convene and hold FGC is so prejudicial to these proceedings that the Court is deprived of the ability to deal with the matter further as a result of provisions of the CYPFA. Police raised issue of whether flaw in procedure could be cured by section 440 CYPFA (a "slip" section). H v Police [1999] 18 FRNZ 593; Police v S (12 February 2004) YC, Lower Hutt, Walker DCJ; Police v RH (14 April 2004) YC, Wellington, CRN 3285035891, Walsh DCJ discussed; timeframes mandatory and imperative. H v Police distinguished. Discussion of statutory framework: CYPFA s5(a); s5(f); s208(a); s208(c); s208(d); s208(g); FGC of fundamental importance to the YC process; unique and real alternative to the traditional adversarial process. Discussion of FGC process; CYPFA ss245-271.

(1) Time limits are mandatory and conformity to them is critical to the entire process: "not just boxes that need to be checked" because of s246 and subsequently s270 – where charge is "not denied" there is only one chance to convene FGCs; once FGC convened and held the process may continue under s270 "but it is absolutely critical that it starts and that it starts properly".

(2) The effect of FGC requirements pre-charge or pre-summons in H v Police mean that absent such pre-charge conference a jurisdictional foundation is absent and the proceedings are void.

(3) Failure to convene the FGC within mandatory time limits affects validity of other subsequent actions, such as the ability of the Court to make orders. Convening the FGC is critical but once done the YJC has a certain degree of flexibility in holding or adjourning FGCs thereafter.

(4) A Court cannot reconvene a FGC under s246 and s281 cannot be invoked to cover the situation where a FGC has not been convened or held under s246.

(5) The Court cannot determine the matter under section 281 CYPFA unless a FGC has been held or, in certain very limited circumstances, a FGC has been waived.

(6) A FGC held after late convening is not a valid FGC as time limits are critical.

(7) Section 440 CYPFA cannot be used to cure what is a fundamental defect on which the FGC regime is posited. Time limits not simply a "cog in the wheel" but fundamental elements of the process. "There is no justification whatsoever for any agency that is empowered by statute to perform certain duties to cast those duties aside, to rely upon a "slip" section, to blithely ignore what is required of them".

Decision: Although the remedies posited in Police v S and Police v RH are available, matter adjourned pending argument on **whether contempt of Court is available to be used in**

respect of FGC Co-ordinators who do not carry out their duties or abide by the directions of the Court under section 246.

Police v JC [2006] DCR 465

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v JC
Reported: [2006] DCR 465
File number: CRI 2005-285-000098
Court: Youth Court
Location: Wellington
Date: 7 November 2005
Judge: Moss J
Charge: Obstructing constable in execution of duty; Assaulting constable
CYPFA: s208; s214
Key title: Arrest without Warrant

LexisNexis Case Summary:

Children and young persons – Youth Court – Obstructing constable in execution of duty – Assaulting constable – Out of control party – Church and carpark next to property where party being held – Church members concerned at behaviour and contacting police – Police attempting to close down party – Defendant asked not to re-enter and to leave on several occasions and warned of arrest – Defendant pushing past one officer and kicking another when being taken to van – Children, Young Persons, and Their Families Act 1989, ss 208, 214.

The defendant was present at a party on 6 August 2005. He and a number of his friends were invited but there were also 50 or so uninvited people. At around 9.30 pm the police went to the property where the party was being held for the first of two occasions that evening. There was a church and carpark next to the property and the police had been called by a member of the church community. That person was concerned that partygoers were spilling into the church carpark, behaving offensively, smashing bottles and interfering with vehicles. Two officers reached agreement with one of the occupiers that the party should be quietened down and they were ultimately satisfied that things were in control and left. A short time later the officers were returning from another incident and drove past the property on the way back to the police station. They were waved down by church members. One of the officers decided that the party was out of control. He found one of the occupiers and reached agreement with him that that was the case. He gave that occupier some time to try and close down the party. The occupier was not successful and then, after some difficulty, the two officers moved through the house to try and close down the party. Two other units were called and eventually there were ten officers trying to close down the party. The defendant emerged from a room upstairs and was confrontational towards the officers. He then stumbled, hit a window and broke it. The defendant and a friend were told to go downstairs, where arrests were already being made. An officer overheard another officer telling the defendant that he should leave or he would be arrested for obstruction. The defendant's behaviour was described as aggressive

and belligerent and he appeared to be intoxicated. That officer next saw the defendant still on the property arguing and being aggressive. He heard several warnings being given to the defendant not to re-enter the property and to leave the property. He also heard him being told that he would be arrested for obstruction if he did not leave. The defendant subsequently tried to push past that officer, at which point he was arrested for obstruction. A struggle ensued and the defendant was put in handcuffs. The defendant was being taken from the property to the church carpark, where the prisoner van was waiting, by the officer when he was pushed against a wall because he was struggling. At that point, he intentionally kicked another officer who had come to assist.

Held (informations proved)
1 The Court preferred the evidence of the police for several reasons. First, given the defendant's behaviour as found by the Court, it was entirely likely that his attempt to avoid detention would have gone as far as assault. Secondly, the degree of pain which the officer who was kicked described, and the Court accepted as an accurate description and that was not challenged, was not the pain from an accidental application of force by a slight young man being detained by two burly seasoned police officers. Rather, that must have occurred as a result of an intentional application of force. Whether it was by knee or heel frankly did not overly matter. The Court was satisfied that, by whichever part of his body, the defendant had intentionally applied force to the body of the officer (see para [30]).

2 The defence to the obstruction charge was that the defendant did not know that the police officer was acting in the execution of his duty. It was clear to the Court on the facts that it had found that the defendant knew the police were acting in the execution of their duty which was to clear out this party, and that defence could not succeed (see para [31]).

3 The test that the officer must take steps to ascertain whether s 214 of the Children, Young Persons, and Their Families Act 1989 applies or not reads an additional step into s 214. The issue for the officer is not whether this offender is covered by the Act. It is a factual inquiry for the Court to consider whether the officer was satisfied and on reasonable grounds, not as to age but as to the factors set out in s 214(1)(a) and (b). There was no evidence that the officers considered age in this case but it was not necessary if the provisions of s 214(1) were fulfilled (see para [34]).
R v Grant (Youth Court, Henderson 30 July 1990, Harvey J) Not followed.

4 The Court was satisfied that the defendant was warned at least three times and probably six or seven times that if he continued to behave in the way he was he would be arrested for obstruction, and that the defendant did not desist. That was ample proof that it was necessary to arrest him to prevent further offending. In the Court's view it followed inevitably from the description of the fracas, the number of officers, the difficulties of shutting down the party and the general behaviour of the defendant at the time that it would have been unwise to deal with the matter by way of summons because that would not have had the necessary immediate effect, which was to close down the defendant's behaviour. It seemed to the Court that, notwithstanding his youth and the special protection offered by the Children, Young Persons, and Their Families Act, the officer was satisfied and on reasonable grounds that the requirements of s 214 were met (see para [35]).

Decision: Informations proved.

Other cases mentioned in judgment
Police v Mackley (1994) 11 CRNZ 497.

H v Police (30 November 2005) YC, North Shore, CRI 2005/244/66 Judge M E Perkins

Name: H v Police
Unreported:
File number: CRI 2005/244/66
Court: Youth Court
Location: North Shore
Date: 30 November 2005
Judge: Perkins DCJ
Charge: Sexual Violation; Indecent Assault
CYPFA: s322, s5(f)
Key title: Delay

Summary: H charged with sexual violation (purely indictable offence) and indecent assault on 5-year-old half-sister. Alleged offending occurred 17-25/6/2004; several delays due to young person "not denying" summary offence and then denying the charge after the FGC; other systemic delays. Preliminary issue in respect of delay finally argued on 26/10/2005. Whether delay in the investigation following the disclosure to the Police of the offending on 18/10/2004 (although earlier referral form dated 28/9/2004 found) and the commencement of the prosecution on 27/4/2005 was unnecessarily or unduly protracted. Section 322 CYPFA; Police v Crowe (Unreported, YC, Wellington, CRN 0285015569); Police v DH [1995] NZFLR 473 as to timing and prejudice to defendant considered; BGTD v Youth Court Rotorua & NZ Police (Unreported, HC, Rotorua, M119/99, 15 March 2000): need to balance individual rights against the public interest; particularly pertinent where allegations of serious sexual offending are concerned; principles contained in s5(f) CYPFA are not to be elevated above all other issues.

Decision: Informations dismissed as:

(a) Delay between the commission of the alleged offences and the laying of the Information and the first hearing is inexplicable. This case is distinguishable from others in that the Police, at a very early stage, had clear evidence available in the form of a concession from the young person and the evidence of an eye witness, which they did not pursue.

(b) The delay occasioned quite substantial prejudice to the young person in the context of the principles and remedies available under the CYPFA. H no longer eligible for restorative justice procedures and, if charges proved, H would now be transferred to DC to face DC sentences.

(c) While partially the fault of the young person and not specifically pursued now by his youth advocate there have been further worrying delays in the systemic processes adopted by the YC following the FGC in having the matter proceed to a preliminary hearing.

Police v XD [2006] DCR 553 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v XD [2006] DCR 553

File number: CRI 2005-242-000050
Court: Youth Court, Nelson
Date: 17 November 2005
Judge: Judge Zohrab
Key title: Orders – type: Supervision - s 283(k), Orders - type: Community Work - s 283(l), Orders - type - Reparation s 283(f), Orders - type: Discharge – s 282.

LexisNexis Case Summary:

Sentencing – Youth Court – Supervision order – Community work order – Submission filed by police for formal orders – Reparation order – Subsequent family group conference unable to agree on final disposition of matter – Burglary – Possession of explosives – Making hazardous substance – X warned of consequences of continuing with behaviour – Family group conference proposing section 282 discharge – Further offending – Whether Court should adjourn final disposition of matter until report completed on benefit of intervention by medication – Factors under s 284 of Children, Young Persons, and Their Families Act – Children, Young Persons, and Their Families Act 1989, ss 282, 283, 284, 298.

Hearing

Submissions were filed on behalf of the police asking for the Court to make an order placing X under the supervision of the Chief Executive, a community work order and a reparation order.

On 6 May 2005 X was spoken to at length regarding making bombs and explosives. He was warned clearly of the consequences of continuing with his behaviour. There was further offending on 15 May 2005 and an interview on 18 May. A Youth Aid contract was signed shortly afterwards. On 25 May 2005 X's stepfather located a number of hazardous items. X appeared before the Youth Court on 26 May. There was a Family Group Conference (FGC) on 29 June 2005 and the proposed outcome was that there should be a discharge under s 282 of the Children, Young Persons, and Their Families Act (the Act). In July there were two burglaries and on 14 September 2005 another burglary at Motueka High, which resulted in X being arrested and charged with burglary, possession of explosives and making a hazardous substance. Another FGC was held on 15 October 2005. A final disposition on how the matter should be finalised could not be agreed on. The police were going to seek a supervision order, a community work order and a reparation order. X's family, however, did not want him to end up with a formal record. X was before the Court having not denied three charges of burglary, two charges of possession of explosives and two charges of making a hazardous substance. The police were of the opinion that they had given X every opportunity and that there had been a steady progression of defiant behaviour by him. They were seeking formal orders.

Held

(supervision, community work and reparation orders made)

1. This was not an appropriate case to be dealt with by a s 282 discharge. The situation was as grim as X's father was concerned about as there were no convictions. X was still within the Youth Court's jurisdiction (see para [12]).
2. The Court made an order under s 283(k) of the Act placing X under the supervision of the Chief Executive for six months. A number of additional conditions were that X abide by his curfew, live where directed, take part in programmes identified to support him and not associate with any people who had had an adverse influence on him (see para [14]).
3. A community work order was appropriate and X was ordered under ss 283(l) and 298 of the Act to undertake 80 hours of community work. That was to be performed at the Marsden Cemetery for a minimum of three hours each week and the order was to last for a six-month period. The supervisor was the Chief Executive of the Department of Child, Youth and Family Services (see para [16]).
4. The Court also made a reparation order under s 283(f) of the Act that $700 be payable to the police for the contribution towards the time, cost and effort of their mobilisation (see para [17]).

T v Police (19 December 2005) HC, Auckland, CRI 2005-404-340, Simon France J

Filed under:

Case Summary provided by LINX

Name: T v Police
Unreported:
File number: CRI 2005-404-340
Court: High Court
Location: Auckland
Date: 19 December 2005
Judge: Simon France J
Charge: Sexual Violation
CYPFA: s322
Key title: Delay

LINX Case Summary: Sexual violation of 11 year old sister - appeal against conviction by a young person found guilty in the YC and sentenced in DC to 18 months imprisonment - whether breach of s25(b) New Zealand Bill of Rights Act 1990 (the Act) and of equivalent youth justice provisions - whether right of appeal against refusal of application brought under s 322 Children, Young Persons, and Their Families Act 1989 (CYPF Act) to dismiss charges because of delay - appellant aged 16 years 7 months at time of arrest, 17 years 3 months at time of defended hearing, 17 years and 10 months at time of transfer to DC, and 18 years 3 weeks at time of sentencing - impact of remand period on appellant said to have made appellant sad and suicidal - impact of delay exacerbated by fact appellant was subject to 24 hour curfew whilst on remand - HELD: ultimately it was a matter of balancing what generally was a lengthy but not unreasonable period, against the circumstances of detention - although YC procedures were applicable because of appellant's age at time of charging, Court was entitled to have regard to fact that for the bulk of the period he was older and fell outside

the ambit of the CYPF Act - there had been no breach of s25(b) of the Act - Court was influenced in its final assessment by the particular age of appellant - had he been younger there would have been a different outcome - had there been a breach of s25(b) Court would not have considered that quashing the conviction was an appropriate response - the worst period of delay occurred after the defended hearing and did not prejudice the fairness of guilty determination - overall delay was not so excessive as to merit quashing the conviction absent actual prejudice to a fair trial - Court would instead have invited counsel to further address issue of sentence reduction - approach discussed in Du v District Court at Auckland & Anor [2006] NZAR 341, endorsed.

Decision: appeal dismissed.

Police v DTA YC Upper Hutt CRI-2005-292-000470, 12 December 2005

Filed under:

Police v DTA

File number: CRI 2005-292-000470
Court: Youth Court, Upper Hutt
Date: 12 December 2005
Judge: Grace DCJ
Key title: Orders - type: Community Work - s 283(l), Orders - enforcement of, breach and review of (ss 296A-296F): Community work

Community work order issued pursuant to s283(l) CYPFA against DTA on 6/12/04 in relation to charges of resisting Police, possession of an offensive weapon and intentional damage. Order stated that work must be completed within 6 months. DTA failed to carry out any community work; had completed part of FGC plan but was unable to complete one aspect of it as drunk; history of absconding. DTA to turn 17.5 years tomorrow; CYFS seek cancellation of community work sentence. Police seek to have matter transferred to the District Court as YC will have no jurisdiction after tomorrow due to DTA's age. Charges relating to robbery, escaping from custody and burglary also to be finalised.

Police argue s 299 CYPFA cancellation may be made 'at any time', this submission is made 'at any time' and the Court is therefore vested with jurisdiction. CYFS argue YC has no jurisdiction as 6 month sentence has expired and the application was not made before the sentence expired.

Held: Judge of view the Court must have jurisdiction to deal with cancellation applications at any time because a contrary view enables young people to disappear and then 'thumb their nose at the justice system'; public of view that YC too lenient on young people; public interest factor requires that young people are appropriately dealt with.

Matter transferred to DC as incident of drunkenness indicates DTA not sincere; community work not done; further offending; if DTA was an adult he would automatically receive a custodial sentence; special circumstances dictate that a non-custodial sentence could be regarded as inadequate.

Court convened as a DC; DTA convicted; ordered to undertake 150 hours community work (figure agreed to at FGC); under supervision of Probation Service for 12 months with conditions.

Decision:

Community work order cancelled.

Police v TH (2006) DCR 474

Filed under:

Police v TH

File number: CRI-2005-279-000022
Court: Youth Court, Tauranga
Date: 20 December 2005
Judge: Harding DCJ
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial, Youth Court Procedure.

Summary:

TH (16.5) before Court on information alleging incest with brother. Criminal Procedure (Mentally Impaired Persons) Act 2003 ('CPMIPA') applies. Whether TH unfit to stand trial: s 9 of the CPMIPA; Five steps from *Rei Trow v Police* HC Auckland CRI-2004-404-000208, 10 November 2004 per Nicholson J: – step 1 - Judge found sufficient evidence exists to establish that TH caused the act or omission forming the basis of the offence. Focus now on step 2 of *Trow* – whether TH is mentally impaired: s 13(4) and s 14(1) CPMIPA 'Court must receive the evidence of two health assessors ...', s 14(2). Two reports have been prepared by health assessors; issue as to how Court should receive this evidence. Police submit evidence may be received by the presentation of full report(s) from the health assessors addressing whether the defendant has a relevant mental impairment (s 14(1) of the CPMIPA) with appropriate jurat/signed briefs of evidence/viva voce evidence. Judge not willing to conclude that the Court, having directed reports, may receive them. FC may order reports; CYPFA, s 160 but no equivalent provision for the Youth Court. Necessary to preserve independence of the defendant and the Police from the health assessors. Judge unwilling to call the assessors and lead evidence as may have to 'descend into the fray at the point of re-examination'.

Whether an amicus curiae may usefully be appointed. *R v Hill* [2004] 2 NZLR 145; Court may in its discretion appoint an amicus in the event that the Court requires assistance in a way that cannot be provided by counsel. Judge decides to appoint an amicus with the task of briefing and presenting the evidence of health assessors and making submissions to the Court as to the method by which such assessors evidence ought to be produced.

Decision:

Amicus appointed to assist the Youth Court.

Police v J and P [2006] DCR 526 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v J and P [2006] DCR 526

File number: CRI-2004-283-000015
Court: District Court, Wanganui
Date: 13 December 2005
Judge: Callinicos DCJ
Key title: Sentencing in the adult Courts: Application of Youth Justice principles; Sentencing in the adult Courts: Sexual violation by unlawful sexual connection.

LexisNexis Case Summary:

Criminal procedure – Young offenders – Sentence and disposition – Sexual offending by twin brothers – Intellectual disability – Youth justice principles – Whether protection of community achieved by sentencing brothers to imprisonment – Interests of the victims – Whether denunciation and retributive approach appropriate – Compulsory care order – Crimes Act 1961, s 218B – Criminal Procedure (Mentally Impaired Persons) Act 2003, ss 3, 9, 14, 34, 34(1)(b)(ii), 35, 37 – Children, Young Persons, and Their Families Act 1989, ss 101, 283(a), 284, 290, 333 – Intellectual Disability (Compulsory Care and Rehabilitation) Act 2000, ss 26, 85, 463.

Sentencing and disposition

This was the sentencing disposition in respect of a number of serious sexual offences committed by twin brothers aged 17 at the time of sentencing.

In August 2005, the two young persons, twin brothers, were convicted of a number of serious sexual offences and transferred from the Youth Court jurisdiction to the District Court for sentence.

In 1992, when the twins were 14 years old, they were removed from their parents by the Department of Child, Youth, and Family Services (CYPFS) under a place of safety warrant. Since that time, they had been under the care of a variety of caregivers, including their maternal aunt who was the mother of one of the victims of their offending.

Held:

(ordering a compulsory care order for a period three years in respect of both young persons) Under s 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIPA) both J and P would be cared for as care recipients under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCRA) rather than being sentenced to imprisonment. The significant gains made by the boys between being charged and being sentenced would, in all likelihood, have been lost if they went to prison. Whilst there was a strong view in higher Court authorities emphasising the denunciation and retributive

approach, the principles in the Sentencing Act relating to the protection of the community, the interests of the victims, and the youth justice principles, supported the view that the protection of the community was more likely to be achieved by adopting a course of support, therapy and rehabilitation rather than imprisonment. J and P would therefore not be detained in a secure facility, but would be subject to a care order for an initial minimum period of three years (see [96] and [100]).

Cases mentioned in judgment

Police v C HC Auckland A 4903, 22 May 2003 per Rodney Hansen J.
R v N [1998] 2 NZLR 272.
X v Police HC Auckland CRI-2004-404-000374, 11 February 2005 per Heath and Courtney JJ.

2005

R v Semmens (27 January 2005) DC, Gisborne, CRN 2004-216-65, Judge Gittos DCJ

Filed under:

Name: R v Semmens
Unreported:
File number: CRN 2004-216-65
Court: District Court
Location: Gisborne
Date: 27 January 2005
Judge: Gittos DCJ
Charge: Indecent Assault; Sexual Violation
CYPFA: s213
Key title: Youth Court procedure

Summary: Whether admissions previously made in the YC may be admitted into evidence in relation to later offending. Semmens faced indictable charges of indecent assault and sexual violation. The Crown sought to lead evidence of three similar offences – two had been dealt with in the YC on the basis that they were not denied, and no formal prosecution had ensued concerning a further matter. Defence counsel argued that to allow this material could inhibit parties from taking the frank and pragmatic approach that characterises the YC. Judge Gittos found that s213 CYPFA, which states that evidence of warnings and formal Police cautions are inadmissible, implies that the statutory prohibition against leading similar fact evidence against young people is limited to that situation and does not extend to more grave circumstances where charges are laid and the matter proceeds to the YC, or where no charges are laid but a complaint is made. Judge Gittos approached the question of admissibility as he would in any other case and, given the similarity of the foregoing offences to the matter currently before the Court, admitted the evidence.

R v Slade [2005] 2 NZLR 526 (CA)

Filed under:

R v Slade [2005] 2 NZLR 526 (CA)

Court of Appeal
File number: CA245/04, CA266/04,
Date: 28 February 2005
Judge: Anderson P, Hammond and William Young JJ
Key title: Sentencing in the adult Courts – Murder/manslaughter; Sentencing in the adult Courts – application of Youth Court Principles.

The Court of Appeal ruled that a minimum non-parole period of 17 years under s 104 Sentencing Act 2002, could be so crushing for a young person that it would be manifestly unjust to impose it.

In *R v Slade* two youths appealed against sentences of life imprisonment with a minimum 17-year non-parole period for murder. The pair (then 16), along with a third youth, had viciously attacked and robbed a passer-by who later died of massive head injuries. Section 104 requires that the 17 year minimum be imposed where certain factors are present during the murder unless the Court is satisfied that 'it would be manifestly unjust to do so'. The Court of Appeal held that this was a case where s104 applied and then considered whether a 17 year sentence of actual imprisonment would fall so heavily on the young men that it would be 'genuinely crushing and destructive of their lives and therefore manifestly unjust'.

The ringleader in the offence, Hamilton, was particularly brutal and lacking in remorse, and the Court had little difficulty in dismissing his appeal. Slade, whose involvement had been more peripheral, although not minimal, and who nevertheless faced the full 17-year sentence, presented a greater challenge to the Court.

The Court stressed that there is no youth exemption to s104 but noted evidence showing that adolescents' developmental levels are different to those of adults. Statistics show a high degree of violent offending amongst youths but offending tails off once offenders reach their twenties. Registered consultant psychologist, Dr Ian Lambie, set out the reasons for this in a report for the defence:

It is widely accepted that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults (Steinberg & Scott, 2003). Adolescents have difficulty regulating their moods, impulses and behaviours (Spear, 2001). Immediate and concrete rewards, along with the reward of peer approval, weigh more heavily in their decisions and hence they are less likely than adults to think through the consequences of their actions. Adolescents' decision-making capacities are immature and their autonomy constrained. Their ability to make good decisions is mitigated by stressful, unstructured settings and the influence of others. They are more vulnerable than adults to the influence of coercive circumstances such as provocation, duress and threat and are more likely to make riskier decisions when in groups. Adolescents' desire for peer approval, and fear of rejection, affects their choices even without clear coercion (Moffitt, 1993). Also, because adolescents are more impulsive than adults, it may take less of a threat to provoke an aggressive response from an adolescent.

Dr Lambie's report also referred to the high levels of depression, anxiety, suicidal ideation and self-injurious behaviour, and victimisation from other inmates that adolescents experience in prison. Further, adult institutions offer fewer health and mental health services for adolescents than for adult prisoners. The Court noted the policy implications arising for the criminal justice sphere from this evidence, particularly in addressing the causes of offending.

The Court stated that cases such as the present can only turn on their own facts, having regard particularly to the intent of the perpetrator, their actual participation in the wrongful event, and their "attitude" to what occurred. In this case, Slade showed some empathy and awareness and, although his involvement was not minimal, he was not the principal perpetrator and could not be considered to be on all fours with Hamilton for the purposes of s 104.

Result:

Considering his age, abusive and deprived upbringing and the crushing nature of a sentence such as this for a 17 year old, the Court decided that this would be a case where manifest injustice would result from the lengthy non-parole period. Consequently, Slade's appeal was allowed and the 17 year minimum non-parole period was set aside. His sentence of life imprisonment remained.

X v Police (2005) 22 CRNZ 58 (HC)

Filed under:

X v Police (2005) 22 CRNZ 58 (HC)

File number: CRI 2004-404-000374
Date: 11 February 2005
Court: High Court, Auckland
Judge: Heath and Courtney JJ
Key Title: Sentencing in the adult Courts: Application of Youth Justice principles; Sentencing in the adult Courts: Sexual violation by unlawful sexual connection.

Summary

This case considered whether youth justice principles (set out in s 208 of the CYPFA) apply in an adult tariff Court, and if so, to what extent should those principles be taken into account. X was charged with several counts of unlawful sexual connection and indecent assault with two young males (one under the age of 12 and one aged between 12-16). X was aged between 14 and 15 at the time of the particular offending with which he was charged. He came before the Youth Court at the age of 17. X admitted the charges in the Youth Court. The Court entered a conviction on each charge and ordered that X be transferred to the District Court for sentence under s 283(o) of the CYPFA. The District Court sentenced X to three years imprisonment on each of the sexual violation charges, to be served concurrently. X appealed against his sentence on the ground that the sentence imposed by the District Court Judge was manifestly excessive, inappropriate, and did not take into account youth justice principles relevant to the sentencing decision.

Held: The District Court must take into account youth justice principles in determining the length of the sentence of imprisonment to be imposed for a youth offender following a transfer for sentence from the Youth Court. Several factors should be taken into account when sentencing young offenders, including:

- The age of the offender and their particular vulnerability and immaturity;
- Findings in the Youth Court as to chances of rehabilitation and support groups;
- The reasons why the Youth Court Judge transferred the case to the District Court; and
- The principles and purposes of sentencing reflected in the goals of s 208 of the CYPFA.

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Outcome

- Appeal allowed. Sentences imposed by District Court Judge set aside.
- X sentenced to 2 years on each sexual violation charge, terms to be concurrent. 50% discount to sentence due to acceptance of early responsibility, remorse, and age of offender. Age was an important factor: "The age of the offender takes account of his vulnerability and immaturity which in turn operate to lessen (at least to some degree) the weight to be given to premeditated offending." [109]
- Leave to apply for home detention granted.
- Section 14(1) of the Parole Act 2002 conditions apply with other conditions specified in judgment.

The High Court's Analysis

The Statutory Scheme

There are important differences in procedure and the consequences of any finding that a charge has been proved between the youth and adult courts.

The CYPFA governs youth justice in New Zealand. The law recognises that youth offenders ought to be treated differently from adult offenders. The particular features of the youth justice system highlighted in the High Court case were:

- The Youth Court operates using age-related controls, sanctions and procedures that recognise the limited understanding and particular vulnerability to influence of young people (*Police v Edge* [1993] 2 NZLR 7 (CA)).
- The Youth Court applies "youth justice principles" set out in s208 of CYPFA (*E v Police* (1995) 13 FRNZ 139 (HC)) that reflect the objects of the Act.
- The consequences of electing trial by jury are significant as to potential sentence. The maximum sentence that can be imposed by a District Court following a transfer for sentence from the Youth Court is 5 years for the reasons given by the Court of Appeal in *R v P* CA59/03, 18 September 2003 per Keith, Hammond and Patterson J).
- The method of disposal of criminal proceedings in the Youth Court is unique. The Youth Court does not have to enter convictions after proof that the offence has been committed. Rather, the Court may make one or more of the orders set out in s 283 of the CYPFA.

In this case, the Youth Court made an order for transfer to the District Court under s 283(o) of the CYP Act. Section 290 restricts the making of a s 283(o) order:

The High Court stated that this process was of some importance as "In effect, an order for transfer is a recognition that sanctions available solely in the Youth Court are inappropriate to respond to the particular offending in issue." [38] A transfer order indicates that a wider range of sentencing options ought to be considered. It removes the option of purely Youth Court sanctions being imposed for the offending. [41]

In making sentencing decisions the Youth Court is guided by:

a. the principles of youth justice (s 208 of the CYPFA);

b. The objects of the CYPFA;
c. The principles to be applied generally in the exercise of powers conferred by the Act; and
d. The long title to the Act.

When a decision is transferred to the adult tariff court the provisions of the Sentencing Act 2002 apply. The High Court therefore had to consider whether and how youth justice principles would apply in the District Court. The authorities on the applicability of youth justice principles outside the Youth Court have developed in an ad hoc manner:

- A detailed history of the case law is at paras [46] to [56]. Only one case dealt with the interface between the CYPFA and Sentencing Act 2002 in the context of a transfer for sentence in the District Court under s 283(o) of the CYPFA: *R v M T-J* (2002) 20 CRNZ 1051 (DC) .
- *R v M T-J* was a case that involved an aggravated robbery where the tariff case of *R v Mako* ordinarily applied. In his judgment, Judge Harvey held that the sections in the CYPFA continued to be available in the District or Sentencing Court. The High Court quoted extensively from his judgment, citing in full paras [25] to [30].

Reasoning

The Court's analysis is set out at paras [68] to [85].

(a) Applicability of youth justice principles

- The starting point for analysis is s283(o) of the CYPFA. "In effect an order for transfer has the effect of removing a young offender from the youth justice regime." [68] Once in the adult tariff court, the provisions of the Sentencing Act 2002 apply.
- The Sentencing Act 2002 provides a framework for analysis when imposing a sentence. Nothing in either s 9(1) or (2) of the Sentencing Act 2002 (which list aggravating and mitigating factors to be considered by a sentencing Court) prevents the Court from taking into account other aggravating or mitigating factors.
- When a Youth Court determines if a young offender should be sentenced in the District Court it must apply the criteria set out in s 290 of the CYPFA. The factors of particular importance relate to the likelihood of a custodial sentence being imposed (s 290(1)(b) and (c)). When the Youth Court makes that assessment, ss 16 and 18 of the Sentencing Act 2002 are also relevant.
- In determining whether a District Court is obliged to have regard to youth justice principles the wording of s 208 of the CYPFA assumes importance. The first two principles are only relevant to the youth court "*[p]rima facie*, the balance of the principles set out in s 208 are relevant to sentencing, whether in the Youth Court or the District Court" (i.e. s 208(c) to (h)).
- Section 5 of the CYPFA, to which s 208 is expressly subject - refers to principles to be applied by **any Court exercising powers conferred by or under the Act (**i.e. s 5(a)-(f)). There was some discussion about the meaning of the underlined words. The High Court held:
    a. The words "any Court" are not limited to the Youth Court [76].
    b. When the District Court sentences a young person pursuant to a s 283(o) order the DC exercises a power conferred by or under parts 4 or 5 of the CYPFA, and so is exercising a power "conferred by or under the Act".
- The High Court addressed "whether this construction causes an inconsistency between those cases in which the young person is tried summarily in the Youth Court (whether in respect of summary or indictable offences) and those in which trial by jury is elected and the

option to revert to the Youth Court jurisdiction is not offered or not accepted". It held at [80]:

"We accept the argument that sentencing exercised after trial by jury is a power "conferred by or under [Part 4] or Part 5" of the CYPFA (for the purposes of s 208) is more tenuous. But, we have come to the view that it is a valid interpretation given that, even in the most serious offence of murder, a modified preliminary process is mandated by the CYPFA. For that reason we hold that the CYPFA empowers the sentencing Court by providing for the way in which different Courts deal with particular charges in specified circumstances."

[81] As ss 4, 5, and the Long Title to the CYPFA are located within earlier parts of the statute, there is nothing in s 208 of the CYPFA that could preclude a sentencing Court, other than the Youth Court, from taking those objectives, purposes and principles into account." [81]

- The effect of this obiter statement is that where a case has only passed through the Youth Court as a matter of procedure any sentencing decision in the adult tariff courts will have to consider youth justice principles.
    - The High Court stated that their interpretation was consistent with that of Judge Harvey in *R v M T-J* except in three important aspects, set out at para [83] from (a) to (c).

Some Important Principles

The Court outlined at [85] "some important principles which we consider ought to be followed when District Court Judges are asked to sentence under s 283(o) of the CYPFA":

a. In many cases the Youth Court will have inquired, both through the receipt of specialist reports and at a Family Group Conference, whether adequate family support groups exist to assist an offender to rehabilitate. Findings on that issue ought to be included in the reasons for transferring the young offender to the District Court for sentence because a finding, one way or the other, may influence the District Court on sentence. Similarly, any findings as to the nature of such a support group are also likely to be helpful.
b. The extent to which the youth justice principles set out in s208 and the purposes of the CYPFA can be taken into account will fall for consideration on a case by case basis. A District Court Judge will need to be reasonably specific in his or her analysis of the weight to be given to particular factors so that an appellate Court can understand the reasons why the sentence was chosen. In particular, it is important that the District Court Judge take account of the reasons for transfer given by the Youth Court because the decision to transfer necessarily means the case is too serious for Youth Court sanctions alone.
c. In cases of sexual violation, non-custodial sentences can rarely (if ever) be justified because of the existence of s 128B of the Crimes Act 1961 and the dicta of the Court of Appeal in *R v N*. Nevertheless, the principles of youth justice are still relevant in fixing the length of the appropriate term of imprisonment. Often, the youth justice principles will be relevant to the sentencing goal of imposing the least restrictive outcome available in the circumstances: s 8(g) of the Sentencing Act 2002.
d. Many of the principles and purposes of sentencing reflect goals set out in s 208 of the CYPFA. For example, s 8(h) and (i) and the mitigating factor of age (s 9(2)(a)) can be seen as directly relevant to the principles in s 208(c), (d), (e) and (f).

[85] Finally, and most important of all, we reinforce what was said by Judge Harvey in *R v M T-J*. The application of youth justice principles does not prevent the District Court from imposing a sentence of imprisonment. Nor does it they prevent the District Court, in appropriate circumstances, from holding that sentencing goals of accountability for harm done, denunciation and deterrence require a longer custodial sentence because those factors assume primacy over the youth justice principles. Each case must be determined on its own facts. The point is that the sentencing of a young person must take account of youth justice principles.

Police v Clarke DC Christchurch CRN 5209003016, 25 February 2005

Filed under:

Police v Clarke

File number: CRN 5209003016
Date: 25 February 2005
Court: District Court, Christchurch
Judge: Doherty DCJ
Key Title: Sentencing in the adult Courts: Other; Sentencing in the adult Courts: Application of Youth Justice principles

Notes on Sentencing. Clarke transferred to adult Court on aggravated wounding charge; 10 or 11 charges still in YC from a crime spree that included car conversion and stealing from cars and shops. During one car conversion attempt, Clarke (then 14) was confronted by the car's owner; a struggle ensued and Clarke stabbed car owner in the arm twice with scissors leading to aggravated wounding charge; victim suffered permanent injuries. Mitigating factors: unfortunate upbringing; Clarke engaging and bright; family supportive but desperate; remorse. Aggravating factors: drug and alcohol abuse, violence issues; Clarke intended his actions; prior criminal record. Need for deterrence but also rehabilitation; Starting point is 3-5 years (*R v Hereora* [1986] 2 NZLR 164), no "positive or redeeming feature currently in your make-up". Bearing in mind guilty plea and age, credit of one half of sentence.

Decision:

Sentenced to two and a half years imprisonment.

Police v E & T (15 February 2005) YC, Wanganui, Callinicos DCJ

Filed under:

Name: Police v E & T
Unreported
File number:
Date: 15 February 2005
Court: Youth Court

Location: Wanganui
Judge: Callinicos DCJ
CYPFA: s276
Charge: Aggravated Robbery
Key Title: Jurisdiction of the Youth Court - s276 offer/election

Summary: E & T (15.5 yrs) charged with aggravated robbery; both indicated a desire to plead guilty. Whether YC jurisdiction should be offered. E & T planned and carried out an aggravated robbery on a shop, with the assistance of two associates. E threatened the victim with a craft knife in the presence of victim's three-year-old child. T advised the Police of her involvement prior to any contact having been made with her by Police; neither E nor T had previously appeared before the Courts. Leading cases considered: *Police v P & T (Young Persons)* (1991) 8 FRNZ 642; *S v DC at New Plymouth* (1992) 9 FRNZ 57; *Solicitor General v Wilson and Paul* (Harrison J, HC, Auckland, A9/02 and A13/02, 10 May 2002), *X v Police* (Heath and Courtney JJ, HC, Auckland, CRI 2004-404-374, 7 February 2005) and particularly *W v Registrar of Tokoroa Youth Court* (1999) 18 FRNZ 433 and *Police v James (A Young Person)* (1991) 8 FRNZ 628; factors relevant to the exercise of the discretion listed; each factor discussed in relation to this case. Here, T less involved in offence than E; T gave herself up to Police immediately; E less accepting of responsibility; both E & T turning 17 later in 2005; victim supports a rehabilitative attitude; no previous offending; public interest may be accommodated within the YC; s208 CYPFA. Held: T offered YC jurisdiction as objects of CYPFA can be met in the time available. E not offered YC jurisdiction as time available not sufficient to deal with her lesser appreciation of her situation and public interest concerns; further, E more involved in the offending at a more aggressive level. However, remitting of E's jurisdiction does not indicate the only outcome is one of the most severe kind: para [22] of *W v Registrar of Tokoroa Youth Court* emphasised.

Decision: YC jurisdiction offered to T but not to E.

R v Patea-Glendinning [2006] DCR 505 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

R v Patea-Glendinning [2006] DCR 505

File number: CRI-2005-483-000017
Court: High Court, Wanganui
Date: 29 March 2005
Judge: Miller J
Key title: Sentencing in the adult courts: Application of Youth Justice Principles; Sentencing in the adult courts: Aggravated robbery, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Principles of Youth Justice (s 208)

LexisNexis Case Summary:

Criminal law – Youth justice – Appeal by Crown against sentence for aggravated robbery – Statutory sentencing jurisdiction following transfer of defendant to District Court for sentencing – Relevance of youth following transfer of defendant to District Court for

sentencing – Youth as mitigating factor – Starting point for sentence – Whether sentence imposed by District Court manifestly inadequate – Summary Proceedings Act 1957, s 173A – Children, Young Persons, and Their Families Act 1989, ss 2, 5, 6, 208, 272, 282, 283(o), 284, 290(2), 351, 352, 353, 354, 355, 356, 357, 358, 359, 360 – Interpretation Act 1999, s 5 – Sentencing Act 2002, ss 7, 8(h), 9(2), 16, 18, 104.

Sentencing – Young offender – Starting point for sentence – Whether sentence imposed by District Court manifestly inadequate – Sentencing Act 2002, ss 7, 8(h), 9(2), 16, 18, 104.

Appeal

The Crown appealed against the sentence imposed upon the respondent, Ira Patea-Glendinning, for aggravated robbery.

The respondent, Patea-Glendinning, was sentenced to 300 hours' community work, reparation, and two years' supervision with special conditions for the aggravated robbery of a dairy in Wanganui in February 2005 when he was 16 years old. The Crown appealed that sentence, maintaining that, having transferred the respondent to the District Court for sentencing under s 283(o) of the Children, Young Persons, and Their Families Act 1989 (the CYPF Act), the Judge was required to impose a sentence of not less than 18 months imprisonment under the Sentencing Act 2002.

Held

(dismissing the appeal)

1. The CYPF Act ceased to apply once the qualifying young person, in this case the respondent, was transferred to the District Court for sentence under s 283(o) of the Act (see paras [45], [46], [47], [48], [49]).
   X v Police (2005) 22 CRNZ 58 (HC) per Heath and Courtney JJ not followed.
2. Youth was properly to be considered a mitigating factor, and the allowance made as such a factor could be a substantial one, depending of course on age and the characteristics of the individual offender and the circumstances of the offence. In this case, therefore, a sentencing starting point of around four years was required (see paras [59], [60]).
   R v Mako [2000] 2 NZLR 170 (CA) followed.
3. The respondent received a substantial sentence of community work and two years' supervision with onerous conditions. That could not be seen as a light sentence or discounted as a real alternative to a short term of imprisonment with leave to seek home detention. When allowance was made for the need to preserve the flexibility of the sentencing Judge to take a rehabilitative approach when dealing with young offenders, it could not be said that the sentence was manifestly inadequate (see para [64]).

Police v DJT (7 April 2005) YC, Manukau, CRN 04292067113, Judge Simpson DCJ

Filed under:

Name: Police v DJT
Unreported:
File number: CRN 04292067113
Court: Youth Court
Location: Manukau
Date: 7 April 2005
Judge: Simpson DCJ
Charge: Unlawfully Taking a Motor Vehicle
CYPFA: s5(f); s322
Key title: Delay

Summary: DJT (16 yrs, 5 months at time of alleged offending) charged with unlawfully taking a motor vehicle; delay of over 10 months between the alleged offending and the first call of the matter; DJT was 17 yrs, 2.5 months at time of laying of Information and 17 yrs, 7 months at date of decision. Counsel argue undue delay contrary to s322 CYPFA, s5(f) CYPFA; prejudice caused because, due to the delay, DJT denied opportunity to be dealt with as a youth, denied rehabilitative options of the Youth Court; also DJT denied recognition of vulnerability of young persons entitling them to special protection during any investigation of alleged offending (s208(h) CYPFA). Police argue delay due to insufficient Police resources but that nevertheless the case had been given some priority; length of delay similar to amount of time routinely taken by Christchurch Youth Drug Court to deal with matters. *BGTD v Youth Court Rotorua* (Unreported, 15 March 2000, Robertson J, High Court, Rotorua, M119/99) distinguished. *Police v AT* (Unreported, Wellington Youth Court, 3 March 2004, Judge A P Walsh); and *Police v P & R* [2004] DCR 673 applied. Held: Delay found; delay was unduly protracted. Public interest in having offenders held accountable and the rights of the victim to have matters dealt with in a sensitive and timely manner recognised; delays must be set against clear statement of principle in s5(f); Police resourcing issues do not justify the delay; case not analogous to therapeutic programmes in the Christchurch Youth Drug Court where young persons are before the Court because an Information has been laid. Delay was prejudicial to DJT as he is now 17 and this prejudice is sufficiently serious to justify the extreme step of halting the proceeding.

Decision: Information dismissed.

Police v TJV (7 April 2005) YC, Manukau, CRN 05292007792; CRN 05292007793, Judge Simpson DCJ

Filed under:

Name: Police v TJV
Unreported:
File number: CRN 05292007792; CRN 05292007793
Court: Youth Court
Location: Manukau
Date: 7 April 2005
Judge: Simpson DCJ
Charge: Robbery; Aggravated Assault
CYPFA: s5(f); s322
Key title: Delay

Summary: T (14 yrs, 5 months at date of alleged offending on 21/5/04) charged with robbery and aggravated assault; Informations sworn on 2/2/05; T appeared in Court for first time in connection with these matters on 8/2/05. Counsel argue undue delay contrary to s322 CYPFA, s5(f) CYPFA; prejudicial to T's schoolwork. Police argue delay due to insufficient Police resources but that nevertheless the case had been given some priority; length of delay similar to amount of time routinely taken by Christchurch Youth Drug Court to deal with matters. *BGTD v Youth Court Rotorua* (Unreported, 15 March 2000, Robertson J, High Court, Rotorua, M119/99) distinguished. *Police v AT* (Unreported, Wellington Youth Court, 3 March 2004, Judge A P Walsh); and *Police v P & R* [2004] DCR 673 applied. Cannot apply rule differently on basis of seriousness of the offence: *Police v P & R*. Held: Seriousness of offending put aside; therapeutic programmes in Youth Drug Court not analogous to this situation and in that Court the young persons are before the Court because an Information has been laid, here no Information laid for 9 months despite the fact that the identity of the offender was known. Delay found, delay was unduly protracted - Police resourcing issues not a justification for the delay and the public interest in holding a young person accountable for wrongdoing should not take precedence over the clear statement of principle in s5(f) CYPFA. The delay was prejudicial to T who is moving into an important stage of his education; prejudice sufficiently serious to warrant the extreme step of halting the proceedings.

Decision: Information dismissed.

The Queen v Randall Jeremy Blade, Police v Ricky Lee James Tuhikarama DC Christchurch CRI-2007-454, 6 May 2005

Filed under:

The Queen v Randall Jeremy Blade, Police v Ricky Lee James Tuhikarama

File number: CRI 2007-454
Court: District Court, Christchurch
Date: 6 May 2005
Judge: Judge Abbott
Key title: Sentencing in the adult courts: Aggravated burglary, Youth Court procedure

Case Summary:
B appeared for sentence (21) on one charge of aggravated burglary and three of injuring with intent to cause GBH. T (17) appeared on one charge of aggravated burglary and one charge of burglary.

T pleaded guilty to the aggravated burglary charge at the conclusion of the preliminary hearing prior to committal for trial.

T did not face the three injuring charges because of the 'unsatisfactory procedural provisions' in the CYPFA, in particular the prohibition in s 273 on a charge being laid indictable unless it relates to a purely indictable offence. T as part of a group travelled from Rangiora to Culverden and entered a house without warning. Three young people in the house were subjected to a prolonged and viscous, beating with weapons being used in the attack. The house and three vehicles were also damaged.

T admitted his involvement to the Police on the night of the incident.

Decision:

Judge Abbott referred to principles of sentencing when co-offenders are sentenced by different Judges on different occasions. The starting point adopted for other members of the group was two and a half years imprisonment, which was reduced by one year for mitigating factors. Judge Abbott, citing *R v Mako* [2000] 2 NZLR 170, where the CA considered that a starting point of seven years would be justified for aggravated robbery involving forced entry. By analogy, the appropriate starting point in this case would be 6 years imprisonment, but that would cause inconsistency problems with the sentences already imposed on co-offenders.

The appropriate starting point for B and T was four years. B was sentenced to 2 years and nine months imprisonment. T was allowed a reduction of 2 years for his age (16) at time of the offence. T had had previous YC appearances, and had committed a burglary offence while on bail.

T's Sentence

1. Two years imprisonment on the aggravated robbery charge
2. On the separate burglary charge, 6 months' imprisonment, cumulative on the aggravated robbery charges.
   Total term two and a half years

Comment
The case highlights the potential problems when a purely indictable charge and related charges, which are indictable but triable summarily, could be laid in respect of a single incident. Judge Abbot considered that s 273 of the CYPFA should be amended to allow for a charge which is not purely indictable to be laid indictably if a purely indictable charge is laid concurrently or has already been laid in respect of the same incident.

Police v CMT YC Wanganui CRI-2004-283-000044, 6 May 2005

Filed under:

Police v CMT

File number: CRI-2004-283-000044
Court: Youth Court, Wanganui
Date: 6 May 2005
Judge: Callinicos DCJ
Key title: Orders - type: Supervision with activity - s 283(m), Orders - type: Supervision - s 283(k), Sentencing - General Principles (e.g. Parity/Jurisdiction)

Reasons for Orders made. CMT ('T' in *Police v E and T* YC Wanganui 15 February 2005 per Callinicos DCJ on YC Database under Jurisdiction – s276 offer/election) had breached her bail curfew three times; victims who formerly wished the offenders to be rehabilitated now asked that the youth offenders be dealt with firmly – Judge does not see these goals as

inconsistent. Police argue that Supervision with activity and Supervision is inadequate with regard to public interest factors and rehabilitation necessary under a Supervision with residence order. CMT embarrassed by her lack of educational ability and not wishing to stand out from her peers by making an effort at school.

Held: CMT genuinely remorseful; admitted her offending before her older co-offenders; advised Police who the co-offenders were; bail curfew breached but awaiting resolution of these matters for 10 months – delay necessary to obtain background information, consider jurisdictional matters and formulate comprehensive plan. Placement in formal residence will not enhance CMT's rehabilitative capacity to any measurable degree; residences not seen as a rehabilitative tool, regardless of the original intentions of the Act; if SWR order made CMT would probably spent first few days of that in Police cells – not rehabilitative. Plan prepared by Chief Executive of CYFs will assess CMT's educational situation with a view towards one-to-one tutoring to move her towards a mainstream environment. The objects of the CYPFA, the individual and public interests in this case will be far better enhanced by giving CMT the rehabilitative tools she needs within a community environment rather than in a supervised residential situation.

Decision:

Supervision with Activity order made pursuant to s283(m) CYPFA and a Supervision Order under s283(k) CYPFA, each order for a period of three months, with conditions.

Police v WR (2 May 2005) YC, Rotorua, CRI 2005-265-57, Judge Geoghegan DCJ

Filed under:

Name: Police v WR
Unreported:
File number: CRI 2005-265-57
Court: Youth Court
Location: Rotorua
Date: 2 May 2005
Judge: Geoghegan DCJ
Charge: Possession of a Class C drug; Burglary (2); Receiving; Unlawfully Taking a Motor Vehicle
CYPFA: s249
Key title: Family Group Conferences – Timeframes/limits; Family Group Conferences – convened/held

Summary: WR charged with possession of a Class C drug, burglary (2), receiving, unlawfully taking a motor vehicle. WR's advocate applied for an order to dismiss the charges because of a breach of the requirement to convene a FGC within the specific CYPFA timeframe. Police and YJC accept that there had been a breach; due to work pressures; WR had not been left to "wither on the vine". Issue as to the effect of the breach and whether the Informations should be dismissed or whether some cause of action may be taken short of dismissal. *Police v S* (12 February 2004, Youth Court, Lower Hutt, Walker DCJ) followed; failure to convene an FGC has the effect that the Court cannot receive recommendations upon which it can rely in the

final disposition of the case; s281B CYPFA not in existence to remedy situation where strict time limits not complied with. Court may take a disciplinary approach to register its concern at the breach or, in other situations, an approach short of dismissal may be appropriate, for example, enabling the prosecuting authority to seek leave to withdraw the Informations. Disciplinary approach inappropriate here as time limits usually observed in this Court and professionals within it working in co-operative manner. Any outcome must take account of victims and community interests, matter should be promptly re-layed to avoid contravening s5(f) CYPFA. Appropriate to invite the Police to seek leave to withdraw these Informations.

Decision: Leave granted and Informations are withdrawn by leave.

Police v KF (22 June 2005) YC, New Plymouth, CRI 2001-221-000012, Judge Becroft DCJ

Filed under:

Name: Police v KF
Unreported:
File number: CRI 2001-221-000012
Court: Youth Court
Location: New Plymouth
Date: 22 June 2005
Judge: Becroft DCJ
Charge: Sexual Violation; Abduction for Purpose of Sexual Connection
CYPFA: s275; s354
Key title: Admissibility of evidence; Jurisdiction of Youth Court - s275 offer/election

Summary: KF (15) charged with sexual violation and abduction for purpose of sexual connection; complainant an 82-year-old rest home resident suffering from dementia and Alzheimer's disease with absolutely no memory of the incident. Whether to offer Youth Court jurisdiction to KF; relevant considerations: (1) likely length of sentence of imprisonment if imprisonment imposed – here five year sentence "cap" if KF convicted and transferred to DC under s283(o) CYPFA sufficient; (2) nature and circumstances of offending – serious offending, significant public interest and these factors weigh against YC jurisidiction; (3) age - 15; (4) sufficient time remains for top end YC sentences; (5) personal and offending history - indecent assaults against girls under 12; (6) social and personal circumstances; (7) victim's interests – victim suffers from dementia and will not be giving evidence, her interests can be equally well protected in the jury trial or YC forum; (8) rehabilitative provisions of CYPFA – if these charges are proved prime consideration must be that of punishment and imprisonment in the DC; (9) matter could be heard and finally determined very quickly in YC but if YC not offered, Crown to seek matter to HC leading to significant delays; (10) public interest.

Whether statements made by the elderly woman to others after the incident, otherwise hearsay, should be admitted against KF. If jury trial held, s344A Crimes Act 1961 application possible but no provision for such an application in YC. If in YC, summary hearing with "voir dire" hearing would be needed. If evidence ruled inadmissible in YC, would admissibility be considered a point of law under s354 CYFPA that could found an appeal? Here it was held the evidence admissibility issue, the same issue as in R v Manase (2000) 18

CRNZ 378, would be a point of law not of fact and would clearly be appealable under the CYPFA.

Decision: YC jurisdiction offered as less delay, no significant disadvantages to the Crown and public interest may be adequately protected even if charges heard in first instance by YC. YC jurisdiction accepted; charge denied. Upon any finding of guilt, conviction and transfer to DC likely.

Police v T YC Wanganui CRI-2005-283-004277, 17 June 2005

Filed under:

Police v T

File number: CRI-2005-283-004277
Court: Youth Court, Wanganui
Date: 17 June 2005
Judge: Judge Callinicos
Key title: Orders - type: Reparation - s 283(f), Supervision; Order – type: Supervision – s 283(k); Family Group Conferences: Plan, Access to Reports (s 191)

Summary:

Reasons for Supervision Order.

T caused $111,000 worth of damage to the Wanganui Soccer Stadium. T and friends were sheltering from rain in the Grandstand when T started a fire to dry wet clothes and failed to ensure that it was put out before leaving the site. A reparation plan had been developed whereby the Soccer Association was to be reimbursed of $2,500 and the whanau would try to pay $2,500 to the Regional Council. T would offer to pay $10 per week. Section 334 report ordered to ascertain whether more reparation could be paid by T and her family towards the significant loss. T and her whanau in dire financial situation; on benefits. T truly remorseful; T has had a difficult life but remains committed to try to pay $10 per week but T now pregnant. Reparation entirely impracticable, if order were made the victims would not receive anything and this would make them feel more aggrieved. This would not meet the Objectives of the Act.

Decision:

Supervision order made under s 283(k) of the CYPFA to monitor Family Group Conference plan: includes education and mentoring, punishment. Victims to receive copy of decision.

Police v SF YC Wellington CRI-2004-285-000133, 15 June 2005

Filed under:

Police v SF

File number: CRI-2004-285-000133
Date: 15 June 2005
Court: Youth Court, Wellington
Judge: Becroft DCJ
Key Title: Orders - type: Discharge - s 282; Orders - type: Discharge - s 283(a)

SF (16) faced a charge of injuring with intent to injure and robbery. Whether the Judge should impose a discharge under s 282 of the CYPF Act, which is an absolute discharge as if charges had never been laid, or a discharge under s 283(a), which involves no further penalty but the order would remain on SF's record.

SF carried out a vicious and apparently unprovoked attack on another young man; victim suffered on-going physical and mental problems from head injury; panic attacks; whole family adversely affected. FGC held; comprehensive plan agreed on; plan completed under sufferance; unwilling compliance necessitated the reconvening of the FGC at one stage; bail breaches. Police argued that no remorse shown or, at best, SF very slow to demonstrate remorse. Youth Advocate argued that from a cultural perspective SF must be embarrassed or ashamed to show remorse but insisted that he did feel remorseful. Psychological report reveals that SF has 'an intermittent explosive disorder'; some 'post-traumatic stress syndrome' symptoms and difficulty controlling his anger. This was considered in the judgment and the Judge noted that it was something SF had been battling with 'over and above what most young boys face' (para [18]). No previous or subsequent offending; s208 and s284 considered. The need for the least restrictive sanction (as per s 208(f)(ii) CYPF Act) is recognised in the judgment ([para 24]) and the support offered by the CYPF Act for second chances is noted. Held: Given seriousness of offending there is a need for a record against SF's name; it would be unfair to those who complete their plans faithfully and get a s 282 to give SF a s 282. The Judge stated that SF is getting a 'second chance' in that he is getting no more than a record against his name for serious offending.

Decision:

Order - s283(a) –This decision was upheld on appeal: see *Feao (Sam) Junior Fapuiaki v Police* (HC Wellington CRI-2005-485-000097 per Young J).

Police v VM and CC YC Rotorua CRI-2005-263-000074, CRI-2005-263-000071, 17 June 2005

Filed under:

Police v VM and CC

File number: CRI-2005-263-000074; CRI-2005-263-000071
Court: Youth Court, Rotorua
Date: 17 June 2005
Judge: Judge Hikaka
Key title: Evidence (not including admissibility of statements to police/police questioning)

Summary:

VM (15) and CC (16) jointly charged with injuring with intent to injure; Police applied for (1) a support person, where relevant, for the witnesses, (2) exclusion of two people who were in Court as supporters of the defendants and (3) a screen for the witnesses while they were giving evidence. Reasons advanced by Police included that the defendants were gang associates, the offence involved serious violence and there had been intimidation of witnesses.

Youth Advocates argued, as to (2) and (3) above, that intimidating behaviour allegations based on hearsay and without sufficient foundation.

Decision:

Judge adjourned proceedings, released defendants on bail and made directions that screens should be provided for all witnesses, that support persons may be in Court on behalf of any witness while that witness gives evidence and that the two people in question should be excluded from the Courtroom. Judge satisfied that the Court has the inherent power to regulate its own processes and ensure fairness of trial procedures. The evidence before the Court was that there was intimidating behaviour and the screens were authorised as a consequence. In order to properly administer justice and ensure that all the evidence can be properly put before the Court, witnesses are to be entitled to be protected from threats or other such behaviour that might divert them from doing their public duty and giving evidence.

Police v MJL DC Invercargill CRN 4225018618, 16 June 2005

Filed under:

Police v MJL

File number: CRN 4225018618
Court: District Court, Invercargill
Date: 16 June 2005
Judge: Judge O'Driscoll
Key title: Media Reporting (s 408); Sentencing in the adult courts - Indecent assault/indecent act

Summary:

Notes on Sentencing. MJL sentenced on a charge of indecently assaulting a girl under the age of 12, offence occurred more than 12 months ago. CYF and Police recommended convict and transfer to District Court (s 283(o) of the CYPFA); victim's mother thought MJL should complete a Stop Adolescent Programme or be transferred to the District Court; MJL desperately in need of help; pre-sentence report recommends supervision for 2 years with special conditions. MJL sentenced to supervision for 2 years with 5 conditions:

1. attend Stop Programme for 18 months and adhere to strict safety guidelines as advised by the programme clinician;
2. to be assessed for a Straight Thinking Programme and attend as directed by the probation officer;
3. no contact with people of, or under, the age of 16 years;

4. no contact with victim or victim's family without written approval of the probation officer; and
5. to take counselling or treatment as directed by the probation officer.

Whether to grant name suppression. Victim seeks that name not be suppressed. MJL argues

1. disclosure of name may inhibit the rehabilitative nature of the sentence imposed;
2. MJL is vulnerable and currently in employment, publication may affect any progress the Stop Programme is designed to achieve;
3. Delay – if matter had been dealt with quickly, MJL would have been 16 when dealt with and would have had the benefit of anonymity and Youth Court jurisdiction.

Difficult balancing matter. Public interest in name being published; serious offending and matter is now in the District Court; condition that no contact with person under 16 difficult to enforce if name not published. Public interest in favour of publication of name.

Decision:

Two years supervision with conditions including attendance at a Stop Programme. Order for name suppression refused.

Police v RJM (13 June 2005) YC, Invercargill, CRN 5225005848, Judge Walsh DCJ

Filed under:

Name: Police v RJM
Unreported:
File number: CRN 5225005848
Court: Youth Court
Location: Invercargill
Date: 13 June 2005
Judge: Walsh DCJ
Charge:
CYPFA: s238
Key title: Bail

Summary: Application for bail; RJM and companions drove repeatedly past a church abusing youth group members; stopped vehicle; intoxicated RJM got out and urinated on church; RJM threatened two church members with a jemmy. No youth justice bed available or RJM would be placed in one; potential employer and another capable person in Court to support RJM; RJM has written to the Court to say he is motivated to change.

Decision: RJM remanded on bail on conditions including curfew; to work where employer directs and to attend such counselling as social worker directs.

Police v SG YC Tokoroa CRI-2005-077-000485, 13 June 2005

Filed under:

Police v SG

File number: CRI-2005-077-000485
Court: Youth Court, Tokoroa
Date: 13 June 2005
Judge: Geoghegan DCJ
Key title: Orders – type: Supervision with residence – s 283(n), Family Group Conferences: Agreement

Notes on Sentencing; SG charged with theft (5); unlawfully taking a motor vehicle; intentional damage; burglary (2) and using a document, many of the offences committed while SG on bail. Three FGCs held; SG on remand in residential centre, SG agreed to plan. SG suffers from bi-polar and conduct disorders, drug and alcohol addiction; care and protection issues. Section 290 CYPFA criteria satisfied.

Decision:

Sentence of supervision with residence for 3 months imposed to be followed by 6 months supervision. Supervision with residence imposed on condition that if SG absconds, CYFS may make an application that the matters be referred back to the YC under s 316 of the CYPFA. Additional conditions added to supervision order including drug and alcohol counselling, to attend training centre, curfew, not to re-offend while the subject of a supervision order.

Police v HK YC Nelson CRI-2005-242-000032, 13 June 2005

Filed under:

Police v HK

File number: CRI-2005-242-000032
Court: Youth Court, Nelson
Date: 13 June 2005
Judge: Whitehead DCJ
Key title: Orders - type: Supervision with residence - s 283(n); Orders - type: Supervision - s283(k)

Notes on sentencing; HK charged with failing to stop to ascertain injury; operating a motor vehicle on a road causing injury and driving whilst disqualified. HK drove an unregistered and unwarranted car; collided with cyclist; failed to stop and offer assistance to cyclist who was lying unconscious on the highway. Order before Court for declaration of non-compliance with a supervision order and a community work order in relation to further charges including theft (4) and burglary (4). Family Group Conference agreed only appropriate sentence is supervision with residence, followed by supervision. Due to multiplicity of offences involved it would be likely that if HK was an adult facing these charges he would be sentenced to a term of imprisonment.

Decision:

Supervision with residence for 3 months followed by supervision for 6 months.

Police v IG 19 September 2005, Youth Court, Wanganui, Judge Callinicos

Filed under:

Name: Police v IG
Unreported
File number:
Court: Youth Court
Location: Wanganui
Date: 19 September 2005
Judge: Judge Callinicos
Charge: aggravated robbery
CYPFA: s283(o)
Key title: sentencing
Case Summary:
IG, aged 15 yrs 11 mths at the time of the offence, admitted charge of aggravated robbery (purely indictable) of dairy with 3 others. YC jurisdiction offered and accepted. CYF initially proposed Supervision with Activity, but later advised that a suitable programme was not available. CYF then proposed Supervision with Residence (CYPFA s283(n)), but Police argued for conviction and transfer to DC.

Judge considered s208 principles, and other YC cases, also *W and Others v Registrar of Tokoroa Youth Cour*t (1999) 18 FRNZ 433 NZFLR 1000, and *X v Police* (11 February 2005) HC, Auckland, CRI 2004-404-374, Heath and Courtney JJ.

IG claimed there were threats from co-accused to take part in robbery, yet Judge described his culpability as moderate to high. IG is described as intelligent, with a supportive whanau, and community, yet he has not stuck to bail conditions. Impact on victims was considerable.

Judge doubted whether Sup with Activity would achieve YC sentencing goals, and other YC options not appropriate due to time and attitude. Hope that a s283(o) transfer would better achieve a community wrap-around sentence and a long period of supervision (only available in DC).

Decision:
IG convicted and transferred to DC for sentence.

Police v P [2006] DCR 120 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v P [2006] DCR 120

File number: CRN 05004012776-83
Court: Youth Court, Auckland
Date: 19 September 2005
Judge: Thorburn DCJ
Key title: Jointly charged with adult (s 277), Orders – type: Convict and transfer to the District Court for sentence – s283(o): Aggravated robbery

LEXISNEXIS Case Summary:

Sentencing – Jurisdiction – Youth offender – Offences of aggravating nature – Whether to transfer to District Court – Parity with co-offenders – Principles of youth justice – Children, Young Persons, and Their Families Act 1989, ss 4, 4(f), 5, 5(a), 6, 208, 208(c), 208(d), 208(f), 283(o), 290, 290(2).

P was charged with six aggravated robberies, which he had not denied. He also committed several other offences while on bail for the robberies. The issue before the Court was whether to transfer P to the District Court for sentencing. No agreement was reached at the family group conference about what jurisdiction the sentencing for the aggravated robberies should occur in. However the police later indicated they did not oppose the Youth Court jurisdiction.

P's offending was described as terrible. In each aggravated robbery a degree of violence or force was used. There was opportunistic offending, with people at such locations as ATM machines being targeted. A taxi driver and a bus driver were also targeted in planned offending. Another person was involved in the offending, and there was a suggestion that P might have taken a lesser role in the offending. However, in the sentencing of the co-offender in the District Court, the co-offender claimed that he had played the lesser role.

The police were seeking the matter to be transferred to the District Court for sentencing. They claimed parity with the co-offender was important and stressed the aggravating nature of the crimes. It was submitted that this was violent offending that had escalated and that given the serious nature of the offending the matter should be transferred to the District Court.

For P, it was submitted that there was a presumption against transfer in s 290(2) of the Children, Young Persons, and their Families Act ("the Act").

Held (declining to transfer the matter to the District Court)

1. Parity with the co-offender who was sentenced in the District Court was not pivotal. If the other person had been a young person who had been transferred to the District Court, then parity would have been more relevant (see para [11]).
2. The decision whether to transfer the case was guided by s 290. No transfer could occur unless the charges were purely indictable. The principles in ss 4 and 5 of the Act were also important (see para [12]).
3. In youth justice the principle of paramountcy of the welfare of the young person was set aside. When criminal offending was involved, there were other issues such as public interest, denunciation and deterrence that usurped the emphasis on the welfare of the young person (see paras [14]).
4. Section 208 of the Act dealt with the principles relating to young people who offended. One of those principles was that young people should be kept in the community as far as that was consistent with the safety of the public. P had no previous convictions and had the

benefit of a strong and supportive family. Those factors weighed against transferring the case to the District Court. The prosecution had to overcome those principles, which recognised the rehabilitation and development of young offenders (see para [17], [20]).

5. The offending all occurred within one month, and his family had since brought P into line. What he did during that month was out of character, and the risk of him offending again was minimal. The principle of the least restrictive intervention was therefore important (see para [25]).
6. The sentencing would occur in the Youth Court, with P facing a sentence of supervision with residence, followed by supervision (see para [29]).

Cases mentioned in judgment

- *Police v Rangihika* [2000] DCR 866.
- *RE v Police* [1995] NZFLR 433.
- *S v Police* [2000] NZFLR 380.

Trifilo v Police (30 November 2005) HC, Auckland, Simon France J

- Filed under:
- **Case summary provided by LEXISNEXIS NZ**
- **Name:** Trifilo v Police
  Reported: [2006] DCR 796
  File number: CRI 2005-404-340
  Court: High Court
  Location: Auckland
  Date: 30 November 2005
  Judge: Simon France J
  Charge: Sexual Violation
  CYPFA: s322, s351
  Key title: Delay
- **LEXISNEXIS NZ Summary:** The appellant was convicted in the Youth Court of sexual violation. The matter was set down for a family group conference and then a disposition hearing under s 283 of the Children, Young Persons and Their Families Act 1989 (the Act) at which time the Court would determine whether to deal with the matter within the Youth Court jurisdiction or transfer the appellant to the District Court for sentencing. Prior to the disposition hearing counsel for the appellant indicated that she wished to pursue an application under the Act which allows an information to be dismissed if the Youth Court is satisfied that a hearing has been unnecessarily or unduly protracted due to delay. The application was heard at the same time as the s 283 hearing. The defended hearing Judge took three months to deliver his findings and then the disposition hearing took another three months. Counsel for the appellant considered that this extra period "more than tipped the scales" so she pursued the application. The Judge who presided over the s 283 hearing was doubtful as to whether it was permissible to bring such an application at that point, or to base it on delay occurring after the defended hearing, but heard and declined it on the merits. Counsel for the appellant then filed a conviction appeal a few days after the Court's decision under s 283 to transfer the appellant to the District Court for sentencing. A hearing was set down to be heard on 11 November 2005. Both parties filed written submissions and it was clear that at that stage the second ground of appeal was being seen by counsel as a direct appeal from the decision of the

District Court on the s 322 application. By the time of the hearing, the Crown had reached the view that there was no jurisdiction to appeal a ruling given under s 322 of the Act. Objection was taken and the Judge agreed. By consent the appeal proceeded on ground (i). Judicial review was considered to be the appropriate route to challenge ground (ii) and counsel for the appellant immediately filed that application. Prior to the Judge issuing his ruling on ground (i), counsel for the appellant indicated that she wished to further litigate the jurisdiction point about appealing a s 322 ruling. Prior to this hearing, the previous Judge dismissed the appeal on ground (i) and noted that ground (ii) had not been considered. Written submissions were filed in advance of the ground (ii) jurisdiction hearing. At the commencement of that hearing, France J indicated a firm view that there was no capacity to appeal a decision made under s 322 but that it was possible to advance delay arguments and a s 25(b) New Zealand Bill of Rights Act breach, in the context of a general conviction appeal. Counsel were in a position to immediately argue the substantive merits so, by consent, that is what happened.

- **Held** (appeal dismissed)
- 1 The decision to decline a stay is not operative. The information has been determined. It is the finding of guilt that is operative, and the appellant was in custody by reason of that conviction and subsequent sentence. The s 322 application was an attempt to prevent the information being determined; once the information is determined, the stay application becomes merely part of the historical landscape. *Herewini v Ministry of Transport* [1992] 3 NZLR 482 cited.
- 2 The plain meaning of s 351 of the Act was that "finding" refers to the hearing at which the young person was found to have committed an offence. Subsection (1) refers to the finding and an order based on that finding. Further, subss (2) and (3) discuss delay between the finding of the Court and the s 283 disposition hearing. Section 283 hearings occurring after a person has been found guilty of the offence. This further strengthens the inference that s 351 provides an appeal from the finding of guilt. A stay application under s 322 was not an order (or refusal of one) based on that finding. The fact that the present appellant made his application after the determination of guilt (which along with the Youth Court the Court doubted was possible) did not alter this. It was the nature of the application that is pivotal, and an application to dismiss the informations for delay was, in the Court's view, subsumed into a determination of those informations (see paras [11], [12], [13], [14]).
- 3 If the delay arose prior to the defended hearing, then obviously s 322 was the appropriate vehicle. If that claim was made and was unsuccessful, the Court was not suggesting that later events (other than a conviction appeal) provided an opportunity to relitigate an unsuccessful application. However, if there had been further delay since the defended hearing there were opportunities outside s 322 – for example, the sentencing or a conviction and sentence appeal, or, the Court suggested, the s 283 disposition hearing. Whilst each occasion had its own inherent limits in terms of the options available to the Court to remedy delay, there remained considerable scope for a Court to give relief if a breach has arisen subsequent to the verdict (see paras [17] and [18]).
- 4 An issue as to whether it was permissible to consider pre-charge delay arises since the wording of s 25(b) talks of everyone "charged with an offence" and the "determination of the charge". Both suggest that the relevant period of delay must be after a charge has been laid.
  Holland v District Court of Whangarei (High Court, Auckland, M1107/00, 20 September 2000, Randerson J) followed. (see para [20]).

- 5 Concerning post-conviction delay, the issue of whether s 25(b) extended beyond verdict was recently determined in *Taito v R*.
  If s 25(b) incorporated delay in the hearing of an appeal it followed that it must also incorporate delay in the period between conviction and sentence. Each was an integral step in the "fair trial" process as the term has been interpreted in Taito. No doubt when the particular period of delay arises will be relevant to the appropriate remedy, but that is a separate issue from whether there has been a breach (see paras [21], [22]).
- 6 The Court was of the view that the same assessment as was made in *Police v Waitohi et al* (High Court, Whangarei, AP 36/03, 28 September 2003, Frater J) could be made of the period here from defended hearing judgment to sentence. Accordingly, the Court considered none of the periods standing in isolation were of undue length. Nor did the Court consider the overall period in itself, amounted to a breach. The Court was conscious the period in *Waitohi* was 19 months from start to appeal, and this was considered undue. However, the Court considered it was quite different when part of that period related to a Crown sentence appeal for which there had been unnecessary delay. A sterner assessment of the reasonableness of that period was to be expected. Further, unlike *Waitohi,* the present case included a defended hearing (see paras [44], [45]).
- 7 The Court concluded that there had been no breach of s 25(b) of the New Zealand Bill of Rights Act. It was apparent that the Court's primary concern had been the combination of time period plus conditions on remand. Whether the conditions made an otherwise reasonable period unreasonable could only be a matter of general assessment. The Court was influenced in its final assessment by the particular age of the appellant. Had he been young there would have been a different outcome (see para [49]).
- **Obiter**
  For completeness, the Court recorded that there had been a breach it would not have considered that quashing the conviction was an appropriate response. The worst period of delay occurred after the defended hearing and did not prejudice the fairness of the determination of guilt. The overall delay was not so excessive as to merit quashing the conviction absent actual prejudice to a fair trial. The Court would instead have invited counsel to further address it on the issue of sentence reduction. *Du v District Court at Auckland* referred to (see para [50]).
- **Other cases mentioned in judgment**
  Dyer v Watson [2004] 1 AC 379 (PC).
  HM Advocate v D P and S M [2001] SCCR 210.
  Martin v Tauranga District Court [1995] 2 NZLR 419 (CA).
- **Appeal**
  This was an appeal against conviction in the Youth Court for sexual violation.

Police v T (23 November 2005) YC, Hamilton, CRI 2005-219-000046, McAloon DCJ

Filed under:

Name: Police v T
Unreported:
File number: CRI 2005-219-000046
Court: Youth Court

Location: Hamilton
Date: 23 November 2005
Judge: McAloon DCJ
Charge:
CYPFA: s238(1)(d)
Key title: Custody – Chief Executive; Custody - CYFS

Case Summary: T remanded in custody under section 238(1)(d) and handed over to community provider; no placement available, T placed with his father. T absconded and was found some distance away in circumstances that suggested more offending was likely. The issue arose as to whether the charge of escaping may be brought in circumstances where a young person, subject to section 238(1)(d), is placed with a parent; meaning of "detained" in section 238(1)(d) CYPFA.

Judge McAloon refused to accept the submission that the aspects of detention and custody in s238(1)(d) could be separated. The words: "... the Court may order that the child or young person be detained in the custody of the Chief Executive" are to be read together, not split. The Judge further considered that the use of the word "detained" is intentional and has elements of restriction of movement and deprivation of liberty and being confined.

Although there is no authority for either the view that the words should be read together or that they should be split, the Judge compared the wording of section 238(1)(d) and section 238(1)(c) and interpreted the difference in the wording as being a reference to two separate concepts – despite the definition of custody in the Act; s362 CYPFA; s385 CYPFA.

Decision: A charge of escaping may be brought in circumstances where a young person, who is subject to section 238(1)(d) CYPFA, is placed with a parent although, of course, the fact of escaping must still be proven.

Police v TL & JV (25 November 2005) YC, Manukau, Judge D J Harvey

Filed under:

Name: Police v TL & JV
Unreported:
File number:
Court: Youth Court
Location: Manukau
Date: 25 November 2005
Judge: Harvey DCJ
Charge: Burglary
CYPFA: s5; s208; s249; s440
Key title: FGC timeframes/limits

Summary: JV and TL charged with burglary; charges not denied; FGCs not convened and held within statutory timeframes. Whether this failure to convene and hold FGC is so prejudicial to these proceedings that the Court is deprived of the ability to deal with the matter further as a result of provisions of the CYPFA. Police raised issue of whether flaw in

procedure could be cured by section 440 CYPFA (a "slip" section). H v Police [1999] 18 FRNZ 593; Police v S (12 February 2004) YC, Lower Hutt, Walker DCJ; Police v RH (14 April 2004) YC, Wellington, CRN 3285035891, Walsh DCJ discussed; timeframes mandatory and imperative. H v Police distinguished. Discussion of statutory framework: CYPFA s5(a); s5(f); s208(a); s208(c); s208(d); s208(g); FGC of fundamental importance to the YC process; unique and real alternative to the traditional adversarial process. Discussion of FGC process; CYPFA ss245-271.

(1) Time limits are mandatory and conformity to them is critical to the entire process: "not just boxes that need to be checked" because of s246 and subsequently s270 – where charge is "not denied" there is only one chance to convene FGCs; once FGC convened and held the process may continue under s270 "but it is absolutely critical that it starts and that it starts properly".

(2) The effect of FGC requirements pre-charge or pre-summons in H v Police mean that absent such pre-charge conference a jurisdictional foundation is absent and the proceedings are void.

(3) Failure to convene the FGC within mandatory time limits affects validity of other subsequent actions, such as the ability of the Court to make orders. Convening the FGC is critical but once done the YJC has a certain degree of flexibility in holding or adjourning FGCs thereafter.

(4) A Court cannot reconvene a FGC under s246 and s281 cannot be invoked to cover the situation where a FGC has not been convened or held under s246.

(5) The Court cannot determine the matter under section 281 CYPFA unless a FGC has been held or, in certain very limited circumstances, a FGC has been waived.

(6) A FGC held after late convening is not a valid FGC as time limits are critical.

(7) Section 440 CYPFA cannot be used to cure what is a fundamental defect on which the FGC regime is posited. Time limits not simply a "cog in the wheel" but fundamental elements of the process. "There is no justification whatsoever for any agency that is empowered by statute to perform certain duties to cast those duties aside, to rely upon a "slip" section, to blithely ignore what is required of them".

Decision: Although the remedies posited in Police v S and Police v RH are available, matter adjourned pending argument on **whether contempt of Court is available to be used in respect of FGC Co-ordinators who do not carry out their duties** or abide by the directions of the Court under section 246.

Police v JC [2006] DCR 465

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v JC
Reported: [2006] DCR 465
File number: CRI 2005-285-000098
Court: Youth Court
Location: Wellington
Date: 7 November 2005
Judge: Moss J
Charge: Obstructing constable in execution of duty; Assaulting constable
CYPFA: s208; s214
Key title: Arrest without Warrant

LexisNexis Case Summary:

Children and young persons – Youth Court – Obstructing constable in execution of duty – Assaulting constable – Out of control party – Church and carpark next to property where party being held – Church members concerned at behaviour and contacting police – Police attempting to close down party – Defendant asked not to re-enter and to leave on several occasions and warned of arrest – Defendant pushing past one officer and kicking another when being taken to van – Children, Young Persons, and Their Families Act 1989, ss 208, 214.

The defendant was present at a party on 6 August 2005. He and a number of his friends were invited but there were also 50 or so uninvited people. At around 9.30 pm the police went to the property where the party was being held for the first of two occasions that evening. There was a church and carpark next to the property and the police had been called by a member of the church community. That person was concerned that partygoers were spilling into the church carpark, behaving offensively, smashing bottles and interfering with vehicles. Two officers reached agreement with one of the occupiers that the party should be quietened down and they were ultimately satisfied that things were in control and left. A short time later the officers were returning from another incident and drove past the property on the way back to the police station. They were waved down by church members. One of the officers decided that the party was out of control. He found one of the occupiers and reached agreement with him that that was the case. He gave that occupier some time to try and close down the party. The occupier was not successful and then, after some difficulty, the two officers moved through the house to try and close down the party. Two other units were called and eventually there were ten officers trying to close down the party. The defendant emerged from a room upstairs and was confrontational towards the officers. He then stumbled, hit a window and broke it. The defendant and a friend were told to go downstairs, where arrests were already being made. An officer overheard another officer telling the defendant that he should leave or he would be arrested for obstruction. The defendant's behaviour was described as aggressive and belligerent and he appeared to be intoxicated. That officer next saw the defendant still on the property arguing and being aggressive. He heard several warnings being given to the defendant not to re-enter the property and to leave the property. He also heard him being told that he would be arrested for obstruction if he did not leave. The defendant subsequently tried to push past that officer, at which point he was arrested for obstruction. A struggle ensued and the defendant was put in handcuffs. The defendant was being taken from the property to the church carpark, where the prisoner van was waiting, by the officer when he was pushed against a wall because he was struggling. At that point, he intentionally kicked another officer who had come to assist.

Held (informations proved)
1 The Court preferred the evidence of the police for several reasons. First, given the defendant's behaviour as found by the Court, it was entirely likely that his attempt to avoid detention would have gone as far as assault. Secondly, the degree of pain which the officer who was kicked described, and the Court accepted as an accurate description and that was not challenged, was not the pain from an accidental application of force by a slight young man being detained by two burly seasoned police officers. Rather, that must have occurred as a result of an intentional application of force. Whether it was by knee or heel frankly did not overly matter. The Court was satisfied that, by whichever part of his body, the defendant had intentionally applied force to the body of the officer (see para [30]).

2 The defence to the obstruction charge was that the defendant did not know that the police officer was acting in the execution of his duty. It was clear to the Court on the facts that it had found that the defendant knew the police were acting in the execution of their duty which was to clear out this party, and that defence could not succeed (see para [31]).

3 The test that the officer must take steps to ascertain whether s 214 of the Children, Young Persons, and Their Families Act 1989 applies or not reads an additional step into s 214. The issue for the officer is not whether this offender is covered by the Act. It is a factual inquiry for the Court to consider whether the officer was satisfied and on reasonable grounds, not as to age but as to the factors set out in s 214(1)(a) and (b). There was no evidence that the officers considered age in this case but it was not necessary if the provisions of s 214(1) were fulfilled (see para [34]).
R v Grant (Youth Court, Henderson 30 July 1990, Harvey J) Not followed.

4 The Court was satisfied that the defendant was warned at least three times and probably six or seven times that if he continued to behave in the way he was he would be arrested for obstruction, and that the defendant did not desist. That was ample proof that it was necessary to arrest him to prevent further offending. In the Court's view it followed inevitably from the description of the fracas, the number of officers, the difficulties of shutting down the party and the general behaviour of the defendant at the time that it would have been unwise to deal with the matter by way of summons because that would not have had the necessary immediate effect, which was to close down the defendant's behaviour. It seemed to the Court that, notwithstanding his youth and the special protection offered by the Children, Young Persons, and Their Families Act, the officer was satisfied and on reasonable grounds that the requirements of s 214 were met (see para [35]).

Decision: Informations proved.

Other cases mentioned in judgment
Police v Mackley (1994) 11 CRNZ 497.

H v Police (30 November 2005) YC, North Shore, CRI 2005/244/66 Judge M E Perkins

Name: H v Police
Unreported:
File number: CRI 2005/244/66
Court: Youth Court
Location: North Shore

Date: 30 November 2005
Judge: Perkins DCJ
Charge: Sexual Violation; Indecent Assault
CYPFA: s322, s5(f)
Key title: Delay

Summary: H charged with sexual violation (purely indictable offence) and indecent assault on 5-year-old half-sister. Alleged offending occurred 17-25/6/2004; several delays due to young person "not denying" summary offence and then denying the charge after the FGC; other systemic delays. Preliminary issue in respect of delay finally argued on 26/10/2005. Whether delay in the investigation following the disclosure to the Police of the offending on 18/10/2004 (although earlier referral form dated 28/9/2004 found) and the commencement of the prosecution on 27/4/2005 was unnecessarily or unduly protracted. Section 322 CYPFA; Police v Crowe (Unreported, YC, Wellington, CRN 0285015569); Police v DH [1995] NZFLR 473 as to timing and prejudice to defendant considered; BGTD v Youth Court Rotorua & NZ Police (Unreported, HC, Rotorua, M119/99, 15 March 2000): need to balance individual rights against the public interest; particularly pertinent where allegations of serious sexual offending are concerned; principles contained in s5(f) CYPFA are not to be elevated above all other issues.

Decision: Informations dismissed as:

(a) Delay between the commission of the alleged offences and the laying of the Information and the first hearing is inexplicable. This case is distinguishable from others in that the Police, at a very early stage, had clear evidence available in the form of a concession from the young person and the evidence of an eye witness, which they did not pursue.

(b) The delay occasioned quite substantial prejudice to the young person in the context of the principles and remedies available under the CYPFA. H no longer eligible for restorative justice procedures and, if charges proved, H would now be transferred to DC to face DC sentences.

(c) While partially the fault of the young person and not specifically pursued now by his youth advocate there have been further worrying delays in the systemic processes adopted by the YC following the FGC in having the matter proceed to a preliminary hearing.

Police v XD [2006] DCR 553 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v XD [2006] DCR 553

File number: CRI 2005-242-000050
Court: Youth Court, Nelson
Date: 17 November 2005
Judge: Judge Zohrab
Key title: Orders – type: Supervision - s 283(k), Orders - type: Community Work - s 283(l), Orders - type - Reparation s 283(f), Orders - type: Discharge – s 282.

LexisNexis Case Summary:

Sentencing – Youth Court – Supervision order – Community work order – Submission filed by police for formal orders – Reparation order – Subsequent family group conference unable to agree on final disposition of matter – Burglary – Possession of explosives – Making hazardous substance – X warned of consequences of continuing with behaviour – Family group conference proposing section 282 discharge – Further offending – Whether Court should adjourn final disposition of matter until report completed on benefit of intervention by medication – Factors under s 284 of Children, Young Persons, and Their Families Act – Children, Young Persons, and Their Families Act 1989, ss 282, 283, 284, 298.

Hearing

Submissions were filed on behalf of the police asking for the Court to make an order placing X under the supervision of the Chief Executive, a community work order and a reparation order.

On 6 May 2005 X was spoken to at length regarding making bombs and explosives. He was warned clearly of the consequences of continuing with his behaviour. There was further offending on 15 May 2005 and an interview on 18 May. A Youth Aid contract was signed shortly afterwards. On 25 May 2005 X's stepfather located a number of hazardous items. X appeared before the Youth Court on 26 May. There was a Family Group Conference (FGC) on 29 June 2005 and the proposed outcome was that there should be a discharge under s 282 of the Children, Young Persons, and Their Families Act (the Act). In July there were two burglaries and on 14 September 2005 another burglary at Motueka High, which resulted in X being arrested and charged with burglary, possession of explosives and making a hazardous substance. Another FGC was held on 15 October 2005. A final disposition on how the matter should be finalised could not be agreed on. The police were going to seek a supervision order, a community work order and a reparation order. X's family, however, did not want him to end up with a formal record. X was before the Court having not denied three charges of burglary, two charges of possession of explosives and two charges of making a hazardous substance. The police were of the opinion that they had given X every opportunity and that there had been a steady progression of defiant behaviour by him. They were seeking formal orders.

Held

(supervision, community work and reparation orders made)

1. This was not an appropriate case to be dealt with by a s 282 discharge. The situation was as grim as X's father was concerned about as there were no convictions. X was still within the Youth Court's jurisdiction (see para [12]).
2. The Court made an order under s 283(k) of the Act placing X under the supervision of the Chief Executive for six months. A number of additional conditions were that X abide by his curfew, live where directed, take part in programmes identified to support him and not associate with any people who had had an adverse influence on him (see para [14]).
3. A community work order was appropriate and X was ordered under ss 283(l) and 298 of the Act to undertake 80 hours of community work. That was to be performed at the Marsden Cemetery for a minimum of three hours each week and the order was to last for a six-month

period. The supervisor was the Chief Executive of the Department of Child, Youth and Family Services (see para [16]).

4. The Court also made a reparation order under s 283(f) of the Act that $700 be payable to the police for the contribution towards the time, cost and effort of their mobilisation (see para [17]).

T v Police (19 December 2005) HC, Auckland, CRI 2005-404-340, Simon France J

Filed under:

Case Summary provided by LINX

Name: T v Police
Unreported:
File number: CRI 2005-404-340
Court: High Court
Location: Auckland
Date: 19 December 2005
Judge: Simon France J
Charge: Sexual Violation
CYPFA: s322
Key title: Delay

LINX Case Summary: Sexual violation of 11 year old sister - appeal against conviction by a young person found guilty in the YC and sentenced in DC to 18 months imprisonment - whether breach of s25(b) New Zealand Bill of Rights Act 1990 (the Act) and of equivalent youth justice provisions - whether right of appeal against refusal of application brought under s 322 Children, Young Persons, and Their Families Act 1989 (CYPF Act) to dismiss charges because of delay - appellant aged 16 years 7 months at time of arrest, 17 years 3 months at time of defended hearing, 17 years and 10 months at time of transfer to DC, and 18 years 3 weeks at time of sentencing - impact of remand period on appellant said to have made appellant sad and suicidal - impact of delay exacerbated by fact appellant was subject to 24 hour curfew whilst on remand - HELD: ultimately it was a matter of balancing what generally was a lengthy but not unreasonable period, against the circumstances of detention - although YC procedures were applicable because of appellant's age at time of charging, Court was entitled to have regard to fact that for the bulk of the period he was older and fell outside the ambit of the CYPF Act - there had been no breach of s25(b) of the Act - Court was influenced in its final assessment by the particular age of appellant - had he been younger there would have been a different outcome - had there been a breach of s25(b) Court would not have considered that quashing the conviction was an appropriate response - the worst period of delay occurred after the defended hearing and did not prejudice the fairness of guilty determination - overall delay was not so excessive as to merit quashing the conviction absent actual prejudice to a fair trial - Court would instead have invited counsel to further address issue of sentence reduction - approach discussed in Du v District Court at Auckland & Anor [2006] NZAR 341, endorsed.

Decision: appeal dismissed.

Police v DTA YC Upper Hutt CRI-2005-292-000470, 12 December 2005

Filed under:

Police v DTA

File number: CRI 2005-292-000470
Court: Youth Court, Upper Hutt
Date: 12 December 2005
Judge: Grace DCJ
Key title: Orders - type: Community Work - s 283(l), Orders - enforcement of, breach and review of (ss 296A-296F): Community work

Community work order issued pursuant to s283(l) CYPFA against DTA on 6/12/04 in relation to charges of resisting Police, possession of an offensive weapon and intentional damage. Order stated that work must be completed within 6 months. DTA failed to carry out any community work; had completed part of FGC plan but was unable to complete one aspect of it as drunk; history of absconding. DTA to turn 17.5 years tomorrow; CYFS seek cancellation of community work sentence. Police seek to have matter transferred to the District Court as YC will have no jurisdiction after tomorrow due to DTA's age. Charges relating to robbery, escaping from custody and burglary also to be finalised.

Police argue s 299 CYPFA cancellation may be made 'at any time', this submission is made 'at any time' and the Court is therefore vested with jurisdiction. CYFS argue YC has no jurisdiction as 6 month sentence has expired and the application was not made before the sentence expired.

Held: Judge of view the Court must have jurisdiction to deal with cancellation applications at any time because a contrary view enables young people to disappear and then 'thumb their nose at the justice system'; public of view that YC too lenient on young people; public interest factor requires that young people are appropriately dealt with.

Matter transferred to DC as incident of drunkenness indicates DTA not sincere; community work not done; further offending; if DTA was an adult he would automatically receive a custodial sentence; special circumstances dictate that a non-custodial sentence could be regarded as inadequate.

Court convened as a DC; DTA convicted; ordered to undertake 150 hours community work (figure agreed to at FGC); under supervision of Probation Service for 12 months with conditions.

Decision:

Community work order cancelled.

Police v TH (2006) DCR 474

Filed under:

Police v TH

File number: CRI-2005-279-000022
Court: Youth Court, Tauranga
Date: 20 December 2005
Judge: Harding DCJ
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 14 mentally impaired/unfit to stand trial, Youth Court Procedure.

Summary:

TH (16.5) before Court on information alleging incest with brother. Criminal Procedure (Mentally Impaired Persons) Act 2003 ('CPMIPA') applies. Whether TH unfit to stand trial: s 9 of the CPMIPA; Five steps from *Rei Trow v Police* HC Auckland CRI-2004-404-000208, 10 November 2004 per Nicholson J: – step 1 - Judge found sufficient evidence exists to establish that TH caused the act or omission forming the basis of the offence. Focus now on step 2 of *Trow* – whether TH is mentally impaired: s 13(4) and s 14(1) CPMIPA 'Court must receive the evidence of two health assessors ...', s 14(2). Two reports have been prepared by health assessors; issue as to how Court should receive this evidence. Police submit evidence may be received by the presentation of full report(s) from the health assessors addressing whether the defendant has a relevant mental impairment (s 14(1) of the CPMIPA) with appropriate jurat/signed briefs of evidence/viva voce evidence. Judge not willing to conclude that the Court, having directed reports, may receive them. FC may order reports; CYPFA, s 160 but no equivalent provision for the Youth Court. Necessary to preserve independence of the defendant and the Police from the health assessors. Judge unwilling to call the assessors and lead evidence as may have to 'descend into the fray at the point of re-examination'.

Whether an amicus curiae may usefully be appointed. *R v Hill* [2004] 2 NZLR 145; Court may in its discretion appoint an amicus in the event that the Court requires assistance in a way that cannot be provided by counsel. Judge decides to appoint an amicus with the task of briefing and presenting the evidence of health assessors and making submissions to the Court as to the method by which such assessors evidence ought to be produced.

Decision:

Amicus appointed to assist the Youth Court.

Police v J and P [2006] DCR 526 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v J and P [2006] DCR 526

File number: CRI-2004-283-000015
Court: District Court, Wanganui

Date: 13 December 2005
Judge: Callinicos DCJ
Key title: Sentencing in the adult Courts: Application of Youth Justice principles; Sentencing in the adult Courts: Sexual violation by unlawful sexual connection.

LexisNexis Case Summary:

Criminal procedure – Young offenders – Sentence and disposition – Sexual offending by twin brothers – Intellectual disability – Youth justice principles – Whether protection of community achieved by sentencing brothers to imprisonment – Interests of the victims – Whether denunciation and retributive approach appropriate – Compulsory care order – Crimes Act 1961, s 218B – Criminal Procedure (Mentally Impaired Persons) Act 2003, ss 3, 9, 14, 34, 34(1)(b)(ii), 35, 37 – Children, Young Persons, and Their Families Act 1989, ss 101, 283(a), 284, 290, 333 – Intellectual Disability (Compulsory Care and Rehabilitation) Act 2000, ss 26, 85, 463.

Sentencing and disposition

This was the sentencing disposition in respect of a number of serious sexual offences committed by twin brothers aged 17 at the time of sentencing.

In August 2005, the two young persons, twin brothers, were convicted of a number of serious sexual offences and transferred from the Youth Court jurisdiction to the District Court for sentence.

In 1992, when the twins were 14 years old, they were removed from their parents by the Department of Child, Youth, and Family Services (CYPFS) under a place of safety warrant. Since that time, they had been under the care of a variety of caregivers, including their maternal aunt who was the mother of one of the victims of their offending.

Held:

(ordering a compulsory care order for a period three years in respect of both young persons) Under s 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIPA) both J and P would be cared for as care recipients under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCRA) rather than being sentenced to imprisonment. The significant gains made by the boys between being charged and being sentenced would, in all likelihood, have been lost if they went to prison. Whilst there was a strong view in higher Court authorities emphasising the denunciation and retributive approach, the principles in the Sentencing Act relating to the protection of the community, the interests of the victims, and the youth justice principles, supported the view that the protection of the community was more likely to be achieved by adopting a course of support, therapy and rehabilitation rather than imprisonment. J and P would therefore not be detained in a secure facility, but would be subject to a care order for an initial minimum period of three years (see [96] and [100]).

Cases mentioned in judgment

Police v C HC Auckland A 4903, 22 May 2003 per Rodney Hansen J.
R v N [1998] 2 NZLR 272.

X v Police HC Auckland CRI-2004-404-000374, 11 February 2005 per Heath and Courtney JJ.

2004

Police v P and R [2004] DCR 673

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v P and R
Reported: [2004] DCR 673, (2004) 20 CRNZ 1005
File number: CRN 3077009228
Date: 22 January 2004
Court: Youth Court
Location: Manukau
Judge: Harvey DCJ
Charge: Aggravated Robbery
CYPFA: s5(f); s322
Key Title: Delay

LEXISNEXIS Summary:

This was an application by P and R to dismiss a charge against of aggravated robbery. The application was based upon the delay in the investigation and charging. It was argued that the delay in bringing the charge was of such a substantial nature that it was against s322 of the Children, Young Persons and Their Families Act 1989.

It was alleged that on 28 October 2002 an armed robbery occurred where offenders with an imitation pistol robbed the complainant of $40 cash and his wallet. The complainant told police that two of the offenders were aged about 16 and the police were provided with details regarding the vehicle used. On 3 November 2002 the police received information about the vehicle and were provided with the names of possible suspects. Nothing more happened in the investigation until 1 April 2003. Inquiries continued but from 8 May until 24 July there was a further delay when the police made no progress. A line of inquiry was followed on 20 July 2003. On 2 October 2003 a search warrant was executed, and R was arrested and first appeared in Court the next day. J was arrested on 3 October 2003 and brought before the Court that day.

Counsel for R submitted that under s322 and s5 where there were decisions affecting a child or young person, that they should be made and implemented within a time-frame appropriate to the child or young person's sense of time wherever practicable. It was argued that the delay here was inexplicable and unnecessary. It was submitted that the seriousness of the offence should have no impact when considering whether to apply s322. R was 16 years and ten months when the allegation arose, but was not interviewed till nearly a year later. It was argued that the delay meant he did not have the sentences available to him under the Youth Court jurisdiction, and that he did not have the advantages of the process within the Youth Justice system, which resulted in significant prejudice.

For P, his counsel endorsed what H's counsel said. It was submitted that the information which led to the arrests on 3 October 2003, was available at the time investigations were

occurring in late October and early November 2002. P, it was claimed, had also been prejudiced as a result of delay because he was 17 on 16 June 2003.

The police submissions attempted to explain the delay as one of lack of resourcing on the part of the police. There were a large number of murder investigations involving numerous suspects, and the resources in the area were stretched to the limit. The police argued it would be unfair to start the clock ticking from the date of the offence because identity was an issue and inquiries had to occur. There had been a period of eight months when the file was unallocated and nobody was working on it, but extra police were brought into the region to address the backlog in September - December 2003 which showed an awareness of the problem and that steps were taken to resolve it, which meant the Court should be reluctant to stay proceedings on the basis of delay.

Held (dismissing the charges)

(1) What had to be considered was: (a) whether or not there was a delay; (b) if it was unnecessarily or unduly protracted; (c) if there was prejudice caused; and (d) whether the prejudice was significantly serious enough to warrant the extreme step of halting the proceeding (para [8]). In such circumstances and applications, cases needed to be considered on an individual basis. It was incorrect to approach delay on a "formulaic" basis as a shorter period of time could be just as unjust as a longer period of time (see para [50]).

(2) Here there was a delay of nearly 12 months in the investigative process. There was information available shortly after the offence that gave the police the name and possible identities and locations of various possible offenders. It appeared this information was not acted on because more serious crimes intervened. However, given that the information was available in November 2002 the delays and follow-up in this particular case were unnecessary. The delays fell within s322 as the investigation was unduly protracted. As a result of the delays both the accused had been prejudiced (see para [51], [4], [55]).

(3) Different rules applied to young people, and the benefits of the Youth Justice System were not available to these accused due to the delays. It was a denial of justice that the remedies available in the Youth Court were no longer available to P and R because of the passing of time, and their ages. They had been denied the opportunity of having their case examined in terms of the processes set out in the Act as a result of the delays in the investigative process (see paras [57] and [58]).

(4)The implications of consistent application of the law and even-handedness in the justice system, and general principle of certainty would fall by the wayside if a rule that applied to one case did not apply to another on the basis that the case in question was more serious or more socially acceptable (para [36]). Differentiating between offences and the application of rules on the basis that some offences were more serious, is a matter of concern as it is an uneven approach to the application of legal rules. There were major difficulties here in complying with s322, and even though it was a serious offence, the rules had to be applied equally across the board. Therefore, both the informations were dismissed.

Cases referred to in judgment

Martin v Police (High Court, Wellington A283/00, 19 December 2000, Wild J).
Martin v Tauranga District Court [1995] 2 NZLR 419.

Police v BRR (District Court, Papakura 23 July 1993, Judge D J Harvey).
Police v D [1998] NZFLR 577
Police v D [2000] NZFLR 237
Police v DH [1995] NZFLR 473
Police v DS (Youth Court, Manukau 24 October 2003, Judge Thorburn)
Police v F (Youth Court, Manukau 1 July 2002, Judge Thorburn)
R v McKenzie (Youth Court, Blenheim, 20 June 1995, Judge McAloon).
R v Shaheed [2002] 2 NZLR 377
Watson v Clarke [1990] 1 NZLR 715

Application

This was an application to dismiss charges against the accused for aggravated robbery, in that the charges went against s322 of the Children Young Persons and Their Families Act 1989.

Police v S (14 January 2004) YC, Kaikohe, CRN 3227006416, Thorburn DCJ

Filed under:

Name: Police v S
Unreported
File Number: CRN 3227006416
Date: 14 January 2004
Court: Youth Court
Location: Kaikohe
Judge: Thorburn DCJ
Charge: Burglary
CYPFA:
Key Title: Databank Compulsion Order; Youth Court Procedure

Summary: Young person (16) charged with burglary of High School tuckshop; at a FGC agreement was reached that the charge would be withdrawn and replaced with unlawful entry with intent to commit crime; offence was admitted at a conference and a plan approved which included reparation and an apology; when matter called in Youth Court the Judge recorded that Youth Court jurisdiction was elected and offence not denied.

Police made an application for a Databank Compulsion Order on basis that the Court had no jurisdiction to make the order because the young person was not convicted of an offence; Judge considers scheme under Criminal Investigations (Blood Samples) Act 1995 which defines "conviction" as including "a finding by a Youth Court Judge that a charge against a young person is proved"; Court considers whether the record shows that there was a finding by a Youth Court Judge that the charge against the young person has been proven; if so, s40 of the Criminal Investigations Act requires that a compulsion order should follow; discussion of what constitutes a "finding" in the Youth Court; held that there was no record that the Youth Court made a finding that the charge was proved; the record "admitted at conference" did not address the necessary element of a finding of proof and because of the need for District Court records to be complete and accurate in respect to such matters the application must fail.

Decision: Application declined; held that record keeping is necessary in Youth Court, and must be clear and unambiguous.

Police v S (12 February 2004) YC, Lower Hutt, Walker DCJ

Filed under:

Name: Police v S
Unreported
File Number:
Date: 12 February 2004
Court: Youth Court
Location: Lower Hutt
Judge: Walker DCJ
Charge:
CYPFA: s246; s249
Key Title: Family Group Conference - Timeframes/limits; Family Group Conference - Convene/Held

Summary: Application to dismiss Information because of failure to convene a FGC within the statutory time limit (14 days); reasons were given for delay, including that the Youth Justice Co-ordinator did not know the nature of the allegations and whether any victims were to be invited but had started the process of convening a conference; definition of "convene" discussed; *H v Police* [1999] NZFLR 966 considered; here no FGC convened within the statutory time limit. Judge then had to decide whether failure to convene within the statutory time limit meant the Information must be dismissed. The Information had been validly laid – it was laid following the arrest of the young person so there was no requirement for an intention to charge FGC prior to the laying of the Information. This contrasts with the situation where there is no arrest where the provisions of s245 CYPFA prohibit the laying of an Information unless there has been consultation between the Police and the YJC and the matter has been considered by an FGC convened under Part IV CYPFA (this was the situation in *H v Police* the effect of which is that the information is invalid as having been laid contrary to statute). Here the Information has been validly laid but no FGC has been convened under CYPFA. The effect is that without an FGC having considered the matter the Court cannot receive recommendations upon which it can rely in the final disposition of the case. Section 281B CYPFA not there to enable remedial steps to be taken where the strict time limits imposed by CYPFA have not been complied with; there is no power for the Judge to reconvene a FGC; the Information is not therefore justiciable and it would be an abuse of process for it to continue; no need for disciplinary approach, instead leave granted to withdraw the Information; Judge states that this should not be used as a "backstop" for Police in cases of delay.

Decision: Leave to withdraw Information granted.

Police v AT (2004) 20 CRNZ 1036 (YC)

Filed under:

Case summary provided by Brookers

Name: Police v AT
Reported: (2004) 20 CRNZ 1036
File number: CRN4285004915
Court: Youth Court
Location: Wellington
Date: 3 March 2004
Judge: Walsh DCJ
Charge: Assault with Intent to Injure
CYPFA: s208; s322
Key title: Delay

Brookers Summary:

Youth justice - Young person alleged to have committed assault with intent to injure - Intention to charge conference held 10 months later - Charge denied - Whether delay between alleged commission of offence and intention to charge conference "unnecessary or unduly protracted" - Children, Young Persons, and Their Families Act 1989, ss 208, 322.

A T, a young person aged 16.5 years, was alleged to have committed assault with intent to injure on 23 March 2003. She was implicated following information received on 8 April from an anonymous informant. When police attempts to contact A T were unsuccessful, they spoke with her lawyer, Ms Long, who advised that A T would not talk to police unless the evidence against her was disclosed. The police advised that they did not necessarily want to arrest A T, but wished to obtain a statement from her about her involvement in the alleged offence. Ms Long then advised she would try to get A T to talk with police.

On 17 June Ms Long met with A T and her family, after which she faxed a letter to Police and Youth Aid referring to the Youth Justice principles set out in s 208 Children, Young Persons, and Their Families Act 1989 ("the Act"), and advising that she did not consider A T' s behaviour was a threat to the public. She therefore requested a referral be made to Police Youth Aid for an intention to charge conference, but asked police to advise if they wished to proceed with an arrest procedure. Ms Long advised that, in the event A T was arrested, she reserved the right to challenge the decision to arrest rather than use the intention to charge process. A week later the police telephoned Ms Long advising that they still wished to speak with A T, suggesting that A T was trying to avoid arrest. Ms Long wrote a further letter to police on 27 June stating that the police did not need to interview A T in order to decide how to proceed, and again requested a referral to Youth Aid. The police then contacted A T' s parents directly, requesting that they bring A T to speak with police as "the lawyer was mucking police around".

Between July and September the police took very little further action, due to staff absences and the lack of a Youth Justice Coordinator. It was not until 19 November that police faxed an intention to charge referral to the Children and Young Persons Service. After querying the timeframes involved, the Youth Justice Coordinator accepted the referral on 26 November, but was unable to contact A T despite four attempts.

At a Family Group Conference, notified on 17 December 2003 and scheduled for 13 January 2004, A T denied the charge. An information was then filed on 21 January. A T appeared in

the Youth Court on 28 January 2004, at which time [(2004) 20 CRNZ 1036, 1037] Ms Long advised that she would be making an application to have the information dismissed under s 322 of the Act.

Held, (1) the police were aware 2-3 months after the alleged offence that a young person was involved, and could have proceeded with an intention to charge process rather than insisting on speaking with her. In all the circumstances the young person could have been in the Youth Court, or engaged in the intention to charge process within 4 months of the date of the alleged offending, at the latest. There was no need to delay the inquiry further by trying to interview and possibly arrest her. (paras 15, 21, 23)

(2) Delays cannot be justified by reference to considerations such as staff shortages and pressure of work. In the present case, while specific delays were explicable, the totality of the delays, in particular the 6 months that elapsed from receipt of the June letters until the filing of an information, crossed the threshold of becoming unnecessarily protracted. (para 26)

(3) Prejudice is a relevant factor to be considered when determining whether proceedings have become unduly protracted. (para 27)

Police v D H [1995] NZFLR 473 referred to

(4) The public interest in holding young people accountable for their actions must be balanced against the fact that the Act requires proceedings against a young person to be carried out expeditiously. and, in the present case, the fact that the charge was denied. (para 29)

Police v B G T D 21/10/99, Judge Ongley, YC Rotorua CRN9277003372073 referred to

Cases referred to

B G T D v Youth Court at Rotorua 15/3/00, Robertson J, HC Rotorua M119/99
Martin v Tauranga District Court [1995] 2 NZLR 419; (1995) 12 CRNZ 509; (1995) 1 HRNZ 186 (CA)
Police v A C T (1992) 8 CRNZ 304
Police v B G T D 21/10/99, Judge Ongley, YC Rotorua CRN9277003372073
Police v Crowe, Judge Carruthers, YC Wellington CRN0285015569
Police v D H [1995] NZFLR 473
R v M 20/6/95, Judge McAloon, YC Blenheim CRN4218004914, 5006003822/3/4
R v Morin [1992] 1 SCR 771; (1992) 71 CCC 3(d) 1; (1992) 12 CR (4th) 1; (1992) 134 NR 321

Application

This was an application to have an information laid against a young person dismissed on the grounds of undue or unnecessary delay, contrary to s 322 Children, Young Persons, and Their Families Act 1989.

Police v HG [2004] DCR 685, (2004) 20 CRNZ 993 (YC)

Filed under:

Name: Police v HG
Reported: [2004] DCR 685, (2004) 20 CRNZ 993
File Number: CRN 4285005795
Date: 18 March 2004
Court: Youth Court
Location: Wellington
Judge: Walsh DCJ
Charge: Burglary
CYPFA: s214
Key Title: Arrest without warrant

Summary: Two issues before the Court: (1) whether a young person was arrested when a Police officer stopped, held and questioned him and (2) whether the arrest was lawful in terms of s214 CYPFA; (1) Judge Walsh examined what constituted arrest under CYPFA considering *R v Goodwin (No 1)* [1993] 2 NZLR 153; held that the Policeman's actions, in particular restraining the young person by holding his arm, advising him he wished to discuss the burglary, cautioning him and giving him his rights, not advising him that he could leave at any time and did not have to go to the Police Station "cumulatively and effectively constituted an arrest on the basis formulated in *R v Goodwin*"; Judge then considered the ways that an arrest without warrant could be validated under s214 and concluded that there was no evidence that the arrest was necessary to prevent further offending under s214; (2) Judge Walsh held that if the s214 route was incorrectly pursued, the s245 alternative could then be followed (following *Pomare v Police* [1995] DCR 204) and held that, as the s214 procedure was not properly followed the Police had to rely on the alternative procedure available under s245 but, as they did not follow that procedure, the Information was invalid and must be dismissed.

Decision: Informations dismissed.

R v Rahmon DC Tauranga DCT 86/03, 3 March 2004

Filed under:

R v Rahmon

File Number: DCT 86/03
Date: 3 March 2004
Court: District Court, Tauranga
Judge: Judge Harding
Key Title: Evidence; Youth Court procedure

Summary:

Application for leave to cross-examine witness to credit based on charges previously proved or admitted in the Youth Court and District Court; accused has an extensive list of previous convictions, including using a document for pecuniary advantage, credit by fraud and theft, in total 20 convictions for documentary dishonesty; criminal record also provides details of

Youth Court matters; Judge considers whether it is appropriate to look at Youth Court matters; concludes that the Youth Court is not a Court of criminal record and given that Youth Court matters that are proved are not convictions, s 12 Evidence Act cannot provide a basis for permitting cross-examination as to credit; however s 13 permits cross-examination of a witness on a matter affecting the credit of a witness - Court therefore has to decide whether or not the witness should be compelled to answer. Held: that there is no statutory prohibition to cross-examination on such matters and that it is permissible for there to be cross-examination as to credit based on Youth Court records, despite the fact that they are not convictions and that the Youth Court is not formally a Court of criminal record.

Decision:

It is permissible for there to be cross-examination as to credit based on Youth Court records, despite the fact that they are not convictions and that the Youth Court is not formally a Court of criminal record.

Police v BT YC Manukau CRI-2004-255-000013, 27 April 2004

Filed under:

Police v BT

File Number: CRI-2004-255-000013, CRI-2004-255-000037, CRI-2004-255-000038, CRI-2004-255-000047
Date: 27 April 2004
Court: Youth Court, Manukau
Judge: Harvey DCJ
Key Title: Custody (s 238): CYFS, Custody (s 238): Chief Executive (s 238(1)(d), Custody (s 238): Police (s 238(1)(e))

Application to place a young person in the custody of the Police for a potentially indefinite period where CYFS claimed it did not have 'suitable facilities for the detention and safe custody of the young person'; young person had extreme, challenging behaviour; young person was 16 but had already served a prison sentence and been the subject of a s 101 custody order; CYFS argued that B was an exceptional case, 'safety' should be broadly viewed, CYFS could not provide 'safe' facilities; and that B should be placed in Police custody; Judge considered the nature of the order available under s 238(1)(e) and preconditions to making it examined; Judge considered that nothing had changed from previous order except that staff refused to accept the young man; Judge declined to make the order, instead ordering that the young person be remanded in CYFS's custody under s 238(1)(d).

Decision:

Order made for young person to be remanded in CYFS's custody under s238(1)(d).

Police v RH (14 April 2004) YC, Wellington, CRN 3285035891, Walsh DCJ

Filed under:

Name: Police v RH
Unreported
File number: CRN 3285035891
Date: 14 April 2004
Court: Youth Court
Location: Wellington
Judge: Walsh DCJ
CYPFA: s249
Charge: Assault with intent to injure
Key Title: Family Group Conferences - Timeframes/limits

Summary: RH (a young person) was arrested and charged with assault with intent to injure; charge "not denied"; RH accepted offer of Youth Court jurisdiction. A FGC was directed on 17 December 2003 under s246(b)(i) CYPFA. It was convened outside the 14-day timeframe in s249(4)(b) of the Act. The delay in convening the conference was due to a combination of Police failure to get certain information to the youth justice co-ordinator ('YJC') quickly, unavailability of the victim, RH, his parents and the Youth Advocate due to the Christmas break, and difficulty fixing a convenient time for the FGC because RH's parents worked at different times.

Judge Walsh confirmed the reasoning in *Police v S* (12 February 2004, Youth Court, Lower Hutt, Judge Walker) that it is not an abuse of process for a Youth Court Judge to exercise the discretion to grant leave to withdraw a charge following an arrest where a Court-directed FGC has not been held in time.

Police v S and Police v RH herald a significant change in approach to the issue of Court-directed FGCs, convened out of time. Judges are no longer bound to simply dismiss the charges; in appropriate cases, it is now clear that a Judge may exercise his or her discretion to grant leave to withdraw them.

On the facts before him in *Police v RH*, however, Judge Walsh held that such leave would not be granted and that a failure to meet statutory timeframes for convening a Court-directed FGC meant the charge would be dismissed.

Leave to withdraw not an abuse of process

Judge Walsh rejected an argument made by the Youth Advocate that it would be an abuse of process to grant leave to withdraw an Information where a young person had been arrested and a Court-directed FGC had not been convened in time. He noted that:

- Section 36 of the Summary Proceedings Act gives Judges a discretion to grant leave to withdraw a charge and that provision applies to Youth Court Judges (by virtue of s321(1) and Schedule 1, cl. 2 of the Act).

- Whether to grant leave under s36 is a matter for judicial discretion.

- If a particular exercise of discretion is challenged, the focus must be on whether there was an improper exercise of the discretion not on whether the exercise was an abuse of process.

- To establish an improper exercise of the discretion, it must be shown that a Judge acted unreasonably (as per established principles, e.g. by failing to take account of relevant factors or taking into account irrelevant factors).

- Any exercise of the discretion under the Act must take account of the competing interests of the victim, young person and public.

Judge Walsh compared the often quite different timeframes for arrest (under s214) and intention to charge (under s245) cases. In arrest cases, he said, it was possible that some unforeseen circumstance might arise (e.g. sudden illness or bereavement) that would justify granting leave to withdraw an Information where delay had caused FGC timeframes not to be met. Where, however, leave was sought as a "backstop" for the Police (or any other party) because there had been institutional tardiness, it should not be granted.

Decision: Judge Walsh held that the delay in the case before him was such that it contravened the mandatory time limits in the Act and could not be "cured". He noted, *obiter*, that the case was one that might better have been dealt with by the intention to charge procedure in s245 (with its more generous timeframes) rather than by arrest under s214.

Judge Walsh observed that no application had been made for leave to withdraw the Information, but that, in any case, no such leave would have been granted in this case because there were no "reasonably compelling reasons" to do so, taking into account the victim's interests but also the overall delay. Information dismissed.

Police v FT DC Auckland CRN 03204004344, 13 May 2004

Filed under:

Police v FT

File number: CRN 03204004344
Date: 13 May 2004
Court: District Court, Auckland
Judge: Principal Youth Court Judge Becroft
Key Title: Sentencing in the adult Courts - Aggravated Robbery; Sentencing in the adult Courts - application of Youth Justice Principles.

Summary

This judgment was a sentencing in the District Court after the Youth Court made a s 283(o) CYPFA order convicting and transferring a young person to the adult Court for sentence. It is an example of how s 283(o) CYPFA may sometimes be used not for the purposes of imposing a sentence of imprisonment, but rather to -buy more time' where the young person in question is nearing the expiry age for Youth Court orders (i.e. 17 years and 6 months under s296 CYPFA).

FT was initially charged with disorderly behaviour and being found without a reasonable excuse in an enclosed yard. Both these charges related to incidents when FT was intoxicated. While subject to an Family Group Conference (FGC) plan in respect of his earlier offending, FT, with a group of friends, approached three teenage boys and coerced them into driving

them about in their car. They then robbed the boys of money, clothing and cell-phones, using threats of violence, and violence, to get what they wanted. FT and his friends then robbed a teenage boy of his shoes, cell-phone and money using threats of violence. In respect of each of these two incidents, FT was charged with aggravated robbery. The matter came before the Youth Court where FT was offered, and accepted, Youth Court jurisdiction. A s 283(o) order was subsequently made by consent. The primary reason for making the s283(o) order was that FT was, by that time, 17 years and 4 months old - that is, he was almost at the expiry age for Youth Court orders.

In the District Court sentencing, Judge Becroft focused on the aggravated robbery offences. He began by weighing the aggravating and mitigating factors. The aggravating factors in F' s case included a degree of planning, group violence and threats, two incidents of offending within a short space of time; and at the time of the aggravated robberies, F was already subject to an FGC plan with which he was supposed to be complying. The mitigating factors in FT' s case were his age, no prior convictions/Youth Court orders, remorse and taking responsibility for his actions. While FT was held on remand under s238(1)(d) CYPFA he had behaved well.

Here, two conflicting sentencing approaches: the District Court is a tariff Court and, under *R v Mako* [2000] 2 NZLR 170 (CA), the offending in question should lead to a prison sentence of 1 - 2 years. On the other hand, Youth Court principles are important, given that the case had been transferred from the Youth Court for sentence, and, in particular, to take account of the following four factors:

1. FT' s friend, who offended with him, had already been sentenced in the Youth Court. He would, if all went well, end up with no more than a Youth Court order on his record. If FT was sent to prison for the same offending, this would not achieve sentencing parity.
2. The reason FT was made subject to a s 283(o) order was that he was nearing the expiry age for Youth Court orders. Implicitly, had FT not been as old as he was, the matter would have been kept in the Youth Court and dealt with by a Youth Court order. A Youth Court order would have been appropriate in this case, but for the issue of FT' s age.
3. FT had already spent 5 months in CYFS's custody under s238(1)(d) and this must be taken into account in sentencing.
4. There was a genuine possibility that FT could be rehabilitated and never offend again. This was most likely if he were to go on the Reducing Youth Offending programme. If he were sentenced to prison, however, he would not qualify for that programme.

Decision

Judge Becroft concluded that he would take a "very unusual and rare step" and sentence FT not to prison, but rather to two years supervision, during which time he would be subject to conditions which included a Reducing Youth Offending Programme, alcohol counselling and treatment, an anger management programme and educational employment training.

Judge Becroft indicated that if FT failed to comply with any of these conditions, then an application should be made to review the sentence and, in that case, a sentence of 1 - 2 years imprisonment "would be absolutely inevitable".

R v T, T and O HC Auckland CRI-2003-092-026865, 19 May 2004

Filed under:

R v T, T and O

File number: CRI-2003-092-026865
Date: 19 May 2004
Court: High Court, Auckland
Judge: Wild J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated persons; Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance.

Ruling as to admissibility of videotaped evidence sought under s 344A of the Crimes Act 1961; H (14 at time of offence) jointly charged with murder; H's mother ('N') accompanied H to police station but was not told by Police that they regarded her as the nominated person; at Police station N agreed to be the nominated person but her rights and responsibilities were not explained; N broke down and H's step-father ('M') took over as nominated person; M not nominated by H; rights and responsibilities explained to M but M and H not given opportunity to discuss matters alone. Rights explained to H but not his right to have a lawyer *and* a nominated person present during the interview. *R v Irwin* [1992] 3 NZLR 119 (HC); *R v K* CA 216/02, 17 July 2002 discussed; 'reasonable compliance' - focus to be on substance rather than form; seriousness of charge a factor in consideration of reasonable compliance; cross-examination of suspect permitted but not berating the suspect or non-acceptance of the suspect's answers.

Spirit and object of the Act requires adequate protection of young people in police interviews; *R v Accused* (1991) 7 CRNZ 539 (CA); CYPFA, s 208(h); need to balance rights of young people against need for law enforcement to be carried out without undue hindrance *R v T* (1996) 14 FRNZ 705 (HC); *R v Coleman* HC Whangarei T8892/95, 15 March 1996; *Lord v R* HC Wanganui T1618/97, 3 December 1997 (a 15 year old facing a murder charge). Failure to allow young person to nominate an adult was a pivotal factor in the foregoing authorities (*R v K* (above); *Lord v R* (above) applied); *R v K* distinguishable here but that decision emphasises importance CYPFA places on the young person being given the opportunity to choose the adult who is to support them at interview; meaning of 'support' discussed. Must advise accused of the information which stands against them (*Lord v R, R v Tawhiti* [1993] 3 NZLR 594); H not aware that charge was one of murder until mid-way through interview; Police questioning robust but not overbearing.

Held: No substantial compliance here. Breaches when viewed in culmination are fatal to the admissibility of the video interview. The second part of the interview can not be admitted on a 'stand alone' basis. (*Lord v R*).

Decision:

Both parts of the video interview are inadmissible.

Police v Z DC Wanganui CRN 3283017416, 13 May 2004

Filed under:

Police v Z

File number: CRN 3283017416; 3219030734; 2219039567; 3219030735
Date: 13 May 2004
Court: District Court, Wanganui
Judge: Judge Callinicos
Key Title: Orders - type: Reparation - s 283(f), Victim, Custody (s 238): CYFS, District Court - limitations on sentencing.

Summary:

N (15) in custody of Chief Executive of CYFS pursuant to CYPFA, s 101; N charged with theft and assault; charges proved by admission at Family Group Conference; N received a s 282(1) discharge. In one incident, N had bitten a security trainee and that victim sought reparation of $100; whether Court has jurisdiction to make a reparation order in favour of victim and whether such order appropriate. CYPFA, s 283(f) relating to reparation by young person or by 'parent' or 'guardian' of young person discussed: reparation only for 'emotional harm' or 'loss of or damage to property'; query whether 'emotional harm' in this case as $100 likely to be for medical bills.

Held:

Cannot make a reparation order against N herself due to her age; cannot make a reparation order against the Chief Executive of CYFS: CYFS is N's custodian under s 101, not her parent. CYFS not N's guardian unless s 110 order made (no such order made here); protection against tortious liability exists under s 394 of the CYPFA in any event. Order against parents a possibility.

Decision:

No reparation order made against N or CYFS.

Police v BT (No 2) YC Papakura CRN 4255006063, 22 June 2004

Filed under:

Police v BT (No 2)

File Number: CRN 4255006063; CRN 4255006064
Date: 22 June 2004
Court: Youth Court, Papakura
Judge: Harvey DCJ
Key Title: Custody (s 238): CYFS, Custody (s 238): Chief Executive (s 238(1)(d)), Custody (s 238): Police (s 238(1)(e))

Second decision of Judge Harvey in relation to the custody of BT; CYFS applied for the remand of BT to a penal institution under s 238(1)(A)-(C) of the CYPFA; Judge Harvey considered the prerequisites for remand under s 239(3) CYPFA and declined to make such an order; ordering instead that B continue to be remanded in CYFS custody under s 238(1)(d), but granting an application for his placement in secure care at the residence where he was being held.

Judge Harvey commented that the power to remand a young person to a penal institution was created to address a lack of CYFS' s residential resources, but that, as that lack was being addressed, the provision creating that power would expire on 30 June 2004. Before a young person may be remanded to a penal institution under s 238(1)(A) - (C), the Court must be satisfied that the 6 mandatory prerequisites set out in s 239(3) are met.

Judge Harvey was satisfied that the first four prerequisites were met on the facts. He had received a certificate from CYFS to fulfil the requirements of s 239(3)(e), but noted the difficulty for a Court in accepting a bald certificate presented with no supporting evidence or reasons for the assertions it contained.

Judge Harvey considered the final requirement, in s 239(3)(f), noting that the word 'appropriate' in that paragraph gives rise to the following test:

'I must be satisfied in all the circumstances that it is proper that [the young person] be remanded to a penal institution.' (para [10]).

At paragraph [15], Judge Harvey set out the reasons he was not so satisfied, as follows:

- A s 238(1)(A)-(C) order is an *in extremis* measure; as with s 238(1)(e), it is not intended that such an order be substituted for a s 238(1)(d) remand.
- BT was doing well at the residence in which he had been placed and the evidence was not such as to satisfy the Court that his remaining there would do more than 'inconvenience' CYFS in its running of the residence.
- BT was soon to turn 17 and his custody would then be reviewed, subject to provisions of the Bail and Criminal Justice Acts. To change his custody arrangements now would be anticipating this but not having regard to those statutes.
- BT should not be deprived of the opportunity to remain in the residence and continue the work being done there.

Decision:

Judge Harvey ordered that BT should continue to be remanded in the CYFS residence under s 238(1)(d), but granted an application for him to be kept in secure care there for 14 days.

Police v P (20 July 2004) YC, Hamilton, CRN 4219024285, Maclean DCJ

Filed under:

Name: Police v P
Unreported

File Number: CRN 4219024285
Date: 20 July 2004
Court: Youth Court
Location: Hamilton
Judge: Maclean DCJ
Charge: Escape from custody
CYPFA: s238(1)(d)
Key Title: Custody - Chief Executive

Summary: P (14) denied two charges under s120(1) of the Crimes Act that she escaped from the custody of CYFS; evidence was that P had been found at 11.30pm on one occasion, and 9.30pm on another, in breach of her curfew pursuant to s238(1)(d) orders; no evidence that anyone had spelt out any formal curfew but there was evidence that P's mother did not approve of her behaviour; main issue for the Court was whether P "escaped from custody". Held: that custody is "lawful custody", and that if a young person is subject to s238(1)(d) it would follow that absconding would amount to the crime of escaping under s120 of the Crimes Act; however, without clear conditions or a "contract" specifying a curfew the charge was not proven.

Decision: Charge dismissed.

Langi v Police (23 July 2004) HC, Wellington, CRI-2004-485-104, France J

Filed under:

Name: Langi v Police
Unreported
File number: CRI-2004-485-104
Date: 23 July 2004
Court: High Court
Location: Wellington
Judge: France J
CYPFA:
Charge: GBH; Burglary; Escaping Lawful Custody
Key Title: Bail; Youth Court procedure

Summary: Appeal against refusal to grant bail. Appellant questioned the applicability of section 10 of the Bail Act 2000 when the "conviction" in question was a decision of the Youth Court that a charge was found proved. Noting authority for the proposition that such orders do not amount to convictions (*Timo v Police* [1996] 1 NZLR 103 and *Taualupe v Police* (Wellington High Court, CRI-2004-485-38, 29 March 2004, Neazor J), France J agreed with the appellant that as the orders in question had since been cancelled in the Youth Court, no order, whether amounting to a conviction or not, was in existence. Bail Act 2000 s15(1) and Criminal Justice Act 1985 applied.

France J refused bail due to three occasions of offending while on bail, two occasions of breaching bail conditions and due to the nature of L' s earlier offending. Also relevant was the

fact that the current charges were serious and involved violence. Strict conditions could not alleviate the risk of offending while on bail.

Decision: Appeal dismissed.

WO v Police (6 July 2004) YC, Manukau, CRN 4292027400-7401 & 7404, Malosi DCJ

Filed under:

Name: WO v Police
Unreported
File number: CRN 4292027400-7401 & 7404
Date: 6 July 2004
Court: Youth Court
Location: Manukau
Judge: Malosi DCJ
CYPFA: s5(f); s322
Charge: Sexual violation
Key Title: Delay

Summary: WO (14 at time of offending) faced three charges of sexual violation on a male child; WO accepted two charges and denied a third; application to dismiss charges for delay. Offending occurred between 3/4/03 - 30/9/03 and hearing set down for 1/7/04. Judge adopted approach in *BGTD v The Youth Court at Rotorua and New Zealand Police* (High Court, Rotorua, M119/99, 15 March 2000) where s5(f) CYPFA approach important but not to be elevated above other issues; also adopted analysis of Harvey DCJ in *Police v DH* [1995] NZFLR 473 where words "whereever practicable" in s5(f) CYPFA recognised that external factors and bureaucratic delays may impact upon swift disposal of cases. Test in *Police v JP and MR* (Unreported, Youth Court, Manukau, 22 January 2004) applied: consider (1) whether there was a delay, (2) whether delay unnecessarily or unduly protracted, (3) if there has been prejudice caused and (4) "whether that prejudice to all of those matters together [is] significantly serious to warrant the extreme step of halting this proceeding". *BRR v Police* [1994] 11 FRNZ 25; *Watson v Clarke* [1990] 1 NZLR 715, 730 considered. Youth Court jurisdiction still available to WO for 2.5 years. WO's individual rights to be balanced against public interest in cases of this nature; such matters to be considered on a case by case basis. Held: Judge found delay of 3 months and 20 days and that this was "unnecessarily and unduly protracted" but that it was not in the public interest to dismiss the charges given her finding that no prejudice to WO's recall of events and ability to answer charges existed in allowing the charges to proceed.

Decision: Application dismissed.

Police v S YC Auckland CRN 4204003278, 30 September 2004

Filed under:

Police v S

File number: CRN 4204003278
Date: 30 September 2004
Court: Youth Court, Auckland
Judge: Callander DCJ
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Person

Summary:

S admitted motor vehicle offences and involvement in street robberies. Challenge made to admissibility of videotaped statements of confession as:

1. confession unfairly obtained as S states he was earlier told if he admitted his offending he would not be charged with any offence;
2. nominated person did not properly carry out his duties.

Held:

1. Confession not unfairly obtained and video statement admissible
2. Nominated person fulfilled his duties as per s 222. Miller J in *R v A* HC Auckland CRI-2003-292-001224, 23 June 2004 pointed out the nominated person process involved balancing the need to protect young people and effective law enforcement; nominated person not a lawyer - legislation envisages that parents may take the role - but rather to assist in making mature judgements; see also *R v K* CA216/02, 18 July 2002; *R v S* (1997) 15 CRNZ 214 (CA).

Decision:

Confession not unfairly obtained and video statement admissible. Nominated person fulfilled duties as per ss 221 and 222.

Police v N [2005] DCR 376 (YC)

Filed under:

Police v N [2005] DCR 376

File number: CRI-2004-269-000070
Date: 20 September 2004
Court: Youth Court, Taupo
Judge: Principal Youth Court Judge Becroft
Key Titles: Orders - type: Conviction and transfer to the District Court for sentencing - s283(o): Serious assault (including GBH), Custody (s 238): Chief Executive (s 238(1)(d)), Principles of Youth Justice (s 208), Sentencing - General Principles (e.g. Parity/Jurisdiction)

Summary:

N (16) entered motel unit and demanded money from victim, co-offender (17) held a slug gun to victim's head; Youth Court jurisdiction previously offered and accepted; N admitted charge at Family Group Conference; supervision with activity and supervision orders for 10 other charges put in place five days prior to offending; s 284 factors considered in depth. N

described as 'good' and 'intelligent' and had family support but initial offending, offending while on bail, a top end YC sentence of supervision with activity just days prior to this offence, a serious charge involving a firearm and drug and alcohol issues weighed against N. Public safety a key consideration.

Decision:

Convict and transfer to District Court for sentence; N to remain in custody under s 238(1)(d).

Police v N DC Taupo CRI-2004-269-000070, 8 October 2004

Filed under:

Police v N

File Number: CRI-2004-269-000070
Date: 8 October 2004
Court: District Court, Taupo
Judge: Judge Geoghegan
Key Title: Sentencing in the adult courts - Other.

Summary:

N (16 at time of offence); entered motel unit and demanded money from victim, co-offender (17) held a slug gun to the victim's head; In Youth Court, N convicted and transferred to the District Court due to a number of factors in relation to offence and background circumstances including long term criminal offending (see *Police v N* [2005] DCR 376 (YC)). Other factors include pre-sentence record discussing positive developments in youth's family since his imprisonment, the defendant's age and remorse for actions; Court says that youth does not automatically justify leniency but it is a highly relevant consideration; Court applies *R v Mako*; imprisonment of 18 months; granted leave to apply for home detention.

Decision:

18 months imprisonment; leave to apply for home detention.

Police v V YC Auckland CRN 4204003659/ORS, 4 October 2004

Filed under:

Police v V

File number: CRN: 4204003659/ORS
Date: 4 October 2004
Court: Youth Court, Auckland
Judge: Judge Harvey

Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Aggravated robbery; Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other.

Summary:

V (16), a Russian student, was sent to study in New Zealand; no real supervision; no family present; V became involved in serious offending with other Russian students. V's role in offending was secondary and he had acknowledged his wrongdoing and expressed remorse; *R v Mako* [2000] 2 NZLR 170 (CA) considered. Police argued matter should be sent to the District Court and were critical of disclosure of matters arising from Family Group Conference. Randerson J in *W and Thomas Hohaia v Chief Executive, Child Youth and Family Services* HC Auckland M 793-02, 3 October 2002 referred to.

Held:

V under peer pressure and isolated from his culture and family and given the rehabilitative focus of CYPFA, matter decided in V's favour.

Decision:

Matter to remain in Youth Court. Orders - supervision with residence for 3 months followed by supervision until V aged 17.5 years.

TA v NZ Police FC Auckland FAM-2004-004-000891, 1 November 2004

Filed under:

TA v NZ Police

File number: FAM 2004-004-000891
Court: Family Court, Auckland
Date: 1 November 2004
Judge: Judge Fitzgerald
Key title: Care and protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261); Evidence.

Summary:

Police applied for declaration that TA (16) was in need of care and protection pursuant to s14(1)(e) CYPFA in relation to charges of unlawful sexual connection with a 6-year old boy alleged to have occurred when he was 13. Matter adjourned while further sexual offending charges against TA dealt with in YC and found “not proved”; delays.

Whether the application for declaration should be dismissed on the grounds that the delays are such that to allow matters to proceed would be vexatious, oppressive and an abuse of the procedure of the Court.

Police argue not in TA's best interests to discharge the application without any inquiry into the veracity of the allegations. TA argues s 207 CYPFA; Court has inherent power to dismiss proceedings as an abuse of process. Judge satisfied that there is jurisdiction to dismiss the application for a declaration but in exercising the power under s 207, s5 and s13 principles are to be applied, subject to the paramountcy principle in s6. CYPFA, s 18(3) discussed - referral to be made by officer who carried out the inquiry and, as a result, formed the belief that the child was in need of care and protection; no miscarriage of justice caused by any delay that might have occurred here: s 440 CYPFA. Under-resourcing not a valid reason for unreasonable delay para [39]; in proceedings involving children the need to prioritise time and resources is even greater; ss 5(f) and 200 of the CYPFA. Delay not so unreasonable as to amount to an abuse of process.

Submissions made concerning overlap between care and protection and youth justice provisions of the Act; care should be taken not to incorporate any more of the youth justice philosophy and law into care and protection cases than Parliament intended; discussion of care and protection and youth justice provisions of the Act. Sections 5(f) and 200 do not make timeliness an absolute requirement; 60 day period in s200 to apply unless special reasons why a longer period is required but this should not be extended to excuse a failure to prioritise care and protection work; s 14(1)(e) applications generally relate to a high risk group of children and matters concerning them should be determined quickly. The delays, both on their own and considered together with the other aspects of official delay referred to, are not such as to make allowing the application for declaration to proceed further oppressive, vexatious or an abuse of procedure of the Court.

If the matter does proceed, whether the complainant can give evidence at the hearing by way of playing the evidential videotape and giving any further oral evidence, and being cross-examined, via closed circuit television.

Mode of Evidence: Police applied under r 57(1)(b) of the CYPF Rules for the evidence of the complainant, now aged 10, to be admitted in the form of the evidential interview videotape and for any further evidence to be given by closed circuit television; r 57 does not now apply by virtue of r 2(2)(aa)(I) of the CYPF Rules. Rules 170 and 299 of the Family Court Rules 2002. *Re L [videotaped evidence]* (1997) 15 FRNZ 637; *Department of Social Welfare v Dt and Lt* (1987) 2 FRNZ 712; Court must be mindful of its obligations to the complainant on the basis that s 13(i) of the CYPFA incorporates s 208(g) which requires the Court to have regard to the interests of victims and so the Court must consider it to be in the best interests of the complainant to give evidence in the manner proposed.

Rule 170(b) applies to enable an application to be made to the Court to have evidence tendered in the form of a videotape; contemplates a party being able to apply for directions as to the procedure by which the videotaping is to be carried out. Rule 170(b) is an empowering provision rather than a restricting one. Rule 299 authorises the giving of evidence in the form proposed here but it is also possible to allow the application by the exercise of the Court's inherent powers to determine procedural matters: *McMenamin v AG* [1985] 2 NZLR 274; *Moke v Lawrence, Grafton v Police* HC Christchurch A88/01, 17 June 2002 per Pankhurst J.

Giving evidence in Court is stressful for children and the Court should use modern technology to minimise this stress whilst preserving TA's right to a fair hearing.

Decision:

1. Application to dismiss the application for a declaration on the grounds of abuse of process and for being oppressive or vexatious is dismissed.
2. The complainant's evidence will be given by the playing of the evidential videotape and then via closed-circuit television.

Police v ML DC Auckland CRN 4204003095, 11 November 2004

Filed under:

Police v ML

File number: CRN 4204003095
Date: 11 November 2004
Court: District Court, Auckland
Judge: Judge Harvey
Key Title: Sentencing in the adult courts: Sexual violation by unlawful sexual connection, Sentencing in the adult courts: Indecent assault/indecent act

Summary:

Notes on sentencing; ML (15) charged with sexual violation and indecent assault; complainant a 5 year old girl; matters transferred from Youth Court to District Court; significant harm suffered by victim. Aggravating factors: violence, breach of trust as residing in victim's house; Mitigating factors: no previous convictions; guilty plea; remorseful.

High authority cited for sentence of 18 months to two years imprisonment in cases of this nature; in one case 18 months supervision imposed on offender of 14 years of age. Sentencing Act 2002 and CYPFA principles considered particularly importance of reintegration and rehabilitation; no "special ticket" for YPs but must take into account issues affecting YPs. Held: Imprisonment would be contrary to rehabilitation and reintegration policies behind CYPFA; 18 months to 2 years a long time within a YP's timeframe (CYPFA, s5(f)); *Police v C* CA 332/95, 28 September 1995 applied; SAFE programme would achieve rehabilitation and reintegration goals of legislation.

Decision:

Placed on supervision for two years on condition that SAFE programme be completed and counselling undertaken as directed.

Police v SS [2005] DCR 269 (YC)

Filed under:

Police v SS [2005] DCR 269

File number: CRN 4204003278; CRN 4204003280
Date: 11 November 2004
Court: Youth Court, Auckland
Judge: Judge Harvey
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s283(o): Aggravated robbery.

Summary:

Notes on sentencing. SS (16) charged with two counts of aggravated robbery; gun used in one; first charge not denied; second charge proven in Youth Court. Whether SS should remain in the Youth Court or be transferred to the DC for sentence (s 283(o) of the CYPFA). SS had a long history of problems in residential centres; ADHD; absconding; intensive social work input and programmes since 1995. Judge noted that in *R v Mako* [2000] 2 NZLR 170 the Court of Appeal stated that the terms of imprisonment suggested in that case may be reduced for young people; however, there is still a presumption of imprisonment; presumption regrettably often overlooked; s 290 of the CYPFA considered.

Held:

SS over 15, offences purely indictable and youth justice avenues no longer adequate, s 290 grounds made out for s 283(o) transfer. Every opportunity extended to SS in the past - all attempts 'thrown back in the face of those who have endeavoured to assist'.

Decision:

Orders - Conviction and transfer to the District Court - s 283(o).

NZ Police v HK FC Manukau CYPF 2003-055-27, 10 December 2004

Filed under:

NZ Police v HK

File number: CYPF 2003-055-27
Court: Family Court, Manukau
Date: 10 December 2004
Judge: Judge Malosi
Key title: Care and protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261); Evidence (not including admissibility of statements to police/police questioning), Abuse of Process

Summary:

HK allegedly committed sexual offences against two sisters when he was aged 12. Police applied pursuant to s67 CYPFA for a declaration that HK in need of care and protection

relying on s14(1)(b)(d) & (e) CYPFA. Application made on behalf of HK for the s14(1)(e) ground to be dismissed.

1. Whether or not in bringing this s 14(1)(e) application there has been an abuse of process on account of failure to adhere to law;
2. and/or delay of such magnitude that the application should be dismissed.

HK denied the charges. Section 18(3); s 70(2) CYPFA; in circumstances where the Police apply without notice for an interim custody order and contemporaneously for declaration prior to a Family Group Conferences (FGC) having been held, they must still make a referral to a YJC: s18(3); s70(3) is clear that there the responsibility shifts to the Registrar to refer the matter for the purposes of the FGC; Registrar failed to comply with s70(3). Time from date of complaint to application for declaration was about 6 months; having regard to the careful and proper manner in which inquiries were undertaken the timeframe was not unreasonable nor prejudicial to HK. Section 200 of the CYPFA 60-day time limit, 'special reasons'; attempt at engaging HK in therapeutic process pre-declaration was unfruitful but worth trying and consistent with the paramountcy principle. No s 322 CYPFA equivalent allowing a Family Court Judge to dismiss s 14(1)(e) applications for delay; s 207 CYPFA; argument for dismissal founded on abuse of process. Section 322 delay cases of little assistance as s14(1)(e) applications remain care and protection matters not youth justice matters. Allegations against HK are well-known in his neighbourhood; he is steadfast in his denial of the allegations; if the s 14(1)(e) application proceeds he may clear his name or, if the allegations are proved, an appropriate plan can be put in place for HK to address the issues; either way would be consistent with s 6 of the Act. Thus, the application for a declaration on the s 14(1)(e) ground can proceed.

Evidence; Rule 299, Rule 170: Family Court Rules 2002. Police seek directions for the evidence in chief of the two child complainants to be admitted at hearing in the form of the videotapes of their interviews at the Evidential Video Unit and that the rest of the evidence of all of the children be given by way of closed circuit television. It is possible to interpret r 170 and r 299 as applicable to adults only because of the existence of these specific regulations in relation to the videotaping of the evidence of child complainants; nonsensical to suggest evidential video interviews, carried out in accordance with the Evidence (Videotaping of Child Complainants) Regulations cannot be submitted into evidence in a Family Court proceeding if prior approval for the interview is not sought; would bring “already groaning system to a standstill”. Child complainants and witnesses should not have less protection than they would have in other jurisdictions.

Consideration of s 198(1); s 178 report prior to hearing will not assist the Court or the Police.

Decision:

The application to dismiss the s 14(1)(e) ground is dismissed. The complainant’s evidence-in-chief may be given in the form of the videotape interviews carried out at the Evidential Video Unit, and any further evidence and cross examination conducted through closed circuit television. The two child witnesses may give all of their evidence by way of closed circuit television; application for s 178 report dismissed.

2003

Police v H (a young person) [2004] DCR 97

Filed under:

Case summary provided by LexisNexis NZ

Name: Police v H
Reported: [2004] DCR 97
File number: CRN Nos 2257008263, 64
Court: Youth Court
Location: Auckland
Date: 22 January, 5 February 2003
Judge: Thorburn DCJ
Charge: Sexual Violation
CYPFA: s5; s208; s275; s276
Key title: Jurisdiction of the Youth Court - s275 offer/election; Jurisdiction of the Youth Court - s276 offer/election

LexisNexis Summary:

Children and young persons - Young offender - Offender not pleading guilty - Whether young offender given opportunity to elect that matter be determined in Youth Court - Principles to take into account - Children, Young Persons, and Their Families Act 1989, ss 5, 208, 274, 275, 276.

The young person, H, was charged with sexual violation first by oral connection and secondly by anal penetration in relation to one alleged incident that allegedly took place in a school dormitory toilet. At the time of the alleged offending, H was 14 years old. As the charges were purely indictable, a depositions hearing was held in December 2002 in accordance with s 274(2) of the Children Young Persons and Their Families Act 1989 ("the Act"). Most of the evidence was by way of hand-up and a case was conceded. Therefore, the Court had to decide whether to give H the opportunity of forgoing his right to trial by jury so that the case could be heard as a defended hearing in the Youth Court before a Youth Court Judge. H did not indicate any desire to plead guilty to the charges.

Held (exercising discretion accordingly)

(1) As H did not indicate any desire to plead guilty to the charges, s 275 of the Children, Young Persons, and Their Families Act ("the Act") applied and the discretion was confined to the issue of the appropriate forum for trial or hearing as distinct from outcome or sentence. The discretion required under s 275 of the Act was distinguishable from that required under s 276 of the Act. When the Court exercised the discretion under s 275, more weight was put on the importance of implied principles and the expressed protective provisions of the Act. This was particularly important where the young person denied the offence. The election should be offered to young persons unless there was some good reason not to offer it.

(2) All powers exercised under the Act were to be guided by the principles in s 5 of the Act. All powers exercised under the Youth Justice provisions of the Act were to be additionally guided by the principles in s 208 of the Act. The young person was offered the opportunity of forgoing his right to trial by jury for the following reasons:

Page 98 [2004] DCR 97

(a) The youthfulness of the young person and his alleged victim;

(b) A Youth Court hearing would occur significantly earlier than a trial;

(c) A Youth Court hearing would ensure compliance with the special provisions in the Act for separating Youth Justice proceedings from mainstream adult Court business;

(d) The young person and his family preferred a Youth Court hearing;

(e) There were no issues of convenience or expedience as can sometimes arise where a young person was jointly charged with an adult resulting in severance giving rise to two hearings in separate jurisdictions;

(f) The Youth Court environment was more likely to preserve and/or maintain the relational needs of the young person throughout the trial than the more clinical, impersonal and alienating atmosphere of a trial Court;

(g) If the offences were proven, the young person was of an age whereby the full unrestricted range of Youth Court outcomes were available. This factor was given less weight in coming to the decision.

Cases referred to in judgment: *Police v D* (Youth Court, Levin CRN 5254003780 13 May 1995, Judge Inglis QC); *Police v E* (Youth Court, Manukau CRN 0257007441/2 21 December 2000, Judge Simpson); *Police v Edge* [1993] 2 NZLR 7; (1992) 9 FRNZ 659; *Police v James (a young person)* (1991) 8 FRNZ 628; *Police v M* [1990] DCR 544; *Police v M* [1999] NZFLR 588; *Police v Manuel* (1998) 16 CRNZ 62; *Police v Rangihika* [2000] DCR 866; *Police v Richard* (Youth Court, Upper Hutt CRN 9278003995/6, 12 June 1990, Judge Lee); *Police v S* [1996] NZFLR 906; *Police v S & M* (1993) 11 FRNZ 322; *Police v Tai (a young person)* (1991) 8 FRNZ 613; *Police v W* (Youth Court, Papakura CRN 0220114524/5, 8 December 2000, Judge Boshier); *R v A* [1994] 2 NZLR 129 (CA); *R v C* (Court of Appeal, CA105/02, 23 May 2002); *R v Mako* [2000] 2 NZLR 170 (CA); *R v Titoko* (Court of Appeal, CA144/96 11 September 1996); *RE v Police* [1995] NZFLR 433; *S v District Court at New Plymouth* (1992) 9 FRNZ 57.

Informations The young person, H, was charged with sexual violation first by oral connection and secondly by anal penetration. This was the hearing to decide whether H should be given the opportunity to forgo his right to trial by jury and have the information heard and determined in the Youth Court,

[2004] DCR 97 page 99, pursuant to s 275 of the Children, Young Persons and Their Families Act 1989.

Police v HR (11 February 2003) YC, Manukau, CRN 3292009210-11, Harvey DCJ

Filed under:

Name: Police v HR
Unreported
File number: CRN 3292009210-11
Date: 11 February 2003
Court: Youth Court
Location: Manukau
Judge: Harvey DCJ
CYPFA: s238(1)(d)
Charge: Aggravated Robbery
Key Title: Custody - Police

Summary: HR kept in police cells for 10 days; oral confirmation by CYFs that no beds available. HR to be released from police cells into the custody of the Chief Executive of Social Welfare. Contrary to all sense of justice and international conventions that HR should continue in police cells for another week.

Decision: Matter adjourned for one week. HR to be detained in custody of the Chief Executive of Social Welfare pursuant to section 238(1)(d).

Police v B (23 May 2003) YC, Manukau, CRN 2292064464, Harvey DCJ

Filed under:

Name: Police v B
Unreported
File number: CRN 2292064464
Date: 23 May 2003
Court: Youth Court
Location: Manukau
Judge: Harvey DCJ
CYPFA: s249
Charge: Receiving stolen items
Key Title: Family Group Conference - Timeframes/limits
Summary: B charged with receiving stolen items; charge not denied; matter

adjourned for FGC; no steps taken to convene FGC within appropriate time frame. Convening family group conferences within certain timeframes mandatory: *H v Police* [1999] NZFLR 966. Timing critical where CYPFA concerned; need to standardise national procedure for reporting that Court has directed a FGC to CYFs.

Decision: Information dismissed.

In the Matter of the CYPFA, MB and an Application under s309

Filed under:

Name: In the Matter of the CYPFA, MB and an Application under s309
Unreported
File number:
Date: 12 August 2003
Court: Youth Court
Location: Wellington
Judge: Becroft DCJ, Principal Youth Court Judge (2001 - present)
CYPFA: s309, s310
Charge: Theft of a Motor Vehicle; Theft from a Motor Vehicle
Key Title: Review of orders; Youth Court Procedure

Summary: Order for supervision with activity followed by supervision imposed on MB; CYFs later applied under s309 CYPFA for a declaration that MB failed to comply with a condition set out in the supervision order; application filed before order expired; application adjourned twice. Whether, now that the order has expired, the Court has jurisdiction, if the declaration is made, to cancel the order and impose another order in its place. Section 309 and 310 CYPFA discussed; s309 envisages a two-step process: (1) an application to the Youth Court for a declaration that a young person has failed, without reasonable excuse, to comply with one of the two named orders; (2) If declaration made, Court may then cancel the order and in substitution make such other order under s283 as the Court thinks fit, or make any order the Court is empowered to make under s310. Step (2) is discretionary, not mandatory. Held: Court has no jurisdiction to cancel an order that has expired; preferred meaning of "cancel": "to call off or discontinue something already arranged or in progress"; this definition is in line with parallel but differently phrased provisions in the adult jurisdiction and consistent with other provisions of the CYPFA.

Obiter: Against the argument that a s309 application filed towards the end of a supervision order would never thus lead to an order for cancellation and re-sentence, Judge Becroft observed that a parallel application under s310(3)(b) for suspension of the order, pending final determination of the application, is possible. Here, adequacy of application and lawfulness of supervision order questioned; correct Youth Court procedure as to section 309 outlined in detail.

Decision: Declaration that MB failed without reasonable excuse to comply with a condition of his supervision order; however, no jurisdiction to cancel the supervision order and impose another order in it's place.

Police v K-H YC Pukekohe CRN 2257008263-64, 8 August 2003

Filed under:

Police v K-H

File number: CRN 2257008263-64
Date: 8 August 2003
Court: Youth Court, Pukekohe
Judge: Harvey DCJ
CYPFA: s2(2); s283(o)
Charge: Sexual Violation
Key Title: Jurisdiction of the Youth Court - Age; Orders - Conviction and transfer to the District Court for sentencing - s283(o): Sexual violation by unlawful sexual connection

Summary:

K-H (14 at date of offence) had committed two offences of sexual violation; whether it was possible to invoke the provisions in s 283(o) of the CYPFA given K-H's age, CYPFA s 2(2) and the precedent cases of *Police v S* [1996] NZFLR 906 and *Police v I* (1999) 18 FRNZ 185 (also reported as *Police v M* [1999] NZFLR 588). Crown referred to decision of Judge Boshier in *Police v W* YC Papakura, 8 December 2000 where young person in similar situation transferred to District Court. Authorities discussed in detail along with *Police v Edge* [1993] 2 NZLR 7; meaning of "proceedings" in CYPFA, s 2(2)(b). Judge declined to adopt limited interpretation and application of s 2(2)(b) found in *Police v W* where "proceedings" not thought to extend to steps taken after proceedings have commenced - only used to determine whether a charge can be brought against a person and whether the charge can continue.

Held:

Section 283(o) provisions not available in this case; CYPFA s 2(2)(a)&(b) dictate that the age critical requirement applies to whether the Court has jurisdiction to hear the case and also to the proceedings that follow. *Police v I* and *Police v S* (above) upheld.

Decision:

Section 283(o) not available and matter to be dealt with under other available provisions of s283.

R v P CA 59/03 18 September 2003

Filed under:

R v P

Court of Appeal
File number: CA59/03
Date: 18 September 2003
Judge: Keith, Hammond and Paterson JJ
Key Title: Sentencing in the adult Courts - Sexual violation by unlawful sexual connection; Sentencing in the adult Courts - application of Youth Court principles; Sentencing - General Principles e.g. Parity/Jurisdiction

P (16 at time of offending) charged with sexual violation by unlawful sexual connection and attempted sexual violation, purely indictable charges. During the preliminary YC hearing, P indicated a desire to plead guilty and was offered YC jurisdiction under s 276 of the CYPFA, which he accepted. The YC subsequently transferred the matter to the DC for sentence under s283(o) CYPFA and the DC imposed a custodial sentence of 5.5 years. P appealed against sentence on the basis that it was manifestly excessive.

Held:

When a matter is transferred from the YC to the DC under s 283(o), there is a cap on any custodial sentence of 5 years (s7 of the Summary Proceedings Act 1957). Here, the DC was subject to that 5 year sentencing limit and consequently did not have the power to impose the sentence it did. Appeal from DC in its summary criminal jurisdiction is to the HC; appeal to Court of Appeal fails for want of jurisdiction.

There is no explicit power in the CYPFA to lift the 5 year cap for s 283(o) sentencing (c.f. the power to do so in respect of adult offenders under s 28F(3) and (4) of the District Courts Act 1947). At the time when the CYPFA was enacted, the District Court could not sentence on purely indictable charges and there was a 3 year cap on custodial sentences where an adult pleaded guilty at a preliminary hearing. When these matters were changed in respect of adult offenders, it would be expected that, if such changes were also to apply to young persons, express provision to that effect would have been made. No consequent change was made to the CYPFA, so it must be assumed that it was not intended that an uncapped custodial sentence should be possible in respect of Youth Court-transferred matters.

Decision:

Appeal declined for want of jurisdiction.

R v Rapira [2003] 3 NZLR 794 (CA)

Filed under:

Case summary provided by LEXISNEXIS NZ

R v Rapira [2003] 3 NZLR 794

Court of Appeal
File number: CA 318/02, 328/02, 334/02, 340/02,341/02, 358/02, 93/03
Date: 5 September 2003
Judge: Elias CJ, Gault P and McGrath J
Charge: Murder; Manslaughter; Aggravated Robbery
CYPFA:
Key Title: Evidence (not including admissibility of statement to police/police questioning); Sentencing in the adult Courts: Aggravated Robbery; Sentencing in the adult Courts: application of Youth Justice principles, Sentencing in the adult Courts/Court of Appeal: Murder/manslaughter

LEXISNEXIS summary

Criminal law - Parties to offences - Knowledge required by party to murder - Availability of manslaughter verdict for secondary party where principal convicted of murder - Crimes Act 1961, ss 66(2) and 168.

Criminal law - Evidence - Diagnostic history - Opinion and similar fact evidence on issue of knowledge of wrongdoing.

Criminal law - Trial - Direction to jury as to knowledge of wrongdoing or contrariness to law of offender under age of 14 years - Opinion and similar fact evidence on issue of knowledge of wrongdoing - Crimes Act 1961, s 22.

Criminal law - Sentence - Whether presumption of life imprisonment for murder displaced - Approach to sentencing young offenders convicted of very serious offences - Sentencing Act 2002, s 102.

Appeal

This was an appeal by Riki Rapira, Bailey Junior Kurariki, Alexander Tokorua Peihopa, Joe Edwin Kaukasi, Whatarangi Rawiri, Casie Rawiri and Phillip Kaukasi, the appellants, against their various convictions for murder and manslaughter and against the sentences imposed by the trial Judge in relation to the robbery of and attack on a delivery driver, which subsequently led to his death.

The accused, led by Phillip Kaukasi, implemented a plan to rob a Pizza Hut delivery driver of food and money. On the day of the robbery the accused arranged which positions they were to take and hid a baseball bat near the address they had selected. Rawiri rang and placed the pizza order from a public phone booth. Peihopa collected the baseball bat on the way to the address. When the order arrived, Rawiri and Kurariki, who was under 14 years of age at the time, acted as customers, while the other appellants hid. Joe Kaukasi was the lookout. Peihopa struck the driver on the side of the head with the baseball bat. The appellants left the scene with the food and drink that Phillip Kaukasi and Rapira took from the delivery car. Some time after the robbery and attack, Rawiri and Lisa Waikato observed the driver staggering past. Along with Peihopa, they cut his belt bag and took money from him. The driver was unable to get assistance and died as a result of the blow.

- The appellants appealed against their various convictions and sentences. The Court was asked to consider the following points on appeal:

- The knowledge required by s 66(2) of the Crimes Act 1961 of parties to murder and culpable homicide;

- The availability of a verdict of manslaughter for a secondary party where a principal offender was convicted of murder under s 168 of the Act;

- The admissibility of hearsay evidence under the exception for diagnostic history;

- The directions properly to be given to a jury where the Crown had to prove in accordance with s 22 of the Act that a person under the age of 14 years knew either that the act constituting the offence was wrong or that it was contrary to law;

- Displacement of the presumption of life imprisonment for murder under s 102 of the Sentencing Act 2002; and

- The approach properly adopted to the sentencing of young offenders convicted of very serious offences.

Held

1. The essential question for establishing guilt of murder under s 168 of the Crimes Act 1961 was whether each accused had knowledge that intentional infliction of grievous bodily injury by another party to the common intention, of robbing the driver, was probable. Intention to kill or knowledge that death was likely to ensue was not necessary for the liability of the secondary party under s 168 (see paras [21], [22], [23], [24], [25], [26], [27]). *R v Tuhoro* [1998] 3 NZLR 568 (CA) applied; *R v Te Moni* [1998] 1 NZLR 641 (CA) discussed.
2. Where the principal was guilty of murder under s 168, secondary parties were guilty of manslaughter under s 66(2) if they knew that the infliction of physical harm, which was more than trivial or transitory, was a probable consequence of the prosecution of the common purpose of robbing the driver. It was not necessary for death to be intended or foreseen by a secondary party (see paras [31], [33]). *R v Hardiman* [1995] 2 NZLR 650 (CA) referred to; *R v Tuhoro* [1998] 3 NZLR 568 (CA) referred to.
3. A secondary party could be convicted of manslaughter when the principal offender was convicted of murder. Different foresight or intent as to consequences within the prosecution of the same common purpose was reflected in the hierarchy of culpability provided by the legislation, following a continuum of foreseeable harm. It was only if the principal stepped outside the common design in a way totally unforeseen that issues as to the application of s 66(2) liability arose. Lack of knowledge of the principal's intent to inflict grievous bodily harm affected the culpability of the secondary parties for murder but not their guilt of manslaughter (see paras [37], [52]). *R v Hamilton* [1985] 2 NZLR 245 (CA) applied.
4. The proposed hearsay evidence of the diagnostic history of substance abuse was rightly excluded in the circumstances. It was taken from the accused when he knew it was to his advantage to identify significant abuse. The extent of the abuse was not substantiated by earlier medical or other records and was a matter of controversy (see paras [44], [45]). *R v Rongonui* [2000] 2 NZLR 385 (CA) distinguished.
5. An intention to facilitate an aggravated robbery was an intention to facilitate a robbery with the aggravating features identified by the Act. The reference to the qualifying offence of robbery in s 168(2) included aggravated robbery (see paras [50], [51]).
6. The jury had to be satisfied beyond reasonable doubt that an accused under the age of 14 knew that he was doing wrong or acting contrary to law in all the essential ingredients of the offence which the Crown was required to prove. The trial Judge had correctly directed the jury on the requirement of s 22 of the Act that it could not infer knowledge of wrongfulness from the participation itself and that it could draw on its knowledge of the understanding of 12-year-olds as long as the focus was on the particular accused. The trial Judge was not required to use any specific language in directing the jury regarding the accused child's capacity to appreciate that the act was wrong or contrary to law. The trial Judge had correctly instructed the jury in the language of the Act (see paras [78], [79]). *R v Brooks* [1945] NZLR 584 (CA) discussed.
7. The evidence that a young accused understood that he was doing wrong might include evidence of previous convictions and criminal behaviour and evidence of previous criminal behaviour was not excluded by virtue of the fact that the accused could not be prosecuted for the earlier behaviour by reason of age. The opinion evidence given by the constable who had dealt with the accused over a long period of time had not referred to specific earlier

offending. The issue was whether the evidence was probative of the question of understanding and whether the probative value was outweighed by any prejudicial effect. The Judge had correctly identified these issues (see paras [88], [89], [97]).

8. The presumption of life imprisonment was not displaced in the circumstances of the case. The test was that the sentence of life imprisonment was manifestly unjust. The conclusion was an overall assessment that had to be made on the basis of the circumstances of the offence and the offender. The use of "manifestly" required the injustice to be clear. The assessment of manifest injustice fell to be undertaken against the register of sentencing purposes and principles in the Sentencing Act 2002 and in particular in the light of ss 7, 8 and 9 of that Act. The conclusion of manifestly unjust was likely to be met in exceptional circumstances only. Although youth was a factor to be properly taken into account in sentencing, where the offending was grave the scope to take account of youth might be greatly circumscribed. Youth of itself was not a sufficient reason to make life imprisonment manifestly unjust if the offender had the necessary intent or knowledge of consequences to be guilty of murder (see paras [121], [122], [123]).
9. The starting points taken by the Judge - of ten years for manslaughter in the light of the aggravating features present, of seven years for aggravated robbery of a food delivery driver who was vulnerable by reason of his occupation and half that for attempted robbery, and of two and a half years' imprisonment for theft from someone who was semiconscious and needed urgent medical help - were appropriate (see paras [132], [133], [134], [136], [137], [138]).
10. In the case of a young offender sentenced to life imprisonment, use of the power under s 25 of the Sentencing Act 2002 for early consideration of parole might be appropriate where, through developing maturity and positive responses to correction, the ten-year non-parole period ought to be reconsidered in the interests of justice. This meant that there was no inevitability that the accused would serve inappropriately long sentences. Their youth was not a factor that could be given great weight in the case of deliberate, repetitive and organised criminal activity which was not impulsive and which called for a deterrent sentence (see paras [124], [153]).

Appeals dismissed.

Police v SJP (1 October 2003) YC, Wellington, Walsh DCJ

Filed under:

Name: Police v SJP
Unreported
File number:
Date: 1 October 2003
Court: Youth Court
Location: Wellington
Judge: Walsh DCJ
CYPFA: s275
Charge: Aggravated Robbery
Key Title: Jurisdiction of the Youth Court - s275 offer/election

Summary: SJP charged with aggravated robbery; stole money from victim, lured him into an alleyway, threatened victim with knife to get wallet; incident carried out with adult co-offender. Whether s275 CYPFA offer of Youth Court jurisdiction should be made.

Authorities considered: *S v District Court at New Plymouth* (1992) 9 FRNZ 57; *C v District Court at Dunedin* (1993) 10 FRNZ 416; *Police v I* (1998) 18 FRNZ 185; *NZ Police v K-H* (Youth Court, Auckland, CRN 2257008263/4, 5 February 2003). Here, relevant factors are (1) that sentencing options are wider in the Youth Court than the District Court (*R v P* (High Court, Auckland, S89/90, 14 September 1999, Gault J); (2) whether any sentence of imprisonment is likely to exceed 5 years; (3) the nature and circumstances of the alleged offending (*Police v James (A Young Person)* (1991) 8 FRNZ 628; *Police v Tai* (1991) 8 FRNZ 613; *Police v P* (30 September 1991, Youth Court, Auckland, CRN 1204003984, Brown YCJ; *Police v TLA* [2000] DCR 240); (4) shorter timeframe for Youth Court hearings more suitable for young people; (5) age and previous record (*Police v James (A Young Person); Police v S & M* (1993) 11 FRNZ 322); (6) victim's interests (*Police v Tai*); (7) necessity for young offender to be held accountable and accept responsibility for behaviour (*Police v Richard* (Youth Court, Upper Hutt, 12 June 1990, CRN 9278003995/6, Lee DCJ); (8) desirability for joint hearing for victim and alleged offenders (*C v District Court at Dunedin* (1993) 10 FRNZ 496; *Police v TLA*); (9) public interest (*R v Police* (1990) 6 FRNZ 538; *Police v James*); (10) attitude of prosecutor (*R v Police* (1990) 6 FRNZ 538) and (11) whether young person denies the offence (*NZ Police v King-Hazel*, Judge Thorburn). Here, any term of imprisonment, likely to be less than 5 years; public interest important but this is weighed against need to ensure SJP has the benefit of rehabilitative aspects of sentencing in Youth Court; SJP a party to the offence and offence of mid to lower range of seriousness; fixture likely to be allocated more quickly in the Youth Court; SJP has stayed out of trouble recently; goal of accountability can be achieved in the Youth Court. Young people should be offered Youth Court jurisdiction unless some good reason demonstrated for not doing so (*Police v D,* Levin, CRN 525003780, 13 May 1995, Judge Inglis QC); here good reason to offer election.

Decision: Youth Court jurisdiction.

NZ Police v DN FC Manukau CYPF 092/36/03, 26 November 2003

Filed under:

NZ Police v DN [2004] NZFLR 1009

File number: CYPF 092/36/03
Court: Family Court, Manukau
Date: 26 November 2003
Judge: Judge Malosi
Key title: Care and protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261), Victims; Family Group Conference: Attendance; Family Group Conference: Timeframes/limits: Intention to Charge

Summary:

Interface between s14(1)(e) and youth justice provisions of CYPFA. DN allegedly committed 14 offences while 11 years old including wilful damage, dangerous driving of a stolen vehicle while pursued by Police. Police applied for a s 78 interim custody order and an application on notice for a declaration upon the grounds set out in s 14(1)(b)(d)(e) and (f) of the CYPFA.

Family Group Conference (FGC) directed, psychological, social worker and cultural reports sought (s178, s186). By time of FGC 25 offences were put to DN and admitted by him. FGC held, after delay to obtain all reports; YJC made decision to have no victims present for several reasons including the large number of offences, a Vietnamese interpreter was necessary which would lengthen the proceedings considerably and a two-staged process of FGC was desirable to enable the first FGC to ascertain whether DN admitted the offences as per s 259 of the Act.

FGCs are the jewel in the CYPFA crown and crucial to the reconciliation between the wrongdoer and the victim; s 72(1); s 251; s 208(g) CYPFA. If DN had denied the offences at the FGC, a defended hearing would have proceeded for those offences to be determined by a Judge. Counsel submits the FGC is a legal nullity as victims not invited; s440 CYPFA unable to remedy the situation; fundamental principles of the Act contravened constituting a miscarriage of justice. Police agree. CYF argue the two-step approach was a common sense response to a difficult situation. Held: Section 250 CYPFA is clear that the YJC was required to 'make all reasonable endeavours' to consult with victims; no effort was made as YJC decided not to invite any victims. Section 270 CYPFA; power to reconvene cannot be used to remedy blatant defect in the process of convening the conference. Section 253(3) CYPFA; held that absence of victims at FGC did materially affect the outcome; failure to consult with and invite victims led to a miscarriage of justice – conference therefore deemed invalid as to s14(1)(e). To start from scratch and hold a valid FGC would be an abuse of process.

Time limits for convening s 14(1)(e) FGCs. Narrow reading of s249(1) CYPFA shows the 21 day time limit only applies to FGCs to which s 247(a) applies, that is, those triggered by a s 18(3) consultation between the Police and a YJC; planned consultation abandoned here after offending escalated. Child appropriate timeframe must be adopted but cannot import the specific timeframe from s 249(1). Delay unreasonable; FGC for the purposes of s14(1)(e) was also invalid for failure to convene and hold in a timeframe appropriate for DN. FGC was properly convened and held so far as the grounds under s14(1)(b),(d) and (f).

Decision:

Directions and orders including: The application for declaration upon the grounds contained in s14(1)(e) is dismissed. A declaration pursuant to s 67 upon the grounds set out in s14(1)(b),(d) and (f). The s 78 interim custody order is discharged. Section 101 custody order in favour of the Chief Executive, to be reviewed in 6 months time.

2002

Police v T-M (31 January 2002) YC, Whangarei, CRN 1288016733-37, Boshier DCJ

Filed under:

Name: Police v T-M
Unreported
File number: CRN 1288016733-37
Date: 31 January 2002
Court: Youth Court
Location: Whangarei
Judge: Boshier DCJ
CYPFA: s48, s214
Charge: Burglary
Key Title: Care and protection cross-over - misuse of s48 CYPFA; Arrest without warrant

Summary: A police officer found T-M in central Whangarei some time after midnight and, believing that he was responsible for earlier burglaries, invoked section 48 of the Act and required T-M to return with him to the police station. He interviewed T-M until 5.30am when he returned him to his uncle's address. Several weeks later the police officer interviewed T-M again, at his house. Having taken a statement the police officer then arrested T-M for burglary. The police officer filed a report indicating that he had exercised the power of arrest because T-M was a repeat offender, there was a need to prevent further offending and he wanted to ensure T-M appeared in Court. The charges were denied but, prior to a defended hearing, the Police sought leave to withdraw, acknowledging problems in the preparation of the case.

Judge Boshier held that section 48 should not be used for the sole purpose of taking a child or young person into custody when they are suspected of having committed a crime. Section 48 provides for the delivery of unaccompanied children and young people, who are discovered in a situation where they are at risk, to their parent, guardian, caregiver or social worker. In this case, T-M was unlawfully taken into custody and questioned at length in connection with a number of burglaries pursuant to section 48.

On the second occasion, T-M was arrested because he was a repeat offender, police believed there was a need to prevent further offending and police wanted to ensure T-M appeared before the Court. Judge Boshier stated that section 208 of the Act requires that criminal proceedings should not be initiated unless there are no other means of dealing with an issue and any proceedings should take the least restrictive form. T-M had not been dealt with according to these principles and, further, his arrest had been unlawful pursuant to section 214.

Judge Boshier found that the reasons given by the police officer for the arrest did not comply with this section. In this case, further offending was not imminent and arrest was not necessary to ensure the appearance of T-M before the Court. His Honour stated that where no alternatives exist and arrest is warranted, Police must firstly consult a Youth Justice Co-

ordinator and discuss the offending at a Family Group Conference before contemplating the laying of charges in a Youth Court (s245).

The Judge concluded that charges could not be brought against T-M in the Youth Court unless arrest had been used in the restricted manner laid down in the Act or a Family Group Conference had been held and recommended that such charges should be laid. Neither course had been adopted in this case. Consequently, the police officer was not justified in arresting T-M, there had been a clear and serious misuse of the procedure and the case should not have come to Youth Court as it did.

Decision: the Police were wrong to have laid charges against T-M and they were ordered to refund the Youth Advocate's fees to the Department for Courts.

Police v A and V YC Auckland, 7 January 2002

Filed under:

Police v A and V

File number: unknown
Date: 7 January 2002
Court: Youth Court, Auckland
Judge: Thorburn DCJ
Key Title: Jurisdiction of the Youth Court: s 276 offer/election; Jointly charged with adult (s 277)

A and V jointly charged with multiple offences relating to an aggravated robbery; both indicated a desire to plead guilty; adult co-offender to be dealt with in the adult jurisdiction (*Police v Manuel* (1998) 17 FRNZ 394).

Whether to offer Youth Court jurisdiction; V offered Youth Court jurisdiction as nearly one year until V is 17; s 283(o) CYPFA still a possibility; transfer under s 283(o) would provide sufficient prison sentence; first offender; no previous history; capable of rehabilitation. A offered Youth Court jurisdiction as Youth Court hearing possible sooner (s 5(f) CYPFA); almost 17 but s 283(o) a possibility; not an extensive history of offending; rehabilitation likely so trial should be in Youth Court.

Decision:

A and V offered Youth Court jurisdiction.

Police v P YC Auckland CRN 1204003769, 7 January 2002

Filed under:

Police v P

File number: CRN 1204003769
Date: 7 January 2002

Court: Youth Court, Auckland
Judge: Thorburn DCJ
Key Title: Orders - type: Discharge - s 282; Objects/Principles of the CYPFA Act (ss 4 and 5); Principles of Youth Justice (s 208)

P admitted assault on young UK tourist; adult co-offender who had pleaded guilty to injuring with intent to injure had been dealt with in adult jurisdiction; rehabilitative focus of CYPFA discussed; imperative of young person taking responsibility for his behaviour; s 4(f)(i), s 4(f)(ii), s 208(c), s 208(f) CYPFA; discussion of philosophy of CYPFA included to assist victim in understanding why s 282 discharge given in light of steps young person and family had taken; P a good student and artist; P and family had made reparation; P completed a piece of art and a letter for the victim, also wrote an essay.

Decision:

Orders - Discharge - s282.

Police v P [2002] NZFLR 477 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v P [2002] NZFLR 477

File number: CRN 2243003352
Date: 28 February 2002
Court: District Court, New Plymouth
Judge: Judge Harding
Key Title: Sentencing in the adult Courts - Aggravated Burglary

LEXISNEXIS summary

Sentencing - Young offender - Aggravated burglary - Youth Court - Transfer from Youth Court to District Court - Starting point for sentencing - Custodial sentence - Age as consideration - Suspended sentence - Purely indictable offences - Children, Young Persons, and Their Families Act 1989, s 283 - Criminal Justice Act 1989, s 8.

Application

This was a decision on sentencing in relation to a young offender.

The defendant was a young offender with a history of alcohol and drug abuse. The defendant and an older associate stole a car and used it to ram raid a farm supply business. After stealing chemicals from the business, they disguised themselves and held up a service station with a tomahawk. In the Youth Court, the defendant had been convicted of three charges of burglary, one charge of drunk driving, one charge of driving while disqualified, one charge of shoplifting, one charge of taking a car and aggravated robbery. As the defendant's offending had become more regular and serious over the years, he had been transferred from the Youth Court to the District Court for sentencing.

The Court considered that the starting point for sentencing was five and a half years. The defendant's associate had been convicted and sentenced to 4four and a half years. The defendant had already spent 49 days in custody under the provisions of the Children, Young Persons, and Their Families Act 1989. The issue before the Court was what would be an appropriate sentence for the defendant having regard to his age, his involvement, and to the other matters to which the Court was properly obliged to take into account.

Held

(sentencing defendant to two and a half years' imprisonment on the charge of aggravated burglary)

(1) Age alone is a highly relevant consideration and the younger the offender, the more significant age becomes. But age by itself does not automatically justify leniency. Age is only one of the factors to be taken into account.

(2) A suspended sentence is generally only possible in aggravated robbery if the elements that convert a robbery to an aggravated robbery are there to a small extent only, or if the defendant was involved in a very limited role.

(3) Section 8 of the Criminal Justice Act 1989 prevents the imposition of a sentence of imprisonment on young offenders other than for purely indictable offences.

Nelson v Police HC Auckland A27/02, 12 March 2002

Filed under:

Nelson v Police

File number: A27/02
Date: 12 March 2002
Court: High Court, Auckland
Judge: Paterson J
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s283(o): Aggravated robbery; Victims; Appeals to High Court/Court of Appeal: Jurisdiction

Summary:

Appeal against conviction and transfer of N to District Court under s 283(o) of the CYPFA; N (then 15) and two co-offenders attacked Proprietor of computer game business; plan initiated by appellant; Proprietor collapsed and died of heart attack while later talking to Police; finding of autopsy that stress of robbery likely to have been factor in death but sudden death possible at any time; no charges resulting from death.

Appeal on grounds that Judge erred in taking into account the death of the Proprietor as a factor in her decision. Judge's decision gives impression that Judge placed considerable emphasis on effect of incident on victims; not clear why Victim Impact Statement, which emphasised loss to Proprietor's family and of view that robbery caused death, submitted as no statutory requirement for this: Victims of Offences Act 1987; Proprietor's family only 'victims' in terms of Victims of Offences Act if robbery caused death and medical evidence

did not support this view. Judge's decision places too much emphasis on the death; Proprietor's death cannot be used as an aggravating feature for sentencing purposes;

Held:

Judge's rejection of Youth Court alternatives based more on the short period that such alternatives would operate rather than the death factor; serious case where transfer to District Court nevertheless appropriate.

Decision:

Appeal dismissed.

Police v JA YC Wanganui CRN 0283004242, March 2002

Filed under:

Police v JA

File number: CRN 0283004242
Date: March 2002
Court: Youth Court, Wanganui
Judge: Judge Walsh
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Sexual violation by unlawful sexual connection; Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other; Principles of Youth Justice (s 208), Family Group Conferences: Convened/Held, Sentencing - General Principles (e.g. Parity/Jurisdiction)

Summary:

Whether to convict and transfer to the District Court under s 283(o) of the CYPFA in relation to the sexual violation charge; complainant a six year old girl; Family Group Conference (FGC) held; JA admitted sexual violation and burglary charges but denied the intentional damage charge; Police sought s 283(o) order.

Section 208 principles summarised; s 208 subject to s 5; *RE v Police* [1995] NZFLR 433; *W and Others v Registrar Tokoroa Youth Court* (1999) FRNZ 433 cited - emphasis in CYPFA on restorative justice and rehabilitation of young offenders but CYPFA and case law also recognise serious offending may necessitate stronger penalties. Consideration of s 284 CYPFA factors:

- s 284(1)(a): serious offending, victim very young, breach of trust by JA who was babysitting;
- s 284(1)(b) broken family, close relationship with grandmother, badly affected by her death, poor social skills, immature, drug and alcohol abuse issues;
- s 284(1)(c) remorse shown but unclear whether JA understood the gravity of his actions;
- s 284(1)(d) family support diminished over time - JA left to hitchhike to attend STOP programme;
- s 284(1)(e) JA apologised to the victim and her mother;
- s 284(1)(f) serious impact on victim,

- s 284(1)(g) no previous offending,
- s 284(1)(h) FGC recommends Youth Court jurisdiction; s 290(2) CYPFA.

Held:

Matter not to be transferred to District Court; JA has complied with all rehabilitative recommendations (community service, lengthy curfew, STOP programme) and his re-offending while on bail was not sexual offending; if matter transferred to District Court for further punitive measures JA would effectively be punished a second time.

Decision:

Application for transfer under s 283(o) declined.

Pomare v Police (12 March 2002) HC, Whangarei, AP 8/02, Harrison J

Filed under:

Name: Pomare v Police
Unreported
File number: AP 8/02
Date: 12 March 2002
Court: High Court
Location: Whangarei
Judge: Harrison J
CYPFA: s214, s245
Charge: Disorderly Conduct
Key Title: Arrest without warrant

Summary: Appeal against decision of District Court Judge sitting in Youth Court; DCJ dismissed charge of resisting arrest as s214(1) CYPFA grounds not made out; DCJ found that P unlawfully arrested; Police had no lawful right to bring the appeal to trial through the arrest procedure in s214(1); thus must rely on s245(1); Police failed to take any of the three conjunctive steps mandated by s245(1); compliance with all three steps essential prerequisite to laying a lawful information. Information laid by Police therefore invalid and Youth Court had no jurisdiction to determine the information. Held: Appeal determined on basis of s245 though argument not addressed in District Court.

Decision: Appeal allowed.

Harris v Police (14 March 2002) HC, Whangarei, AP 52/01, Harrison J

Filed under:

Name: Harris v Police
Unreported

File number: AP 52/01
Date: 14 March 2002
Court: High Court
Location: Whangarei
Judge: Harrison J
CYPFA: s351
Charge: Assaulting a Police Officer with Intent to Obstruct Him in the Course of his Duty
Key Title:

Summary: H charged with assaulting a Police officer with intent to obstruct him in the course of his duty; charge found proven in the Youth Court; H appealed challenging the Judge's finding of assault on the grounds that she did not consider his defences of defence of another or self defence. Whether H was acting in defence of his mother when she was being prevented by police officer from interfering in police interview of person alleged to have assaulted appellant's sister; Crimes Act 1961, s49. Held: Appellant used force, had honest belief that he needed to defend his mother; honest belief directly relevant to H's state of mind at relevant time, did not use unreasonable force. It was not open to the Judge to find that the appellant had an intent to obstruct the constable in the execution of his duty when she had already found that at the time he interfered and pushed the police officer he believed that his mother required his defence and he was acting pursuant to that belief and for that purpose; Self-defence was doomed to fail on the facts.

Decision: Appeal allowed; Youth Court finding set aside.

Police v Anderson HC Rotorua S.02/1649, 18 April 2002

Filed under:

Police v Anderson

File number: S.02/1649
Date: 18 April 2002
Court: High Court, Rotorua
Judge: Baragwanath J
Key Title: Sentencing in the adult Courts: Other; Sentencing in the adult courts: Murder/manslaughter; Sentencing in the adult courts: application of Youth Justice Principles

Summary:

A (just 14 at time of offence) high on cannabis; crashed car taken without authority; killed passenger. Pleaded guilty to manslaughter and dangerous driving causing death and injury; Criminal Justice Act 1985, s 5 applies to motor death cases: *Brodie v R* [1999] 2 NZLR 513 (CA). Criminal Justice Act 1985, s 7 to be read subject to s5; s 7 comparable with UNCROC Art. 37; *R v Mahoni* (1998) 15 CRNZ 428 (CA) at 436-7, where Court of Appeal emphasised the public interest but recognised that in some circumstances an allowance may be made to take account of immaturity, discussed; but only modest allowance for youth in this class of offending: *R v Abraham* (1993) 10 CRNZ 446 (CA) at 449; Crimes Act 1961, s 150A. Here important factors: consumption of drugs, excessive speed, disregard of passenger's warnings,

persistent bad driving, unlicensed, incidence of death and also the taking of a vehicle. In mitigation: guilty plea and age.

Decision:

Four years imprisonment in relation to both offences to be served concurrentl

Police v C (9 April 2002) DC, Waipukurau, CRN 0281003969, Perkins DCJ

Filed under:

Name: Police v C
Unreported
File number: CRN 0281003969
Date: 9 April 2002
Court: District Court
Location: Waipukurau
Judge: Perkins DCJ
CYPFA:
Charge: Sexual Violation; Indecent Assault
Key Title: Databank Compulsion Order; Youth Court procedure

Summary: C (14) charged with committing an indecent act on a 10 year old boy and a separate charge of sexual violation; C applied to plead guilty to the charges pursuant to s276 CYPFA; Informations were endorsed "formally admits guilt to charge"; Whether C has been convicted of a relevant offence such that there is jurisdiction to make an order under Criminal Investigations (Blood Samples) Act 1995, s39. Discussion of Youth Court procedure; Criminal Investigations (Blood Samples) Act 1995, s2 definition of "conviction" includes Youth Court finding that charge is proved either by admission or following a defended hearing. Rarely if ever will a Youth Court Judge note a plea of "guilty" or a "conviction" on the Information. Notation of "formally admits guilt" on the Informations in this case equates to the normal notation of "proved". *Police v S* (2000) 19 FRNZ 72 distinguished. As charges are proved, this case falls within the definition of "convicted" in the Criminal Investigations (Blood Samples) Act 1995. Judge expressed sympathy for grandmother's pleas against the granting of the application but emphasised that once the grounds of application are established, a Judge has no discretion.

Decision: Grounds for the application for databank compulsion order established therefore no discretion to refuse the making of the order.

Police v Pedley [2002] DCR 629

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v Pedley
Reported: [2002] DCR 629
File number: CRN 1054013962-3; CRN 1054007381-2
Date: 19 April 2002
Court: District Court
Location: Palmerston North
Judge: Lovegrove DCJ
Charge: Dangerous Driving; Failing to Stop
CYPFA:
Key Title: Delay

LEXISNEXIS Summary:

Transport - Dangerous driving - Application by defendant to dismiss four charges on grounds of undue delay and/or abuse of process - Failing to stop for flashing lights/siren - Failing to stop at request/signal of officer - Fixture vacated due to unavailability of police witness - Defence counsel unavailable for re-allocated fixture - Next re-allocated fixture a "back-up" fixture to other case - Insufficient time to hear defendant's case - New Zealand Bill of Rights Act 1990, s 25(b).

The defendant was charged with failing to stop for red/blue flashing lights/siren and dangerous driving on 10 November 2000. The charges were laid on 14 November 2000, and not guilty pleas were entered on 28 November 2000. At a status hearing on 2 February 2001 the not guilty pleas were confirmed with identity the only matter in issue. Matters were put off for a fixture on 23 April 2001. Before that date, the defendant made a formal complaint against the police alleging he had sustained injury as a result of an unlawful assault on him by an officer during the events of 10 November 2000. On 12 April 2001 the Registrar notified counsel for the defendant that the 23 April fixture had been vacated due to "police witness unavailable". On 23 April the police laid further charges against the defendant of careless use and failing to stop at the request/signal of an enforcement officer also arising from the events of 10 November. These charges were consolidated with the earlier ones on the same defended basis. A fixture was allocated for 6 July 2001 despite the registry being aware that counsel for the defendant had jury trial commitments on that date, which was confirmed in a letter from counsel to the Registrar dated 22 May 2001. A further letter dated 23 May advised that he had jury trial commitments between 21 June and 24 August and nine summary fixtures allocated to him over that time requiring re-allocation. On 8 May 2001 the police acknowledged that an officer had struck the defendant on the head with a torch and that on the balance of probabilities this was not accidental. After leaving a voice-mail message for the Registrar about arranging a meeting to discuss re-allocation of his summary fixtures, on 15 October 2001 counsel for the defendant wrote to the Registrar to express concern about the delay in light of an indication that no fixture date would be available before December 2001. He also referred to the arranging of a meeting in the letter. On 20 December 2001 the defendant was allocated a fixture for 25 February 2002, being a "back-up" fixture to another case. That case was resolved on 22 February. However, on 25 February 2002 five other cases and five arrests also had to be dealt with. A youth matter took priority in the afternoon and there was insufficient time to hear the defendant's case in the morning with other cases taking priority.

On 28 February 2002 the defendant applied for the dismissal of four charges on the grounds of undue delay and/or abuse of process in terms of s 25(b) of the New Zealand Bill of Rights Act 1990.

Held (charges dismissed)

(1) The Court regarded the delay of 17 months that had occurred as attributable to avoidable and unreasonable deficiency of process and, on that account, in terms of Martin v District Court at Tauranga (1995) 12 CRNZ 509, as undue.

A process that allows for the increasingly routine scheduling of priority fixtures to days when their combined length will exceed available sitting time and that then relegates the casualties of that process to some distant further date - seven months in the defendant's case - is doomed to be condemned and virtually sits up and begs for s 25(b) of the New Zealand Bill of Rights Act 1990 to be invoked.

Cases referred to in judgment

Dreliozis v R (1994) 12 CRNZ 548
Martin v District Court at Tauranga (1995) 12 CRNZ 509
Moevao v Department of Labour [1980] 1 NZLR 464 (CA)
Police v Act (1991) 8 CRNZ 304
R v B; *R v Parkes* (1995) 13 CRNZ 377

Application

This was an application to dismiss four charges on the ground of undue delay and/or abuse of process under s 25(b) of the New Zealand Bill of Rights Act 1990.

Police v D (3 May 2002) YC, Kaitaia, CRN 4229004579, Druce DCJ

Filed under:

Name: Police v D
Unreported
File number: CRN 4229004579
Date: 3 May 2002
Court: Youth Court
Location: Kaitaia
Judge: Druce DCJ
CYPFA: s48
Charge: Assaulting a police officer in the execution of his duty
Key Title: Care and protection cross-over - Misuse of s48 CYPFA

Summary: Police removed D (16) from private property where he was found to be unlawfully present, drunk and in possession of alcohol. D told a police officer his name, address, phone number and the details of his grandmother with whom he lived. This information was not passed to two other police officers. The officers took D to a police station pursuant to section 48 of the Act. Despite other alternatives being available, D was taken into the police station through a secure entrance at the back of the building. D was questioned about his details so

that his caregivers could be contacted. Police telephoned D's grandmother and told her that he was in the cells to which she said she would collect him in the morning. D became agitated during questioning and punched a police officer. D was charged with assault and the charge was defended on the basis that police had acted unlawfully.

Having noted the key cases of *Ruissen v Minister of Police* (1990) 7 FRNZ 9; *Police v Kepa* 7/8/02 Judge Carruthers, Youth Court, Lower Hutt and *Police v Tangi-Metua* 31/1/02 Judge Boshier, Youth Court, Whangarei CRN: 1288016733-37, Judge Druce emphasised that section 48 was one of the care and protection provisions of the Act. He read that section subject to sections 4, 5, 6 and 13 and noted particularly section 6 which provides that "the welfare and interests of the child or young person shall be the first and paramount consideration having regard to the principles set out in section 5 and section 13 of the Act".

The Judge stated that there is no authorisation in section 48 permitting Police to detain children or young people at a police station as such, but it may be permissible as an intermediary means of delivering that young person to his parent, guardian, caregiver or social worker. The authority to detain a child or young person for questioning exists no further than is necessary for obtaining sufficient identifying information to deliver the child to their specified caregiver. Further, the welfare principle dictates that the Police ought to minimise a young person's exposure to potentially harmful experiences such as being placed in a high security environment.

The Court found in this case that although it had been reasonable for the Police to take D to the police station as an intermediate step towards returning him to his specified caregiver, they had erred on a number of other points, notably:

- The Police failed to adequately consider D's welfare and interests by taking him into the police station through the secure entrance, given that he was co-operating at that time. By taking D into the secure area, police detained him beyond their lawful authority, which was to deliver him into the care of a parent, guardian or caregiver. The secure area of the station would only be justified in the event that reasonable force became necessary to deliver him into the care of the appropriate person (as per s48(1)).

- Police evidence that "further inquiries" were necessary indicated that police were blurring the purpose of the youth's presence in the police station. Section 48 should not be used to detain young people for purposes beyond returning them to designated caregivers.

- D was not informed as to why he was being detained and it is likely that he thought he was under arrest. However, he had none of the advantages concerning arrest available to him under ss214-219 of the Act. This amounted to a clear breach of section 22 of the Bill of Rights Act.

The Court applied the balancing exercise in *R v Shaheed* [2002] 2 NZLR 377 and of particular relevance to the Judge's decision was that:

- The Police and the Court were obliged to give paramouncy to D's interests and welfare.

- There was no urgency or immediacy of danger to the Police or the public at the time which might otherwise make excusable the breach to D's rights.

- This was not a trivial breach but an unlawful detention of a young person aged 16 years 2 months.

- D's caregiver was given insufficient information as to D's legal status or the consequences of her declining to accept him back into her care. Her refusal should have meant that he was placed in the care of a social worker.

- A social worker did not become involved until the following morning.

Consequently, although the Police did not act in bad faith, there was a serious breach of D's rights.

Decision: The evidence obtained relating to the alleged assault of the police officer by D was therefore excluded by the Court and the Information dismissed.

Police v DC (7 May 2002) YC, Wanganui, CRN 1283018602, Walsh DCJ

Filed under:

Name: Police v DC
Unreported
File number: CRN 1283018602
Date: 7 May 2002
Court: Youth Court
Location: Wanganui
Judge: Walsh DCJ
CYPFA: s284; s276
Charge: Sexual Violation
Key Title: Jurisdiction of Youth Court - s276 offer/election; Principles

Summary: DC (14) charged with sexual violation of his 5 year old foster sister over a 7 month period; indicated a desire to plead guilty pursuant to s276; whether Youth Court jurisdiction should be offered. Principles in *Police v Richard and R & R and S* (12 June 1990, Youth Court, Upper Hutt CRN 9278003995/4028, Judge Lee) applied; s284; other authorities canvassed; indication of guilty plea under s276 means that there will be more weight on the issue of disposition and sentencing than under s275. DC had history of abuse and neglect, personable, no empathy for victim; no family support; no previous offences. Section 333 report recommended rehabilitation. Public interest factor difficult; need for punitive measures but also need for DC's intensive support and therapy; CYPFA emphasised rehabilitation (s5, s208), a point emphasised by the Court of Appeal: *W v Registrar Tokoroa Youth Court* (1999) 18 FRNZ 433. Imprisonment would not be in the public interest in the long term.

Decision: Youth Court jurisdiction offered.

Police v H and I and W YC Rotorua CRN 1263016868, 14 May 2002

Filed under:

Police v H and I and W

File Number: CRN 1263016868, CRN 1263016874, CRN 1263016875, CRN 1263016876, CRN 1063016877
Date: 14 May 2002
Court: District Court, Rotorua
Judge: Maclean DCJ
Key Title Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance, Admissibility of statements to police/police questioning (ss 215-222): Explanation of rights.

Summary:

Two of the three offenders were young people aged 14 and 15 at the time of the attack; the YP challenged the admissibility of evidence before the Court; questions of compliance with the relevant provisions of CYPFA arose; Police used roadside 'dock' style identification of accused; Court excludes roadside identification from evidence due to vulnerability of young persons and the need for special protection during the investigative stage as to the commission or possible commission of an offence; second query about validity of admissions and confessions of one accused inculpating another; Court asks whether accused were made aware of their rights under CYPFA and finds no 'reasonable compliance' with requirements under CYPFA; Judge concludes that due to several breaches of CYPFA admissions should be excluded.

Decision:

Evidence excluded.

Police v H & M (26 June 2002) YC, Lower Hutt, Walker DCJ

Filed under:

Name: Police v H & M
Unreported
File Number:
Date: 26 June 2002
Court: Youth Court
Location: Lower Hutt
Judge: Walker DCJ
Charge Aggravated Robbery
CYPF Act s274, 276
Key Title Jurisdiction of the Youth Court - Charge Type; Jurisdiction of the Youth Court - s276 offer/election; Jurisdiction of the Youth Court - age

Summary: Young persons face charge for an indictable offence; query whether YC jurisdiction should be offered pursuant to s276 CYPFA; Police state that hearing should be in

the District Court or High Court as starting point for sentencing would be in the vicinity of four year's imprisonment; Court states that the CYPFA contemplates that such cases can remain in the Youth Court, taking into account the ages of the young persons (15 at time of offence), absence of previous appearances in the Youth Court, victims views that the case should be heard in the Youth Court; Court decides that young persons can elect to have the charges heard in the Youth Court

Decision Youth Court jurisdiction offered.

Police v W (12 June 2002) YC, Auckland, CRN 2204003018; CRN 2204003364, Thorburn DCJ

Filed under:

Name: Police v W
Unreported
File number: CRN 2204003018; CRN 2204003364
Date: 12 June 2002
Court: Youth Court
Location: Auckland
Judge: Thorburn DCJ
CYPFA: s4(f), s5, s208
Charge: Wounding with Intent to cause GBH
Key Title: Objects, Principles; Youth Court Procedure

Summary: Charge summarily laid of injuring with intent to cause grievous bodily harm; Police later sought to withdraw original charge and proceed with purely indictable charge of wounding with intent to cause grievous bodily harm. Police reasoned they were not aware of the seriousness of the injury until after the initial Information was laid. A stay of proceedings was sought on the basis of abuse of process in that, without warning, less than one week before the scheduled fixture date, the more serious charge was laid. The Court held that the last minute unilateral decision made by the Police was patently unfair to W sufficient to sustain an order for stay for abuse of process; discussion of objects and principles of Act; s4(f); s5(c); s5(e) CYPFA. The informant had completely marginalised the objects and principles of the CYPFA in respect to the uniqueness of the statutory scheme for juvenile offenders; s208 CYPFA. There is no assumption that laying the purely indictable charge will inevitably result in the matter being taken out of the Youth Court jurisdiction; s283 still a possibility; no disadvantage to the informant in terms of venue for jurisdiction; more recent medical evidence not relevant.

Decision: Order for permanent stay of proceedings against W on purely indictable charge of wounding with intent to cause grievous bodily harm.

Police v D and H YC Auckland CRN 2204003295, 10 June 2002

Filed under:

Police v D and H

File number: CRN 2204003295; CRN 2204003143; CRN 2204003144; CRN 2204003234
Date: 10 June 2002
Court: Youth Court, Auckland
Judge: Thorburn DCJ
Key Title: Orders - Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery

D and H jointly charged on purely indictable matter of aggravated robbery; H charged with two additional matters. D and H punched and kicked stranger causing serious injuries; charges not denied; Youth Court jurisdiction offered and accepted. Whether case should be transferred to District Court under s 283(o) of the CYPFA. No distinction made as to the roles played by D and H as 'playing to the same tune of common intention'. Section 290(1)(a) and (b) CYPFA satisfied; s 290(2) of the CYPFA; D successful in marae-based rehabilitation programme, many hours community work done; D retained in Youth Court jurisdiction. H retained in Youth Court also although less evidence of commitment to change; necessary to ensure consistency between D and H.

Decision:

Possible to dispose of matter via orders for D but intervention by social worker recommended for H.

R v Kurariki (2002) 22 FRNZ 319 (CA)

Filed under:

Case summary provided by BROOKERS

R v Kurariki (2002) 22 FRNZ 319

Court of Appeal
File number: CA216/02
Date: 24 July 2002
Judge: McGrath, Robertson, Gendall JJ
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Person, Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance, Admissibility of statements to police/police questioning (ss 215-222): Explanation of Rights; Rights

BROOKERS Summary:

Children and young persons - Evidence - Admissibility - Appeal - Appellant allegedly part of group which attacked and robbed pizza delivery man, fatally wounding him - Appellant was 12 years old at time of attack - Father of appellant suggested that appellant may have alibi - Father was potential witness - Suitable people to be nominated person during interview - Independent person brought in to be nominated person - Appellant gave evidence at police station and at scene of attack - Whether the statements by the appellant, in which he

implicated himself in the alleged offending, were made in circumstances in which there was reasonable compliance with the protective regime of the Children, Young Persons, and Their Families Act 1989 - Whether failure by police to afford the appellant his right to have a nominated person of his choice was a breach of his rights - Children, Young Persons, and Their Families Act 1989, ss 2, 208, 215, 221, 222, 224; Children, Young Persons, and Their Families Amendment Act 1994, s 32.

Appeal

This was appeal against the decision of the High Court granting an application by the Crown for an order that the statements made by the appellant to the police were admissible.

The appellant was one of six accused of the murder of Michael Choy, a driver who delivered pizzas and other takeaway food, on 12 September 2001. The Crown alleged that the appellant was part of a group who lured Mr Choy at night to a chosen location by a telephone order for home delivery, planning that one would assault the driver with a weapon and others would rob him of the food and cash. The appellant was alleged to have engaged Mr Choy in conversation while another member of the group approached him from behind and struck him on the side of the head with a baseball bat to incapacitate him. The remaining members grabbed the food and drink and a money belt. Mr Choy died in hospital the following day. The appellant was 12 years and 4 months old at the time of the attack.

On 15 September 2001, Constable Marshall and another officer were looking for the appellant and located him skateboarding in a residential street. Constable Marshall advised him that they needed to talk to him and his father so the appellant took them to his father's house. At the house, the two officers explained to the appellant and his father that they were investigating the death of Mr Choy and believed that the appellant was present at the attack. The father suggested that the appellant had an alibi as he was home all night. The officers explained that they wanted to speak with the appellant and as he was only 12 years old someone had to be with him. The appellant and his father agreed to come to the police station. While driving them to the station, Constable Marshall told the appellant, in the presence of his father, that he did not have to make a statement, that he could stop making a statement at any time, that what he said could be used as evidence in a Court case, and that he was entitled to consult and instruct a lawyer and any nominated person in private. Upon inquiry the appellant and his father said they understood those rights.

In the interview room at the station, Constable Marshall explained the content of a police form which outlined the rights of children when questioned by the police, and another form designed for the person nominated to support the child during the interview. This was signed by both Constable Marshall and the father. Constable Marshall discussed the suggested alibi with the father and then with Detective Sergeant Procter who advised the father that due to his potential role as a witness he should not continue as the person nominated to be present during the interview with the appellant. While discussing possible suitable replacements, the father said that he did not know where the appellant's mother was and that he had an adult daughter who lived with him. The Detective Sergeant decided, and the father agreed, that it would be better to find an independent. Ms Atherton, who had received the necessary training, was brought in. The father said he was happy to have Ms Atherton to do the job and the appellant agreed to have her sit in on his interview. Ms Atherton explained the full rights referred to in the form designed for the nominated person, and explained that the police

would make a telephone and list of lawyers available and that the appellant could speak to a lawyer in private without cost. The appellant said that he did not need a lawyer.

In the presence of Ms Atherton, Constable Marshall asked the appellant a series of questions. The appellant admitted being with the group responsible for the attack on Mr Choy at various times of the night in question but denied being with the group when the attack took place. He agreed to continuance of the interview on video. At the commencement of the video interview, Constable Marshall repeated the rights explained in the police car. The appellant said that he understood those rights and that he was content to continue. Towards the end of the interview, the appellant admitted that he had been with the group when the attack occurred. He said that he and one other member of the group were the ones who met Mr Choy as the customers, allowing others hiding nearby to attack him.

Later that afternoon, the appellant agreed to take part in a videotaped reconstruction at the scene. Constable Marshall explained that he did not have to do it and that all the rights that he explained earlier still applied. The appellant agreed to continue. This was repeated again later that day and on the way to the scene. The appellant indicated that he was happy to continue, that he did not wish to speak to a lawyer, and did not wish to speak with Ms Atherton in private before the reconstruction started. That evening, the appellant was arrested for murder and related charges, which were read to him along with a formal caution. Nothing was said of the evidentiary consequence.

The High Court Judge found that there were breaches by the police of their duty to explain to the appellant his rights under the Children, Young Persons, and Their Families Act 1989 ("the Act") before he was questioned. The breaches identified were failures to advise, or fully advise, the rights given the appellant by s 215(1)(b) and (f). However, the overall finding was that the appellant understood the substance of those rights.

The Judge also found that the police failed to apply correctly the statutory process for the appellant to nominate a person who would support him and take reasonable steps to ensure he understood his rights. The police had not invited the appellant to nominate the replacement and had also failed to follow up the possibility that the appellant's mother or adult sister might be available. The Judge recognised that the primary expectation under s 222 is that the nominated person will be a parent, guardian, or member of the family and if the appellant had been consulted he might have been able to provide his mother's address. The Judge found that the failures in relation to the nominated person process were in breach of the appellant's rights under s 222(1), (3), and (4)(a) and s 215(1)(b). While the case was near the borderline, the Judge was of the view that there had been reasonable compliance with the Act and he ordered that the statements made by the appellant be admitted.

The appellant appealed this decision arguing that the breaches of rights identified by the High Court Judge, including the failure to afford the appellant his right to have a person of his choice following withdrawal of his father, were fundamental, describing the nominated person right as the 'cornerstone of protection' and failure to give it effect was fatal to the argument of reasonable compliance. The Crown argued that the Judge was right to find those breaches were not significant, that they had no impact on the course of events, and that the failure to go back to the appellant to get a nomination of someone in place of his father was merely a technical breach of s 222 and not fatal to the admissibility of the appellant's subsequent statements, because s 224 provided that reasonable compliance with the statutory requirements would suffice.

Held

allowing the appeal:

1. The statutory prohibition on admission in evidence in any proceedings, of statements which do not meet the conditions set out in s 221(2) Children, Young Persons, and Their Families Act 1989 ("the Act"), is expressed by its opening words, that to be subject to the overriding stipulation that reasonable compliance under s 224 is sufficient. The language of s 224 is expressed very broadly so that reasonable compliance can cover situations in which s 221 has been neither strictly complied with, nor complied with at all. In deciding whether there has been reasonable compliance with s 221 requirements, the nature and extent of any failures by the police must be closely considered by the Court. The language of s 224 is not apt to categorise as reasonable compliance with the protective scheme situations where there has been no attempt to comply with steps intended by Parliament to be central in its operation. This approach reflects the scheme and language of the crucial provisions in Part IV of the Act. (p 329, paras 31, 32)
2. It is a fundamental feature of the statutory scheme that a child or young person in the position of the appellant will have the opportunity to be supported by a parent, adult family member, or other chosen person. This right is lost only if the child refuses, or fails to nominate, such a person, thus waiving the right or, in the circumstances of inability of the police to locate, or unavailability of the nominated person, which s 222(2) sets out. Only where there is refusal or failure to nominate by the child or young person does the statute envisage the required support will be provided by a person nominated by the police under the default option provision. The Judge did not accept that the father's agreement and the appellant's own subsequent acquiescence to the appointment of Ms Atherton amounted to compliance with the requirements of the Act. In failing to allow the appellant to choose which family member or adult he wished to support him the police dispensed with a procedure that was central to the statutory scheme and this put the police outside of the scope of the broad coverage of reasonable compliance with s 221(2)(c), under s 224. (p 330, para 36; p 331, paras 37, 38)
3. The fundamental requirements of the statutory scheme in relation to explanations of the appellant's rights were satisfied. The police advised the appellant that he had the right to consult a lawyer, he understood that advice and also had a basic knowledge of how a lawyer could help him. While in some respects there were failures by the police to comply strictly with s 221, other than in relation to the nominated person requirements, no major departures from the statutory scheme were involved. (p 330, para 35).

R v Rawiri, Rawiri, PK & AP & RR & DH & JK & BK (3 July 2002) HC, Auckland, T 014047, Fisher J

Filed under:

Name: R v Rawiri, Rawiri, PK & AP & RR & DH & JK & BK
Unreported
File number: T 014047
Date: 3 July 2002
Court: High Court
Location: Auckland
Judge: Fisher J
CYPFA: s329, s438

Charge: Murder, Aggravated Robbery, Attempted Aggravated Robbery, Theft
Key Title: Media reporting

Summary: Choy Trial Ruling No (4); application for name suppression. Six out of the eight defendants were young people ("YP"). Matters committed to High Court after preliminary hearing in Youth Court and thus s329 and s438 CYPFA no longer applied (*I v Police* (1991) 7 FRNZ 674; *R v Fenton & Ors (No 1)* (1/2/00, HC, Auckland, T992412, Chambers J). Whether YPs have made out a case for name suppression under s140(1) Criminal Justice Act 1985 ("CJA"). Discretion under s140 CJA requires balance of competing interests; authorities in favour of openness of justice; no special considerations other than the youth of the accused. International instruments: International Covenant on Civil and Political Rights, Art 14 para 4; United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") and UNCROC Art 40 discussed; application of international instruments possible as there is judicial discretion and no inconsistent statutory provisions; UNCROC consistent with CYPFA. *V v The United Kingdom (Application under 24888/94)* 16 December 1999, European Court of Human Rights (trial of 10 year old who battered a two year old to death) discussed; there it was held trial unfair as stress placed on child - despite name suppression in place until conviction - in breach of European Convention on Human Rights, Article 6, para 1. Govt in that case unsuccessfully argued that public trial necessary for the open administration of justice and freedom of information.

UNCROC Art 40: children should have privacy respected as a "guarantee"; more moderate position that discretion to be exercised in every case in light of circumstances but when dealing with a young accused the Court should be much more ready to suppress the name than in adult cases; children more vulnerable to stress during proceedings; greater prospect of rehabilitation with children. As to suppression of YP's name under CJA s140 there is no irrebuttable presumption either way; Court must consider the same factors as it does with adults except that youth is a "powerful additional reason for name suppression"; more likely to suppress name if defendant is particularly young, likely to be placed under stress and where charge is more serious. Here, as to "B" (the youngest YP and 12 at time of offence) Court unwilling to risk publishing B's name which, in combination with other pressures on him, could interfere with the conduct of his defence at trial; as to "H" (solely charged with attempted aggravated robbery), matter may have been disposed of in Youth Court with automatic name suppression.

Decision: Name suppression for B and H; interim name suppression for other YPs until 4/7/02 when it will terminate unless evidence is found to show that publication would significantly affect the conduct of the defence.

Police v W (18 July 2002) YC, Auckland, CRN 2288014133, Thorburn DCJ

Filed under:

Name: Police v W
Unreported
File number: CRN 2288014133
Date: 18 July 2002
Court: Youth Court

Location: Auckland
Judge: Thorburn DCJ
CYPFA: s235, s238, s239
Charge: Aggravated Robbery; Wounding with Intent to cause Grievous Bodily Harm; Unlawful Detainment
Key Title: Custody - Police; Custody - Chief Executive

Summary: AR charged with aggravated robbery, wounding with intent to cause grievous bodily harm and unlawful detainment; remanded in Police custody for 10 days; s235, s236 CYPFA; M detained pursuant to decision by social worker and senior Police officer (s236(1)); s239(2) applies to s238(1)(e) detainment; here relevant portion is s239(2)(b) "suitable facilities for detainment and safe custody of child or young person not available to Chief Executive"); Court has been advised daily that no suitable facilities exist. No issue raised about the appropriateness of a custody order. Held: if Court orders s238(1)(d) detention, Chief Executive must comply; detainment contravenes the spirit of the legislation and obligations of Chief Executive. Detainment in Police custody should be no more than 24 hours; s236 shows it is a serious step warranting a report to the highest level of executive scrutiny to keep a young person beyond 24 hours in Police custody. Here, even if reasonable grounds for being satisfied that the young person needed to be detained in Police custody and grounds to continue under s238(1)(e), under s239(2) 10 days is too long. Cannot let assumption that detention in Police custody can continue until a placement is available "creep" into administration of the Act.

Decision: Appropriate custodial remand is and was under s238(1)(d), M to be detained in custody of Chief Executive.

R v K CA 216/02, 17 July 2002

Filed under:

R v K

Court of Appeal
File Number: CA 216/02
Date: 17 July 2002
Judge: McGrath, Robertson, Gendall JJ
Charge: Murder
Key Title: Admissibility of statement to police/police questioning (ss 215-222): Reasonable compliance, Admissibility of statement to police/police questioning (ss 215-222): Explanation of rights

Appellant 12 years 4 months at time of trial; at issue was whether statements made by the appellant, in which he implicated himself in the alleged offending, were made in circumstances in which there was reasonable compliance with the protective regime of Part IV of the CYPFA; evidence was excluded on grounds that the Police breached their duties to the accused prior to the interview, including failing to advise the accused that he did not have to accompany Police to the station for an interview, that he could withdraw his consent to being interviewed at any time, that he could have a lawyer sit in on the interview, or could

nominate a substitute for his father as a support person for the interview; Police had therefore failed to "reasonably" comply with the statutory scheme in Part IV of CYPFA.

Decision:

Evidence excluded.

R v PK and Others HC Auckland T014047, 3 July 2002

Filed under:

R v PK and Others

File number: T014047
Date: 3 July 2002
Court: High Court, Auckland
Judge: Fisher J
Key Title: Appeal to the High Court/Court of Appeal: Jurisdiction, Youth Court Procedure.

Summary

Choy Trial Ruling No (3) relating to s 345 of the Crimes Act 1961. Six of eight accused were Young Persons. Three of nine counts challenged on basis that they did not represent charges first laid in the Youth Court. Whether the inclusion of counts in the indictment that do not precisely reflect the Informations laid at the outset in the Youth Court permissible having regard to CYPFA, s 272(3). YPs argued that they could not be charged with the new offences other than by laying an Information in the Youth Court (*R v L, L and S* HC Auckland T1297, 5 June 1997 per Paterson J) and that new counts disallowed by Crimes Act 1961, s 345(1).

Held

For the Young Persons that ss 335 and 345 of the Crimes Act 1961 can only operate to the extent that it would be consistent with the language and purpose of s272(3) CYPFA. The phrase "charged with an offence" lends itself to a variety of interpretations. These include an interpretation that would permit the introduction of fresh counts that had no direct counterpart in the original Informations so long as the fresh counts arose from the same broad transaction and allege broadly the same culpable conduct on the accused's part, as that which had been alleged in Informations filed in the Youth Court. This would not conflict with the legislative intention implicit in the CYPFA as the Youth Court exercises its discretion as to whether to offer Youth Court jurisdiction in the knowledge that the indictment may be changed in accordance with evidence given in the course of the trial.

Decision

Two counts stand; one count struck out.

Police v R (5 July 2002) YC, Gisborne, CRN 2216005490, Thorburn DCJ

Filed under:

Name: Police v R
Unreported
File Number: CRN 2216005490
Date: 5 July 2002
Court: Youth Court
Location: Gisborne
Judge: Thorburn DCJ
Charge:
CYPFA: s333
Key Title Reports - Psychological

Summary Discusses rehabilitation for sexual offender using SAFE programme; Court requires a specialist report to assess the suitability of the programme for juvenile offenders

Decision: Specialist report ordered.

Police v S (15 July 2002) YC, Lower Hutt, Mill DCJ

Filed under:

Name: Police v S
Reported:
File number:
Date: 15 July 2002
Court: Youth Court
Location: Lower Hutt
Judge: Mill DCJ
CYPFA: s276, s284
Charge: Wounding with Intent to cause Grievous Bodily Harm
Key Title: Jurisdiction of Youth Court - s276 offer/election; Reports - psychological

Summary: S (15) charged with wounding with intent to cause grievous bodily harm; callous and serious premeditated assault; S punched, kicked and stabbed a stranger; indication of desire to plead guilty; whether Youth Court jurisdiction should be offered. Psychologist's report: Oppositional Defiant Disorder; anger; little empathy for victims; psychological issues need to be addressed. FGC held; family recommended Youth Court jurisdiction and supervision with activity; Police recommended s283(o) CYPFA transfer. Whether orders under s283 are adequate and appropriate to deal with the young person; full discussion of principles relevant to the application of s276; consideration of s284 factors; *P v T* (1991) 8 FRNZ 642 McElrea J discussed where criteria from US Supreme Court decision in *Kent v US* 383 US (1966) set out. Relevant factors here included: serious offence; suffered from several psychological disorders, no previous record; significant family and community support; s283(o) transfer still open if Youth Court jurisdiction offered; evenly balanced case.

Decision: Youth Court jurisdiction offered as opportunity for detailed plans from FGC necessary.

Police v SF (11 July 2002) YC, Manukau, CRN 2292030608, Thorburn DCJ

Filed under:

Name: Police v SF
Unreported
File number: CRN 2292030608
Date: 11 July 2002
Court: Youth Court
Location: Manukau
Judge: Thorburn DCJ
CYPFA: s5(f); s322
Charge: Sexual violation
Key Title: Delay; Victims

Summary: SF (15) charged with sexual violation of a 6 year old; effectively a 6 month delay after matter handed to Police; Police argued other agencies had ensured victim was safe so not as urgent as other cases. Held: There is an unfettered discretion under s322 but this should be exercised with reality and common sense. Even if unnecessary or undue protraction exists, the discretion is still there because the wording is " ... a Youth Court Judge *may* ... dismiss ..." Section 5(f) not sole or primary determinant in respect of the application of s322 discretion; it is a particular directive that must be given the importance it deserves having regard to the statutory scheme. Here, delay avoidable and no adequate explanation given but serious victim issues. Where there are indictably laid charges, victims are entitled to be considered as important players and a Judge must not dismiss the charges without looking at the overall picture (*Police v W,* Pukekohe Youth Court, 19 August 2000, CRN 0257004700-2, Judge Boshier).

Decision: Delay not unnecessarily or unduly protracted.

Police v W (9 July 2002) YC, Manukau, CRN 228801352-7, Thorburn DCJ

Filed under:

Name: Police v W
Unreported
File number: CRN 228801352-7
Date: 9 July 2002
Court: Youth Court
Location: Manukau
Judge: Thorburn DCJ
CYPFA:
Charge: Aggravated Burglary; Detaining; Unlawfully taking a motor vehicle; Aggravated Robbery
Key Title: Custody - Police; Bail

Summary: Application for Bail. Two young people burst into house; held down, threatened, assaulted, bound and gagged and robbed occupant. Seriousness of the offending would infer any issues of bail are likely to be very frail; however, the person is a juvenile and therefore has the statutory benefits of the Bail Act 2000 and Criminal Justice Act 1985; co-offender given bail without opposition by Police who opposed bail for W. Bail declined due to seriousness of offending. Held in police custody under s238(1)(e) CYPFA as no space in remand centre; s239 discussed; s239(2)(a) "or be violent" of concern; s239(2)(b) not to be used as a convenience to cover inadequate facilities when statute clear on Chief Executive's duty to provide facilities for young people pending hearing. Direction to Chief Executive that something must be done about the safe custody of young people as envisaged by the Act. Section 239(2) a "distant alternative" to the primary obligation of Chief Executive.

Decision: Bail declined. Remand under s238(1)(d).

Police v C (11 July 2002) YC, Manukau, CRN 2092037077, 2057007015, Thorburn DCJ

Filed under:

Name: Police v C
Unreported
File number: CRN 2092037077, 2057007015
Date: 11 July 2002
Court: Youth Court
Location: Manukau
Judge: Thorburn DCJ
CYPFA:
Charge:
Key Title: Adult co-offenders; Bail

Summary: Application for bail. C (an adult) jointly charged with a young person; matters currently being dealt with in Youth Court. Police oppose bail; bail not granted as high risk of offending whilst on bail and high risk of not appearing before the Court; strength of evidence against C and long history of offending.

Decision: Application for bail declined.

Police v R & T (11 July 2002) YC, Manukau, CRN 2092037076 & ors, Thorburn DCJ

Filed under:

Name: Police v R & T
Unreported
File number: CRN2092037076; 2092034779; 1092027876-77; 2092037073-74
Date: 11 July 2002
Court: Youth Court
Location: Manukau

Judge: Thorburn DCJ
CYPFA:
Charge: Theft, Burglary
Key Title: Bail

Summary: Application for bail. R (29) and T (19) sought bail to attend tangi; R & T faced charges jointly laid with a juvenile of theft and burglary; Re T: Bail Act presumption in favour of bail for 19 year old rebutted by history of offending; history of offending while on bail in past; failure to appear in respect of active charges; Bail Act, s8; just cause for continued detention based on the likelihood of non-compliance with conditions of bail; the likelihood and risk of re-offending and the likelihood that outcomes in respect to this matter, if convicted, will lead to a sentence of imprisonment. Re R: risk of offending while on bail and risk of non-appearance.

Decision: Bail declined for R and T.

Police v T YC Papakura CRN 2292036320, 26 July 2002

Filed under:

Police v T

File Number: CRN 2292036320, CRN 2287007199-200, CRN 2287007202-03
Date: 26 July 2002
Court: Youth Court, Papakura
Judge: Thorburn DCJ
Key Title: Medical treatment; Reports - Psychological

T (14) long history of aberrant behaviour possibly due to brain damage as a child; currently under fresh charges due to "an outburst at Kingslea"; Police appreciate possible significance of physical disabilities as an explanation for defendant's behaviour; defendant is extremely young and shows signs of being institutionalised; young person and public need protection; now that possible medical reasons for T's behaviour have come to light, better remedy for T's behavioural outbursts may be identified.

Decision:

FGC directed

Police v D [2002] DCR 897 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v D
Reported: [2002] DCR 897
File number: CRN2204003529-36
Date: 23 August 2002

Court: Youth Court
Location: Auckland
Judge: Thorburn DCJ
Charge: Aggravated Robbery
CYPFA: s4; s5; s208; s276; s284
Key Title: Objects; Principles; Jurisdiction of the Youth Court - s276 offer/election

LEXISNEXIS Summary:

Children and young persons - Young offender - Jurisdiction - Discretion to offer Youth Court jurisdiction after indication of desire to plead - Whether or not offender should be offered Youth Court jurisdiction - Factors to be considered - Evidence supporting trial for an indictable offence - Crimes Act 1961, ss 235(1)(b), (c) - Children, Young Persons, and Their Families Act 1989, ss 4, 5(b), (c), 14(1)(e), 101, 208, 272, 274, 276(1), 284(1)(d), (g) - Summary Proceedings Act 1957, ss 153A, 168.

Between 14 and 20 May 2002 it was alleged that on eight separate occasions Aholotu Inoke Daniel, (D) aged 14 years, committed aggravated robbery. The offending involved accosting people in vehicles, on bicycles, and at bus stops or targeting and following pedestrians or persuading vehicles to pull over. In all cases violence was either threatened or used, sometimes with a weapon brandished or used also. Property losses totalled $6000 and D admitted all charges at the conference.

Being purely indictable the charges proceeded to depositions in the Youth Court in August and the evidence was sufficient to put him on trial. As Daniel indicated a desire to plead before a committal on the evidence was made; the Court recorded the indication and referred the matter to a family group conference in August 2002 for consideration of whether or not, in light of that indication, Youth Court jurisdiction should be offered. At that conference it was decided that the Court, following submissions from all entitled parties, should decide the issue of jurisdiction.

D had consistently been involved in offending since the age of nine committing thefts and burglaries regularly, behaving threateningly, presenting a firearm, cruelty to animals, dangerous driving and more. His offending had continually become more serious over time. He had significantly behind his peers and his intellectual ability is in the deficient range perhaps placing him in a mental disability category. His behavioural problems at school were well documented and his family situation did not instil any confidence in possible future improvement.

Held (declining jurisdiction)

(1) Sections 4 and 5 of the Children, Young Persons, and Their Families Act 1989 clearly established primary emphasis upon the belief that a young person's best interests and most healthy development will be found in the environment of a safe and functioning family. In respect of young offenders the Act emphasised supporting and strengthening a young person's family environment by addressing society's need to impose sanctions which took the form most likely to maintain the child within his or her family and took the least restrictive form appropriate in the circumstances.

(2) A balancing exercise was required in order to pay heed to the philosophy of the Act which can be described as emphasising the preservation of appropriate and safe development of a young person in a wholesome well-adjusted family environment, in preference to a purely punitive and punishing alternative.

P v M [1990] DCR 544 and *P v S* (1993) 11 FRNZ 322, discussed.

(3) Clearly for this young person the offending was of such serious nature as to outrage right thinking people in the community; requiring the law to give the strongest denunciatory message. However, in view of the offender's age the Court must be mindful and deeply reflect upon principles of rehabilitation before falling into a purely retributive or denunciatory approach.

(4) In order to make a decision under s 279 of the Act the Judge should treat the matter almost as though it was a sentencing exercise and apply the factors listed in s 284.

P v Tai (1991) 8 FRNZ 613, applied.

(5) In this case there were major concerns that the young person had already demonstrated an entrenched trait of disobedience that had burgeoned into serious criminal offending and where his family structure was ineffective against those traits. There were major public interest community protection issues with regard to this young person. In this case, bearing in mind the balancing exercise which must be undertaken, the weight in the sense of public protection was heavily countermanding the emphasis upon non-punitive outcomes.

(6) As the Act stands the longest intervention that can be imposed would be supervision with residence which would take up to no longer than nine months. This young person's need for behaviour modification were extreme and would barely be touched in such a period. The youth will therefore not be offered Youth Court jurisdiction in respect to the purely indictable charges which he had indicated a desire to plead guilty to.

P v TLA [2000] DCR 240, discussed.

Cases referred to in judgment

P v M [1990] DCR 544
P v S (1993) 11 FRNZ 322
P v Richard & R v S (Youth Court, Upper Hutt, 12 June 1990, Judge Lee)
P v S & M (1993) 11 FRNZ 322
P v Tai (1991) 8 FRNZ 613
P v TLA [2000] DCR 240

Proceeding

This was a proceeding whereby the Court had to exercise its discretion under s 276 to offer Youth Court jurisdiction after indication of desire to plead.

Police v BPF YC Marton CRN 2283005720, August 2002

Filed under:

Police v BPF

File number: CRN 2283005720
Date: August 2002
Court: Youth Court, Marton
Judge: Walsh DCJ
Key Title: Jurisdiction: s 276 offer/election

Summary: BFP (14) charged with aggravated robbery; BFP and two co-offenders planned to burgle a property; entered house at night; co-offender punched victim repeatedly; stole DVD and video recorder; victim received abusive phone call from BFP at 1.15am that night. BFP indicated a desire to plead guilty pursuant to s276 CYPFA; whether Youth Court jurisdiction should be offered. Section 283(o) CYPFA not available due to BFP's age; s4, s5, s208 CYPFA considered - of particular relevance was BFP's prior offending, his failure to take advantage of rehabilitation in past; weak relations with family; need for accountability; need to protect public; victim traumatised; s284 CYPFA factors considered - premeditation but BFP did not assault victim; serious offence, little remorse. Section 276 discretion places more weight on the issue of disposition and sentencing than s 275. Public interest and safety factors are particularly strong in this case supporting a transfer to the District Court; imprisonment a possibility. However, dysfunctional family and drug abuse are significant factors in the offending which are more constructively addressed by rehabilitation options under the CYPFA.

Decision:

Youth Court jurisdiction offered.

S v R CA284/02 CA234/0231, October 2002

Filed under:

S v R

Court of Appeal
File number: CA 284/02 CA234/02
Date: 31 October 2002
Judge: McGrath, Baragwanath, Salmon JJ
Key title: Jurisdiction - Charge type, Sentencing in the adult courts: Sexual violation by rape, Sentencing in the adult courts: Sexual violation by unlawful sexual connection

Case Summary:

Appeal against conviction (on the basis of jurisdiction), and sentence.

S (14 years old at the time of the offence) had spent the day with a girlfriend aged 12. The girl had consumed some wine, and the pair later had sex. A complaint of rape was laid by the girl's mother, which was denied by S. S was charged with rape. In the Youth Court, S elected trial by jury. A preliminary hearing was held in the Youth Court, at which he was committed for trial.

Crown later decided to drop the indictment for rape, as it became obvious that the sex was consensual. S pleaded guilty to a lesser charge of unlawful sexual intercourse with a girl aged between 12 and 16, and was ordered to come up for sentence if called on for 6 months.

Argument as to whether s 272(3) of the CYPFA or s 345(1) of Crimes Act 1961 has precedence and whether the lesser charge should be heard in the Youth Court, or whether it can stay in the High Court for trial. CA compared judgments of Paterson J in *R v L,L and S* HC Auckland T12/97 5 June 1997 and Fisher J in *R v PK and Others* HC Auckland T014047, 3 July 2002. The Court preferred Fisher J's reasoning which highlighted frequent modification to charges during the criminal process, and with appropriate procedural protections for the accused, these changes result in no injustice being done to the accused. Fisher J rejected the proposition that all new charges should be returned to the Youth Court but the CA, in turn, rejected his assertion that the Youth Court commits young people to trial in the High Court in the knowledge that the charges that were originally laid in the YC might be reduced in the higher court.

CA concluded that, in dealing with the passage of an indictment through the Youth Court to the High Court, these Courts are carrying out two separate phases of a single process. Once the matter leaves the Youth Court, the processes change and the provisions of the Crimes Act apply. There is no inconsistency.

On the matter of sentence, the CA commented on the consensual nature of the sex, and cited *R v Taylor & Ors* [1997] 3 All ER 527 in the English Court of Appeal. The Court also recognised that S would not have been subject to a conviction on his record if the lesser charge, to which he pleaded guilty, had been originally laid in the Youth Court.

Decision:

Jurisdiction of the High Court for lesser later charge confirmed. Original sentence quashed, discharge without conviction substituted.

R v T-J (2002) 20 CRNZ 1051 (DC)

Filed under:

R v T-J (2002) 20 CRNZ 1051

File number: TO13622
Date: 1 October 2002
Court: District Court, Manukau
Judge: Judge Harvey
Key Title: Sentencing in the adult courts - application of Youth Justice Principles, Sentencing in the adult courts: Aggravated robbery, Objects/Principles of the CYPFA (ss 4 and 5), Principles of Youth Justice (s 208)

Summary:

This judgment confirms the applicability of Youth Justice principles under the CYPFA to sentencing in the District, and other, Courts, in relation to matters that originated in the Youth Court. In this judgment, Judge Harvey reviews the authorities, discusses the inter-relationship between the principles of the CYPFA and of the Sentencing Act 2002 (SA), then suggests an approach to sentencing youth offenders in the adult Courts.

M T-J, a young person, was charged with aggravated robbery in relation to his participation in the theft of cigarettes from a dairy. During the theft, M T-J smashed a beer bottle on the head of the dairy owner. M T-J was 16 at the time of the offending. The charge was laid in the Youth Court. M T-J denied the charges and no offer of Youth Court jurisdiction was made under s 275 CYPFA. The matter went to trial and a jury convicted M T-J. Judge Harvey was then called upon to determine the appropriate sentence in the District Court.

Judge Harvey began by canvassing the relevant case law, including *R v Cuckow* CA 312/91, 17 December 1991 and *W v The Registrar of the Youth Court at Tokoroa* [1999] NZFLR 1000 (CA). In both of those cases, the Court of Appeal confirmed the continuing applicability of Youth Justice principles to sentencing in adult Court in relation to matters that originated in the Youth Court.

Judge Harvey went on to examine in detail the relevant provisions of the CYPFA (in particular ss 5, 208 and 284) and the Sentencing Act ("SA") (in particular ss 7 and 8). He noted the 'parallels' between these respective sections, including:

- That age is a mitigating factor.
- The need to balance community protection and offender rehabilitation/reintegration.
- The need to take account of the interests of victims.
- The emphasis on restorative justice (including offers of amends, rehabilitation, reintegration) and the removal of emphasis on punitive/retributive sentencing.
- The emphasis on the offender's acceptance of responsibility for his/her actions.
- The use of prison as a last resort.

Judge Harvey noted that Youth Court remedies may sometimes be inadequate to address the serious nature of some offending by young people; or it may be that a Youth Court sentence will not last long enough to have the positive effect intended (para [22]). As an example, he mentioned supervision during the completion of a rehabilitative course noting the need, in some cases, for a longer period of legal supervision than was available in the Youth Court. (See *Police v FT* DC Auckland CRN 03204004344, 13 May 2004 per Judge Becroft).

Judge Harvey gave the following reasons for holding - in line with the Court of Appeal dicta - that Youth Justice principles *do* apply to sentencing of young offenders in the adult Courts (para [25]):

- Common themes in the relevant provisions of the CYPFA and SA.
- Common principles in the relevant provisions of the CYPFA and SA.
- Recognition that young people occupy a particular position in relation to the law and that this justifies special consideration when imposing a sentence.
- The SA does not exclude the application of the principles of the CYPFA in sentencing of young persons. If it had been intended that the SA would have the effect of overriding such

principles, it would have been expected that the legislators would have made this clear in the SA.

In sentencing there should be a consideration of youth justice and sentencing principles; need for consistency of approach but also recognition that offenders should not be stereotyped; the law has made special provision in terms of age of responsibility. Once sentence decided upon having taken principles into account, the duration of the sentence must be measured against the requirements of the Sentencing Act, in particular the age of the offender. The youth of an offender for those who fall under the CYPFA demands an application of youth justice and sentencing principles in the determination of the type of sentence and also a consideration of the duration of the sentence.

In the case before him, Judge Harvey started with a benchmark of 4 - 5 years imprisonment (based on the type of offending). Mitigating factors included M T-J's age, no previous serious offences, remorse and maturation over the 2-year interval between offending and sentence. Aggravating factors included the violence involved in the offending and the prevalence of the type of offending in question in the locale in which it occurred.

Decision:

Taking these factors into account, and adopting the approach to the relevant, applicable principles he had already outlined, Judge Harvey imposed a sentence of imprisonment of 2 years on M T-J.

W v Hohaia & Anor (3 October 2002) HC, Auckland, M 793-02, Randerson J

Filed under:

Case summary provided by Linx

Name: W v Hohaia & Anor
Unreported:
File number: M 793-02
Date: 3 October 2002
Court: High Court
Location: Auckland
Judge: Randerson J
Charge: Aggravated Robbery
CYPFA: s262; s264
Key title: Family Group Conference - Non agreement; Family Group Conference - Report from

Linx Summary:

YOUTH JUSTICE - family group conferences - Children, Young Persons and Their Families Act 1989 (the Act) s262, s264 - plaintiff, a young person of 16 years old, had admitted a charge of aggravated robbery - case had not been finally dealt with in the Youth Court because case had been deferred until the outcome of these proceedings - plaintiff sought

declaratory relief on a narrow point relating to family group conferences convened under the youth justice provisions of the Children, Young Persons and Their Families Act 1989 - contention by plaintiff that the Youth Justice Co-ordinator (YJC) was obliged by s262 of the Act to report the respective positions of the parties to the Court, even though no agreement was reached as to how the young person should be dealt with - HELD: there was no obligation on the YJC in this case to prepare a written record pursuant to s262 of the Act, there being no agreement by those present at the family group conference on a recommendation to be made to the Youth Court about how the plaintiff should be dealt with.

Police v J YC Napier, 11 October 2002

Filed under:

Police v J

File number: unknown
Date: 11 October 2002
Court: Youth Court, Napier
Judge: Judge Perkins
Key Title: Evidence, Jurisdiction of the Youth Court: s 275 offer/election

Summary:

J (15) charged indictably with sexual violation by rape of his half-sister, then 7 years old; charge denied; Youth Court jurisdiction offered and accepted pursuant to s 275 CYPFA. No forensic evidence given; evidence not gathered till 2 months after alleged incident; dysfunctional family; long transcript of evidence from video interview with complainant in judgment. Judge agonised over the fact that a young child had clearly been molested but held that the charge of sexual violation by rape against J could not be sustained; the Court was not prepared to find an attempt or a lesser charge.

Decision:

J found not guilty and discharged.

Police v R YC Gisborne CRN 2216010300, 4 November 2002

Filed under:

Police v R

File number: CRN 2216010300 (Indictably)
Date: 4 November 2002
Court: Youth Court, Gisborne
Judge: Thorburn DCJ
Key Title: Jurisdiction of the Youth Court: s275 offer/election

R charged with sexual violation and possessing a rifle whilst committing the crime of sexual violation. Serious offending; Youth Advocate and Crown in favour of Youth Court jurisdiction; Youth Court jurisdiction offered. No history of offending; if offer not made victim would have to give evidence and testify at two separate hearings as sexual violation charge would go to a jury trial separate to the Arms Act charge. Section 283(o) order still a possibility.

Decision:

Youth Court jurisdiction offered.

Police v W (13 December 2002) YC, North Shore, Ryan DCJ

Filed under:

Name: Police v W
Unreported
File Number:
Date: 13 December 2002
Court: Youth Court
Location: North Shore
Judge: Ryan DCJ
Charge: Injuring with Intent to Cause Bodily Harm
CYPFA: 249(5); s322
Key Title: Family Group Conference - Timeframes/limits; Delay

Summary: Application to dismiss Information on grounds that statutory timeframe under CYPFA to hold a family group conference was breached, and that the time delay between commission of the offence and the hearing has been unnecessarily or unduly protracted; Judge finds that the time limit provided for in s249 CYPFA is imperative rather than directory; defendant (16) was 15 at time of offence and is stressed and concerned about likelihood of serving a sentence of imprisonment; vital to dispose of the matter; as provisions of s249(5) are imperative and the FGC was convened out of the time limit the FGC cannot make recommendations and cannot lawfully consider ways in which defendant might be dealt with in relation to the charge.

Decision: The information must be dismissed for want of jurisdiction to make orders pursuant to s283.

Police v WR YC Rotorua CRN 1204003769, 4 December 2002

Filed under:

Police v WR

File number: CRN 1204003769
Date: 4 December 2002
Court: Youth Court, Rotorua
Judge: Judge Grace
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated person, Custody (s 238): Police (s 238(1)(e)), Care and protection cross over (s 280): Misuse of s 48

Summary:

Admissibility of two statements challenged.

WR (14 at time of alleged offence) charged with wilfully setting fire to a building; $80,000 damage to Scout Hall with historic value; charge denied. WR had been found intoxicated at night; Police returned WR to relative's house; half hour later WR found again near area where fire ablaze; taken into "protective custody" pursuant to s 48 of the CYPFA; WR made the first of two admissions at night while intoxicated; no caution or warning was given; no opportunity for a lawyer; WR not advised that he could leave Police station. "Holding young people in cells overnight for detoxification does not meet the requirements of the legislation";

WR's detention unlawful as provisions of section 48 not complied with; WR should have been released to relatives if he consented to that course or to a social worker; this was not done and therefore the first statement is not admissible. Some question whether aunt as nominated person given nominated person information. As to second statement made the following morning when WR interviewed by Police: WR detained for 11 hours at age 14; breach of CYPFA; not arrested yet in Police detention; not charged yet detained without caution. Even if s 224 as to reasonable compliance applies, the issue exists as to WR being in detention for 11 hours.

Decision:

First statement inadmissible. Even if second statement legally admissible this is a case where a Court should exercise its discretion and not admit the statement. Charge dismissed.

Police v McL (6 December 2002) YC, Porirua, CRN 2291017894, Callinicos DCJ

Filed under:

Name: Police v McL
Unreported
File number: CRN 2291017894
Date: 6 December 2002
Court: Youth Court
Location: Porirua
Judge: Callinicos DCJ
CYPFA: s5(f); s322
Charge: Breaking and Entering
Key Title: Delay

Summary: Application to dismiss Information pursuant to CYPFA, s322. McL (then 15) charged with breaking and entering on 10/2/02; charge denied; FGC held 3/7/02; McL appeared in Court on 11/11/02. CYPFA, s322; *P v C* (Undated, circa 1990, YC, Wellington, CRN 0285015569, Carruthers J) upheld; discretion of Judge to dismiss for delay is unfettered and the discretion must be applied in the light of the principle in s5(f) CYPFA. *P v BRR* (1994) 11 FRNZ 25 discussed; *Police v DH* [1995] NZFLR 473, where delays understandable due to nature of offence, distinguished. Held: Time between alleged offence and date of hearing unnecessarily or unduly protracted; as in *P v C* and *Police v BRR* no satisfactory reason why an Information could not have been laid immediately following the FGC; delays not due to complications within the investigation but due to independent and extraneous factors; UNCROC, CYPFA, s5(f) offended; proper case for application of discretion.

Decision: Information dismissed.

Police v N YC Christchurch, 17 December 2002

Filed under:

Police v N

File number: not available
Date: 17 December 2002
Court: Youth Court, Christchurch
Judge: Judge Ryan
Key Title: Orders - type: Conviction and transfer to the District Court for sentencing - s283(o): Other; Fine - enforcement

Summary:

JN (16) admitted large number of charges, mainly property offences. Prior to Sentencing Act 2002, Judge would have referred N to District Court for imprisonment, but Sentencing Act states imprisonment not possible if person under 17 years unless offence purely indictable; offences not purely indictable here. No useful purpose in transferring N to District Court for community service or supervision if no imprisonment available if N does not comply. No prospect of repayment; no reparation ordered; Court declined to remit outstanding fines even though the YP had no means of paying them; fines to remain in the system and warrants to seize property are to issue in time so that system will operate to make N co-operate.

Decision:

Supervision with residence; Disqualified from driving.

2001

Police v B (2001) 20 FRNZ 364 (DC)

Filed under:

Case summary provided by BROOKERS

Police v B (2001) 20 FRNZ 364

Reported: [2001] NZFLR 585, [2001] DCR 627;
File number: CRN0290031253
Date: 31 January 2001
Court: District Court, Waitakere
Judge: Judge McElrea
Key Title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH), Youth Court procedure, Sentencing - General Principles (e.g. parity/jurisdiction)

BROOKERS Summary:

Youth justice - Transfer of proceeding - Charged with robbery - Assault to head and body - Offence admitted at family group conference - No formal plea - Whether the charge was 'proved' - Whether grounds for transfer established - Children, Young Persons, and Their Families Act 1989, ss 276, 283(o), 290, 284.

Hearing

This matter dealt with the question of whether the young person should be transferred to the District Court under s 283(o) Children, Young Persons, and Their Families Act 1989.

The accused ('B'), a young person aged 16 years 11 months, was charged with the robbery of a handbag and wallet containing $300. The robbery took place at a petrol station at 11 pm on 18 May 2000. The victim, a bus driver, was refuelling when the offence occurred. The victim heard what sounded like someone in the bus and went to investigate. She was confronted by B who grabbed her arm and punched her twice in the face causing bruising and a black eye. When the victim went inside the bus to call for help, B returned and attacked her again, punching her about the head and body and kicking her in the back when she tried to pick up her handbag. Initially B was charged with the more serious offence of aggravated robbery, but this was withdrawn by the police when the matter was referred back after an appeal to the High Court. The appeal was based on the fact that the purely indictable charge had not been subject to a jurisdictional discretionary decision of the Youth Court Judge under s 276 of the Children, Young Persons, and Their Families Act 1989. No formal plea was taken, but at a family group conference B admitted to having committed the offence. B had appeared before the Youth Court on a considerable number of charges, including another robbery where an elderly man was pulled from his car and beaten. B was previously sentenced to supervision with activity by way of Court order.

Held

Convicting B and transferring the case to the District Court for sentencing:

(1) Section 283 requires that the matter before the Court be 'proved' before any order is made transferring a young person to the District Court for hearing. There is no requirement under s 283 that a formal plea be taken. A matter is proved sufficiently if it is noted as having been proved by admission at a family group conference, provided that the Youth Court Judge has affirmatively turned his mind to the question of whether that proof is available. (p 366, line 7)

- *C v Police* (2000) 19 FRNZ 357 (HC) distinguished
- *Police v M* (2001) 20 FRNZ 199, [2001] DCR 385 (YC) per Judge Harding approved
- *R v J* CA404/98 2 February 1999 distinguished

(2) Grounds for transferring the matter to the District Court were established under s 290(1)(b) and (c). The nature and circumstances of the offence were such that, if B was an adult, a full-time custodial sentence would have been imposed. [(2001) 20 FRNZ 364, 365]. Due to the special circumstances, any order of a non-custodial nature would have been clearly inadequate. The nature and extent of the violence in this case, coupled with B's previous history of violence of a similar nature, demanded a serious sentence that carried a deterrent message and that could operate to cause his confinement in prison if he reoffended. (p 368, line 28; p 369, line 22).

Police v M (2001) 20 FRNZ 199

Filed under:

Case summary provided by BROOKERS

Police v M (2001) 20 FRNZ 199

Reported: [2001] DCR 385
File number: CRN0043004443
Date: 19 January 2001
Court: Youth Court, New Plymouth
Judge: Judge Harding
Key Title: Databank Compulsion Order, Youth Court procedure

BROOKERS Summary:

Children and young persons - Jurisdiction - Youth Court - Application for DNA database compulsion order in relation to young person convicted of sexual offences - Whether Court's acceptance of admission made in family group conference amounts to a finding of guilt - Children, Young Persons, and Their Families Act 1989, ss 282, 283(o); Crimes Act 1961, ss 128, 133; Criminal Investigations (Blood Samples) Act 1995, ss 2(a), 39, 40.

Application

This was an application for a DNA databank compulsion order in connection with M as a result of his appearance in the Youth Court on a charge of sexual violation.

M was charged with sexual violation by unlawful sexual connection and indecent assault on a child under 12 under ss 128 and 133 Crimes Act 1961. In his initial Court appearance M did not deny the charges and indicated an intention to plead guilty. He was remanded to attend a family group conference and admitted the charges at the conference. When the matter returned to Court, PAFGC ("proved by admission at family group conference"), was noted on the record. The police applied for an order authorising the taking of a blood sample from M under s 39 of the Criminal Investigations (Blood Samples) Act 1995 ("DNA Act"). Section 40 permits taking blood, for DNA databank purposes, from persons convicted of certain specified offences, including sexual violation.

The issue for the Court was whether M had been "convicted" of the relevant offence and, accordingly, whether there was jurisdiction for such an order to be made. Under s 2(a) of the DNA Act "conviction" includes "a finding by a Youth Court that a charge against a young person is proved". The police submitted that the PAFGC notation was a "finding" in terms of s 2. The defence argued that something more than the acceptance of an admission by the Youth Court is required, namely a formal plea of guilty and a positive finding of guilt.

Held

allowing the application:

1. The plain words of s 2 DNA Act include a finding by the Youth Court that a charge against a young person is proved within the definition of "conviction". No particular method of proof is required. (p 203; line 27)
2. Although the Children, Young Persons, and their Families Act 1989 provides express recognition of the special position of young persons, and the need to provide special protection for them, that is a process which precedes a finding that the charge has been "proved". There is no reason why young persons who are found to have committed serious relevant offences should be excluded from provisions that are relevant to the whole population for the future prevention of crime. (p 203; line 30)
3. The finding of a charge proved in the Youth Court contains inherent safeguards to ensure the protection of young persons, including the appointment of a Youth Advocate to advise the young person at the family group conference when the charge is not denied. (p 203; line 37)
4. "Guilt" is only found by the Youth Court under s 283(o) before a transfer to the District Court for sentence. If DNA were only able to be obtained from young persons who were transferred to the District Court there would be no need for the extended definition of "conviction" in the DNA Act. (p 203; line 40)
5. There does not appear to be any proper basis to distinguish between relevant offences, as defined in the DNA Act, proved by a defended hearing in the Youth Court on the one hand, and admitted on the other. In both cases the Court is satisfied to the same standard and the record noted as the charge "proved". (p 203; line 44)
6. Section 2(a) DNA Act is satisfied either by a finding by the Youth Court that the charge has been proved after a defended hearing, or by the positive acceptance in Court of the admission of the charge reported as the result from the family group conference, usually as PAFGC. Accordingly, jurisdiction exists for the application made by the police. (p 204; line 3).

Police v U-S YC Christchurch CRN 0209005194-96, 12 February 2001

Filed under:

Police v U-S

File number: CRN 0209005194-96
Date: 12 February 2001
Court: Youth Court, Christchurch
Judge: Judge Abbott
Key Title: Family Group Conference - Attendance, Delay (s 322)

Summary:

U faced serious assault charge; assault allegedly occurred on 1.4.00; delays; Youth Justice Co-ordinator rang U's family on 31.10.00 to arrange a meeting; meeting held on 8.11.00; Youth Justice Co-ordinator advised he could write up the discussion at the meeting as a record of a Family Group Conference (FGC) or hold a more formal conference with Police and victims present; charge denied so second alternative followed.

Held:

The call by the Youth Justice Co-ordinator to U's family on 31.10.00 did not constitute "convening" an FGC; procedures for convening an FGC import a reasonable degree of formality and conference must be convened in terms of section 2 of the CYPFA before s 253(4) of the CYPFA can apply. "Convene" in s2 and s247 read together dictate that it is necessary to fix the date, time and location of an FGC and notify all interested parties to "convene" an FGC. Time limits mandatory, failure to comply is fatal to any charge subsequently laid: *H v Police* [1999] NZFLR 966 (HC). Delay in terms of s 322 of the CYPFA found.

Decision:

Charged dismissed.

Police v JL YC Auckland CRN 0255015718, CRN 0255018809, 23 March 2001

Filed under:

Police v JL

File number: CRN 0255015718, CRN 0255018809
Date: 23 March 2001
Court: Youth Court, Auckland
Judge: Judge Boshier
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Sexual violation by unlawful sexual connection; Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Sexual violation by rape; Care and Protection cross over (s 280) Family Group Conferences/Care and Protection (s 261); Orders -

type: Supervision with activity - s 283(m), Jurisdiction of the Youth Court: s 276 offer/election.

Summary:

JL (15) charged with sexual violation by unlawful sexual connection and sexual violation by rape. Complainant was JL's 9 year old sister; mother a victim of vicious physical abuse by first husband, JL traumatised by mother's abuse; JL a victim of sexual abuse from age 4. YC jurisdiction offered and accepted, s 276 CYPFA; case remanded so JL could attend a 'SAFE' programme; Declaration that JL in need of care and protection made; JL made good progress on course and may regress if imprisoned. Crown arguing for s 283(o) order with view to sentence of imprisonment; *R v Mako* [2000] 2 NZLR 170 (CA) discussed: two sentencing regimes - first where Youth Court jurisdiction applies and the second where case transferred to District Court or if jurisdiction wholly declined and case remanded to High Court. Precedents do not seek to provide a regime for the way in which Youth Court Judges should approach sentencing having regard to the statutory scheme set out in s 284 and s 290.

Key factors here: safety of victim established, victim primarily concerned about violence against her mother; JL's history of abuse; FGC recommendation that JL stay in Youth Court; Police agree with importance of working on rehabilitating JL although arguing for imprisonment; no prior convictions.

Decision:

Supervision with activity order followed by Supervision in accordance with FGC plan. R **v DJB HC Christchurch T26/01 17 May 2001**

Filed under:

R v DJB

File number: T26/01
Court: High Court, Christchurch
Date: 17 May 2001
Judge: Young J
Key title: Appeals to High Court/Court of Appeal: Jurisdiction, Youth Court Procedure

DJB (14) pleaded guilty in YC to charges of sexual violation by rape and unlawful sexual connection against 6-year old stepsister; YC jurisdiction not offered. DJB committed to HC for sentence by YC. Whether YC Judge was entitled to commit YP to HC for sentence. Whether HC has jurisdiction to sentence DJB. Section 274, 275, 276. Section 274(2)(a) applies; open to DJB to plead guilty in accordance with s 153A of the Summary Proceedings Act: *Police v TDA* [1996] DCR 367.

Section 153A(6) provides that in respect of charges faced by DJB, a plea of guilty under s153A has the consequence that the Court should 'record the plea and adjourn the proceedings for sentencing of the defendant in accordance with s 28F DCA 1947'. Section 28F(3) & (4). It was open to the YC Judge to commit DJB to HC for sentence but he should have firstly adjourned the case to the DC for sentencing under s 153(6)(a). Adjournment need only have been for a minute or so and the Judge could then have reconvened his Court as a

DC and, under s 28F(3)(b) declined jurisdiction and, under s 28G committed DJB to HC for sentence. However, s 204 SPA and s 440 CYPF Act point away from rigid insistence on procedural perfection.

Decision:

HC has jurisdiction to sentence DJB.

Police v W YC Rotorua CRN 1263003406, 22 May 2001

Filed under:

Police v W

File number: CRN 1263003406; CRN 1263003407; CRN 1263003408
Date: 22 May 2001
Court: Youth Court, Rotorua
Judge: Judge Whitehead
Key Title: Jurisdiction of the Youth Court - s 275 offer/election; Care and protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261), Custody (s 238): Person nominated by Social Worker (s 238(1)(c))

Summary:

W (14) charged with sexual violation of three of his siblings and indecent assault upon another child; charges not denied. W had significant health problems; Court told of major risk of re-offending if security of current placement threatened. Non-agreed Family Group Conference. Full discussion of cases where 14 year olds have received terms of imprisonment; here imprisonment would be detrimental and dangerous; s 283(o) not applicable because of W's age.

Decision:

YC jurisdiction offered and accepted. Remand under s 238(1)(c) continued. Case adjourned until care and protection matters have been heard.

Police v K (7 August 2001) YC, Lower Hutt, Carruthers DCJ

Filed under:

Police v K

File number: unknown
Date: 7 August 2001
Court: Youth Court, Lower Hutt
Judge: Judge Carruthers
Key Title: Care and protection cross-over - Misuse of s 48

Summary:

K (15) was charged with assault with a weapon (a knife). K and another youth were with a Black Power gang member when a member of a rival gang jumped out of another car and started a fight. The rival gang member was bleeding badly by the end of the fight but the Black Power member later insisted he had not used a knife. The police officer was unsure whether the young people had been involved in the altercation. They searched K and found no knife. Police were concerned for K's safety given the likelihood of a gang reprisal. The police officer told K that, pursuant to s 48 of the Act, "he had to accompany us back to the Station". K was advised of his rights and a nominated person was found for him. In a video interview K stated that he had stabbed the rival gang member in self-defence.

In considering whether K was validly taken to the police station and questioned under s 48 of the Act, and the admissibility of the resulting video statement, Judge Carruthers emphasised the proper use of s 48 of the CYPFA. Section 48 authorises Police to return young people at risk to their homes or to hand them over to social workers. The Judge made clear that as s 48 is a care and protection provision, it cannot be used to compulsorily detain a young person for questioning even where it is necessary to detain that young person for their own safety.

The Judge accepted a submission by Police that it had been appropriate to use section 48 at the commencement of the incident and that once the young person was safe at the police station it was open to Police to take action under the youth justice provisions of the Act. However, His Honour found that the Police had erred in not telling K that he was no longer being detained under section 48 once at the Police station and that he was free to go. K was, throughout, under the impression that he had been "arrested" under s 48. Further, this confusion was maintained when he was read his rights as to making a statement. Thus, Police needed to make clear to K why he was being taken into custody and, when s 48 no longer applied, he should have been advised of that fact and of the fact that he was free to leave the police station.

Decision:

As K was not informed that section 48 no longer applied, this tainted the subsequent procedures and the admissions obtained. The Judge declined to exercise his discretion to admit the video statement evidence.

Police v McA (7 September 2001) YC, Upper Hutt, 127800, Mill DCJ

Filed under:

Name: Police v McA
Unreported
File number: 127800
Date: 7 September 2001
Court: Youth Court
Location: Upper Hutt
Judge: Mill DCJ
CYPFA: s5(f), s322

Charge: Sexual Violation - Rape
Key Title: Delay

Summary: McA charged with sexual violation by rape, denied offence; McA arrested but no grounds for arrest; police understaffed leading to delays; time from commission of alleged offence to first hearing was nine months and 18 days; case not complex; evidence of health problems and stress for family members and behaviour problems with McA as a result of the delays. Two step enquiry: *BGTD v Youth Court at Rotorua* (HC, Rotorua, 15 March 2000, M119/99); need for balancing of individual rights against public interest. Held: Despite severe limitations the detective had in being able to fulfil his obligations to his caseload, the time between the date of commission of alleged offence and the hearing had been unnecessarily protracted.

Decision: Informations dismissed.

Police v B YC Te Awamutu MA 88/01, 31 October 2001

Filed under:

Police v B

File number: MA 88/01
Date: 31 October 2001
Court: Youth Court, Te Awamutu
Judge: Judge Brown
Key Title: Delay (s 322)

Summary:

B (15.5 yrs) appeared in Youth Court on 9 Informations; 5 laid outside 6 month time limit and thus dismissed (Summary Proceedings Act 1957, s14); whether remaining Informations should be dismissed pursuant to s 322 of the CYPFA.

Offences committed between 17.12.00 and 1.2.01, Family Group Conference (FGC) scheduled for 24.4.01; all Informations laid on 9.7.01. No undue delay; unrealistic where there is alleged repeat offending to place unreasonable emphasis on the date of the first offending; ss 4(f) and 5(f) CYPFA. In *Police v C* YC Wellington CRN 0285015569 per Judge Carruthers 3 month delay between offending and FGC "not exceptional". FGC did not take place as young person had operation to remove tumour; defendant and family did not attend further FGC on 4.7.01. No dismissal of charges; legal process which rewards illness other than in exceptional circumstances strikes a wrong balance quite apart from potential for abuse; delay of 2.5 months to accommodate illness is not unduly delaying proceedings.

Decision:

Informations not dismissed.

Police v IB YC Manukau CRN 1292037261, 2 October 2001

Filed under:

Police v IB

File number: CRN 1292037261
Date: 2 October 2001
Court: Youth Court, Manukau
Judge: Lovell-Smith DCJ
Key Title: Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery

Summary:

IB (15) charged with aggravated robbery; jointly charged with another young person and two adults; IB was armed with an offensive weapon (a claw hammer) and robbed a shop of 3 hooded sweatshirts. In the process IB hit the complainant 4 times with a claw hammer. FGCs held. Victim and family propose Supervision with residence, Police propose s 283(o) CYPFA order. Comments of Judge McElrea on *R v Mako* [2000] 2 NZLR 170 (CA) from *Police v Rangihaka* CRN 0255019855: *Mako* not relevant to young people being sentenced within the Youth Court but extremely relevant if young person convicted and transferred to District Court. Sections 284, 285(6) and 290 of the CYPFA considered.

Aggravating features: premeditation, IB readily took part and volunteered to arm self with claw hammer, IB central to the offending; serious and gratuitous violence; victim suffered head injuries, vulnerability of small businesses, day time attack.

Mitigating features: IB and family remorseful, no previous charges proven in Youth Court. Dysfunctional family, alcohol and cannabis abuse. Principles in ss 4 and 208 CYPFA.

Held:

Due to pre-meditation, violence, victim's injuries, not a suitable case for the Youth Court, having considered all the other alternatives.

Decision:

Order - convicted and transferred to the District Court - s283(o).

2000

Police v S [2000] NZFLR 188 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v S [2000] NZFLR 188

Reported: (2000) 19 FRNZ 72
File number: CRN 992551752
Date: 14 February 2000
Court: Youth Court, Papakura
Judge: Ryan DCJ
Key Title: Databank Compulsion Order, Orders - type: Discharge - s 282

LEXISNEXIS Summary:

Youth offenders - Blood samples - Databank compulsions order - Whether conviction entered - Section required a conviction to have been entered before jurisdiction arose to make compulsion order - Offender had not denied charge of burglary and was later discharged - Whether admission implied that Crown had proved charge - Criminal Investigations (Blood Samples) Act 1995, s 39 - Children, Young Persons, and Their Families Act 1989, ss 246, 281, 282.

Application

This was an application for a databank compulsion order.

These proceedings concerned an opposed application under s 39 of the Criminal Investigations (Blood Samples) Act 1995 for a databank compulsion order. That section conferred jurisdiction to make an order where the young person had been convicted of an offence. Conviction was defined as a finding by the Youth Court that a charge against the young person was proved. The difficulty in these proceedings was that the offender had not denied the charge of burglary when brought before the Court pursuant to s 246 of the Children, Young Persons, and Their Families Act. The Youth Court jurisdiction was elected and it was noted that he admitted the charge. The information was adjourned and the offender was detained in the custody of the Director-General of Social Welfare. He was then further remanded for the completion of a plan agreed upon at a family group conference. Later the young person was discharged.

The police argued that the fact that the charge was not denied amounted to a conviction because the admission inferred that the charge had been proved. This was contended in spite of s 282 of the Children, Young Persons, and Their Families Act 1989 which provided that an information which was discharged was deemed never to have been laid. The application was opposed on the basis that the charge had not been proved and that under the s 246 procedure the Court did not have to make such a finding. It was also argued that the discharge of the young person under s 282 of the Children, Young Persons, and Their Families Act was

equivalent to a discharge under s 19 of the Criminal Justice Act 1985. Under that provision a databank compulsion order could not be made.

Held (declining to make an order)

1. There was no jurisdiction to make an order in this case. Under s 246 the young person was required only to deny or not deny the charge. In this case the charge had not been denied. There was certainly no statutory requirement that the Court make a finding that the charge was proved. The same applied in respect of s 281 which did not create a requirement that the Court find that the charge was proved before discharging the young person. An admission by a person at a family group conference which was subsequently confirmed by the Youth Court was insufficient. There was a clear statutory intention to provide a mechanism for cases to be disposed of without the necessity for the charge to be proved.
2. A discharge under s 282 was equivalent to a discharge under s 19 of the Criminal Justice Act and the same protection was to be afforded.

Police v TLA [2000] DCR 240 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v TLA [2000] DCR 240

File number: CRN 9204003881, 3885; 9204003887,3880; 9204003878, 3886
Date: 7 February 2000
Court: District Court, Auckland
Judge: Judge McElrea
Key Title: Jurisdiction of the Youth Court - s 275 offer/election; Sentencing - General Principles (e.g. Parity/Jurisdiction)

LEXISNEXIS Summary:

Criminal law - Jurisdiction - Offence of assault and robbery - Accused aged 14 and 15 - Whether to exercise Youth Court Judge's discretion and give accused opportunity of forgoing right to jury trial and of electing to have information heard and determined in Youth Court - Alleged accomplice giving evidence for prosecution - Serious assault on innocent victim - Youth Court sanctions not appropriate for youngest and principal offender - Severance not appropriate - Children, Young Persons, and Their Families Act 1989, ss 275,283(o) - Summary Proceedings Act 1957, s 173(a).

Children and young persons - Assault - Accused aged 14 and 15 - Whether to exercise Youth Court Judge's discretion and give accused opportunity of forgoing right to jury trial and of electing to have information heard and determined in Youth Court - Youth Court sanctions not appropriate for youngest and principal offender - Severance not appropriate - Children, Young Persons, and Their Families Act 1989, ss 275,283(o).

Application

This was an application to have a joint charge of assault to be heard in the Youth Court under s 275 of the Children, Young Persons, and Their Families Act 1989.

It was alleged that on 12 August 1999 the three accused and an accomplice, who later gave evidence for the Crown, attacked a girl when she was sitting in a public place. She was punched in the head and body and after falling to the ground, was kicked in the body. The victim was then dragged by her hair to the rear of a nearby building and robbed of $10. Punching to her head and body continued while more money was demanded. She was then dragged into nearby ladies toilets where scissors were taken out of her bag and used as a weapon against her. When she said that she had no more money, one of the accused cut her across her eyebrow. She was then cut across her stomach and also along her right thigh. All three accused denied a joint charge of assault using scissors as a weapon. They were also charged jointly with robbery. Two of the accused were aged 14 and one was aged 15 at the time of the offending, although one of the 14 year-olds had turned 15 by the time of the hearing. Under s 275 of the Children, Young Persons, and Their Families Act 1989 a Youth Court Judge has a discretion to give an accused the opportunity of forgoing the right to trial by jury and of electing to have the information heard and determined in a Youth Court by a Youth Court Judge. The Crown opposed the giving of such an opportunity and the splitting of trials or hearings.

Held

(declining Youth Court jurisdiction)

1. The disadvantages of having two hearings were especially strong in this case given the ages of the complainant and the witness/accomplice. They should be spared the possibility of giving evidence twice.
2. The appropriate range of sentences that might be considered by the Court, depending on the facts, matters yet to be put before the Court by way of victim impact statements and pre-sentence or social worker reports, was best secured by declining Youth Court jurisdiction and leaving those matters to be dealt with by Judge and jury.

T v Youth Court at Rotorua HC Rotorua M119/99, 15 March 2000

Filed under:

T v Youth Court at Rotorua

File number: M119/99
Date: 15 March 2000
Court: High Court, Rotorua
Judge: Robertson J
Key Title: Delay, Appeal to the High Court/Court of Appeal: Jurisdiction

Summary:

Unsuccessful application for judicial review of Court's refusal of s 322 CYPFA application.

Alleged offending took place in August/November 1998, hearing October 1999 after the prosecution applied for adjournments. Applicant argued mistake of law as New Zealand Bill of Rights Act 1990 principles applied rather than CYPFA policy, that the decision was unreasonable and that the Judge had considered irrelevant matters but had not regarded the effect of the delays on the applicant - a relevant consideration. Court obliged to balance individual rights against public interest.

Held:

Application dismissed. Court did not accept that s 5(f) CYPFA should be elevated above all other issues; s 322 requires a 2-step inquiry. First the Judge must determine whether the time between the date of the commission of the alleged offence and the hearing has been unnecessarily and unduly protracted. If it has, the Judge has the discretion as to whether or not to dismiss the complaint. Here, the Judge was not satisfied that the time had been unnecessarily and unduly protracted; reasons for the delay were explicable and thus not necessary for Judge to have considered exercise of discretion; no error to review. Judicial review is not an appeal mechanism or an opportunity for re-assessing factual matters.

Decision:

Application for judicial review declined.

R v Accused (2000) 17 CRNZ 300 (CA)

Filed under:

Case summary provided by BROOKERS

R v Accused (2000) 17 CRNZ 300

Court of Appeal
File number: CA518/99
Date: 6 March 2000
Judge: Tipping, Robertson, Baragwanath JJ
Key Title: Sentencing in the adult Courts: Sexual violation by rape; Sentencing in the adult Courts: Sexual violation by unlawful sexual connection; Sentencing in the adult Courts: application of Youth Court principles

BROOKERS Summary:

Sentencing - Allowance for youth - Appellant 14 years old - Age one factor relevant to substantial reduction from sentencing starting point - 'Callous and depraved' conduct required severe response.

Sentencing - Mitigating factors - Mitigating factors included history of abuse, appellant's age, negative influence of caregiver, and early guilty plea - Sentencing Judge properly considered these - Substantial reduction from starting point - Appellant's conduct 'callous and depraved', requiring severe response.

Appeal

Appeal against sentence.

The appellant, who was 14 years old, raped a Wellington woman and threatened her with a knife while in the company of his caregiver, a Mongrel Mob member. He pleaded guilty to various charges arising from that incident and was sentenced to 7.5 years' imprisonment (from a starting point of '14 years or more'). He appealed.

[Note: Consistent with the format of the issued judgment, paragraph numbers rather than line numbers are used in this report.]

Held

1. the starting point of '14 years or more' selected by the sentencing Judge was appropriate. (p 306, para 12)
2. Mitigating factors raised at the time of sentencing included past physical, emotional, and sexual abuse of the appellant, his age, the caregiver's negative influence, and a very early guilty plea. The sentencing Judge properly considered these matters, and a lower sentence was not justified. The appellant's conduct was 'callous and depraved', requiring a severe response to mark society's condemnation of such behaviour and act as a deterrent to others. (p 308, para 18)

R v Robinson CA404/97, 17 March 1998 applied.

R v Mako [2000] 2 NZLR 170 (CA)

Filed under:

Case summary provided by BROOKERS

R v Mako [2000] 2 NZLR 170

Court of Appeal
Reported: (2000) 17 CRNZ 272
File number: CA446/99
Date: 23 March 2000
Judge: Richardson P, Gault, Thomas, Blanchard, Tipping JJ
Key Title: Sentencing in the adult Courts - application of Youth Justice Principles; Sentencing in the adult Courts - Aggravated Robbery

BROOKERS summary

Sentencing - Penalties - Guidelines - Aggravated robbery - Moananui reviewed and superseded - Criminal culpability should be focus, not target premises - Offence of aggravated robbery encompasses wide range of behaviour - Features additional to essential elements of offence considered - Criminality must be assessed by reference to such features - Starting point should be specified - Examples given in judgment informative not prescriptive - Minimal reference to other judgments required - Mitigating and aggravating factors considered - Suspended sentences rarely appropriate in aggravated robbery cases.

Sentencing - Aggravating factors - Aggravating factors included criminal history and offending while on bail or parole.

Sentencing - Allowance for youth - Young offenders with long histories of offending cannot expect leniency in serious aggravated robbery cases.

Sentencing - Guilty plea - Early guilty plea will usually warrant generous discount - Respondent failed to acknowledge totality of offending until start of trial - Modest discount appropriate.

Sentencing - Mitigating factors - Mitigating factors include guilty pleas, assistance to authorities, and age - In aggravated robbery cases, offending prompted by drug addiction not mitigating factor - Participants who do not confront victims not necessarily less culpable - Young offenders with long histories of offending cannot expect leniency.

Sentencing - Suspended sentence - Rarely appropriate in aggravated robbery cases.

Sentencing - Starting point - Should be determined and specified - Important means of ensuring consistency between cases.

Application

Application for leave to appeal against sentence.This case involved the aggravated robbery of a public bar and TAB betting agency. The respondent pleaded guilty. The Court of Appeal reviewed the sentencing guidelines laid down in *R v Moananui* [1983] NZLR 537 (CA).

[Note: Consistent with the format of the issued judgment, paragraph numbers rather than line numbers are used in this report.]

Held

(1) in general, an early guilty plea will warrant a generous discount, because the plea reflects acknowledgement of wrongdoing, saves resources, and relieves [(2000) 17 CRNZ 272, 273]victims from the anxieties of trial. However, in this case the respondent entered an early guilty plea on the aggravated robbery charge but failed to acknowledge the totality of offending until the start of trial. A modest discount was appropriate. (p 277, para 14; p 277, para 18)

(2) This was an armed robbery in the first category of *R v Moananui* [1983] NZLR 537 (CA). The categorisation of target premises such as banks was based on the number of people endangered and potential proceeds. A public tavern full of patrons, also operating as a TAB betting agency, met the same criteria. The offence was well planned, with firearms, disguises, money bags, and a getaway car. Threatening and aggressive behaviour was manifest towards bar patrons, staff, and ultimately the police. A sentence of 7 years' imprisonment was appropriate. (p 278, para 21). *R v Moananui* [1983] NZLR 537 (CA) applied

(3) Since *R v Moananui* [1983] NZLR 537 (CA), too many sentencing Judges have categorised offending in aggravated robbery cases by reference to target premises rather than the culpability of each offender. In this respect categorisation by type of target premises has proved unsatisfactory, and a different approach is required. (p 278, para 25; p 279, para 31)

(4) In each case of aggravated robbery, features additional to the essential elements of the offence will create variance in the criminality of the conduct. These features include: (p 280, para 34)

a. The degree of planning and preparation; (p 280, para 36)
b. The number of participants and the nature of their deployment; (p 280, para 37)
c. Disguises and other means of concealing identity; (p 281, para 38)
d. The number, type, and use of weapons; (p 281, para 39)
e. Target premises or persons; (p 281, para 40)
f. Presence of members of the public; (p 281, para 42)
g. Violence (distinct from threats and intimidation); (p 281, para 43)
h. Property stolen, and whether recovered; (p 282, para 44)
i. Associated offending such as converting vehicles or taking hostages; (p 282, para 45)
j. Victim impact; (p 282, para 46)
k. Gang involvement (although not all criminal offending by gang members has a gang connection); (p 283, para 49)
l. The need for deterrence; and (p 283, para 50)
m. Multiple offending involving separate incidents. (p 283, para 51)

(5) The criminality of any aggravated robbery offence must be assessed by reference to the particular combination of features listed above, without undue emphasis on any one feature such as the nature of the target premises. (p 283, para 52)

(6) Once the offending is positioned on the scale of seriousness, it is important to determine and specify the starting point before taking into account individual aggravating and mitigating factors. (The Court of Appeal here illustrated appropriate starting points by reference to diverse examples of aggravated robbery.) (p 283, para 53)

(7) The illustrations given are informative, not prescriptive. (p 284, para 60). The detail provided in the current judgment and its schedule should minimise the need to research large numbers of analogous sentencing decisions. (p 284, para 60)

(9) Mitigating factors warranting an adjustment in sentence may include guilty pleas, assistance to authorities, age, and other personal circumstances. More specifically: (p 285, para 62)

a. Robbery prompted by drug addiction is not a mitigating factor. (p 285, para 63)
b. Participants who do not confront victims, such as a lookout or a getaway driver, are not necessarily less culpable. (p 285, para 64)
c. Youth and rehabilitation prospects may be mitigating factors, but offenders who have accumulated long lists of prior convictions while still in their teens cannot expect leniency. (p 285, para 65) *Cooper v Police* 28/11/98, Eichelbaum CJ, Penlington J, HC Hamilton AP106/98; AP116/98; AP121/98; *R v Henry* (1999) 46 NSWLR 346; *R v Smart* 24/5/94, CA57/94 referred to

(10) Aggravating factors include criminal history, and offending while on bail or parole. (p 285, para 62)

(11) Suspended sentences will rarely be appropriate for aggravated robbery. A sentence of less than 2 years is only available if the elements of aggravated robbery are minimal or the

offender participated in a secondary role. (p 285, para 67). *Solicitor-General v Lam* (1997) 15 CRNZ 18 (CA) referred to

(12) This judgment supersedes *R v Moananui* [1983] NZLR 537 (CA). (p 286, para 70)

Police v TC YC Masterton CRN 3138 & 3139, 11 April 2000

Filed under:

Police v TC

File number: CRN 3138 & 3139
Date: 11 April 2000
Court: Youth Court, Masteron
Judge: Judge Ongley
Key Title: Arrest without warrant (s 214), Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance, Admissibility of statements to police/police questioning (ss 215-222): Nominated person

Summary:

TC (15) charged with resisting arrest. Police suspected TC of involvement in burglary, theft and interfering with vehicles. Search warrant executed but no evidence found. Three days later Police officer informed TC, at TC's front gate, that he wished to speak to him in relation to burglaries and asked if TC would accompany him to the Police Station; TC responded that he would find his own way there; TC's father intervened and a scuffle ensued; officer used OC spray on TC; TC not informed of s 215 CYPFA rights; TC fell and escaped but was later arrested.

Whether grounds existed for TC's arrest. TC had not committed any purely indictable offence justifying arrest under s 214(2) of the CYPFA; Police not aware of any further offending by TC. Court found no grounds for arrest without warrant. The fact that TC was unwilling to accompany the officer to the Police station and actively resisted such a course did not add to the substance of grounds for arrest. In the absence of any evidence that the young person was attempting to avoid the Police there is no apparent reason why a warrant could not have been issued. Statements made re admissibility of confessional statements.

TC did not nominate a person for the purposes of s 221(2)(b) of the CYPFA but police criticised for not locating his mother and for not giving the nominated person a chance to speak to TC privately; s 221 probably not complied with: *R v T* [1997] 1 NZLR 341 (HC).

Cases on reasonable compliance discussed. The Court noted that there was a serious question whether there was reasonable compliance within the spirit and object of the legislation.

Decision:

The charge of resisting arrest failed and was dismissed.

C v Police [2000] NZFLR 769, 17 CRNZ 448, 19 FRNZ 357 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

C v Police [2000] NZFLR 769; 17 CRNZ 448; 19 FRNZ 357 (HC)

File number: AP 45/00
Date: 13 June 2000
Court: High Court, Hamilton
Judge: Hammond J
Key Title: Youth Court procedure; Orders - Conviction and transfer to the District Courts - s283(o): Other Offences, Youth Court procedure

LEXISNEXIS Summary:

Children and young persons - Sentencing - Youth Court - Transfer to District Court for sentencing - Charges 'not denied' by young person - Whether offences had been 'proved' for the purposes of s 283(o) of the Children, Young Persons, and Their Families Act 1989 - Whether convictions could be properly entered on the plea of 'not denied' - How criminal offence can be 'proved' - Defect of jurisdiction in this case not able to be cured by s 440 - Children, Young Persons, and Their Families Act 1989, ss 238, 259, 283, 351, 440 - New Zealand Bill of Rights Act 1990, ss 6, 25 - Summary Proceedings Act 1957, s 67.

Appeal

This was an appeal against a decision of a Youth Court Judge to transfer a youth to the District Court for sentence when the offences with which he was charged had not been 'proved' for the purposes of s 283(o) of the Children, Young Persons, and Their Families Act 1989.

The young person (C), aged 16, committed a series of crimes, including close to forty burglaries, between April 1999 and March 2000. When he appeared in the Youth Court it was said on his behalf that the charges were 'not denied' and a notation to that effect was made on the informations. The police argued for all matters to be transferred to the District Court for sentencing.

The Youth Court Judge took the view that C's offending was serious, constant, and unchecked and that he had no alternative but to send C to the District Court. The informations were then embossed by the Judge with a stamp that C was 'convicted and transferred to the District Court'. Subsequently some further informations were laid and the charge noted as having been 'admitted' and these informations were also removed to the District Court for sentence.

C appealed against the transfer on the basis that the charges against him had not been 'proved' and that therefore a conviction could not be properly entered.

Held

(allowing the appeal and remitting the case to the District Court for proper pleas to be taken)

1. A criminal charge was 'proved' in one of two ways. Either it was proved by evidence led by the prosecution, which, in the view of the trier of fact comes up to the criminal law standard of proof. Or, the person charged 'acknowledges' the crime. The use of the term 'not denied' could not support the entry of a conviction. Therefore there had been a fundamental defect of jurisdiction which could not be cured by s 440 of the Children, Young Persons, and Their Families Act 1989.
2. By that point of time at which the Judge was considering whether to remove the youth to the District Court for sentence, the youth must have been formally asked how he pleads, that is guilty or not guilty. It is only if he pleads 'guilty' or the charge has been proved by evidence, that the Youth Court Judge can properly enter a conviction and transfer him to the District Court for sentence.

Chief Executive of the Department for Child Youth and Family Services v H FC Auckland CYPF 048/397/99, 21 June 2000

Filed under:

Chief Executive of the Department for Child Youth and Family Services v H

File Number: CYPF 048/397/99
Date: 21 June 2000
Court: Family Court, Auckland
Judge: Judge Boshier DCJ
CYPFA: s283(n); s280
Key Title: Care and Protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261); Custody (s 238): Chief Executive (s 238(1)(d); Orders - type: Supervision with residence - s 283(n); Reports - Social Worker

Summary:

Care and protection plan failed to work; report by social worker suggests a residential placement be achieved through a Supervision with residence order; social worker advises all institutions are full and cannot guarantee a Supervision with residence order will lead to H being placed in an institution; Police object and say they may have to intervene; Judge concerned that Supervision with residence order should be carried out if made by the Court as "to do otherwise, is to begin to abandon the rule of law".

Decision:

Supervision with residence order; Care and protection plan to be reviewed in November 2000.

Police v G YC Hamilton, 12 July 2000

Filed under:

Police v G

File number: unknown
Date: 12 July 2000
Court: Youth Court, Hamilton
Judge: Judge Brown
Key Title: Fine - enforcement, Jurisdiction of the Youth Court: charge type

Summary:

G failed to pay $1730 in fines; fines not imposed under s 283(d)-(h) CYPFA but within definition of fines in the Summary Proceedings Act 1957; s 88, s 88(3AA) of the Summary Proceedings Act discussed; such fines cannot be enforced on non-payment in Youth Court.

Decision:

Youth Court has no jurisdiction to enforce traffic fines - G to appear in District Court.

Police v TN YC Otahuhu CRN 0248015576, 6 July 2000

Filed under:

Police v TN

File number: CRN 0248015576
Date: 6 July 2000
Court: Youth Court, Otahuhu
Judge: Simpson DCJ
Key Title: Jurisdiction of Youth Court: s 275 offer/election

TN (then 14) and two other young people planned to rob a taxi driver; one young person struck taxi driver with folded Coca Cola can; young people stole car and small amount of money; facts admitted at interview. FGC unable to agree; psychologist's report recommended possible rehabilitative measures; care and protection issues; one young person already being dealt with by Youth Court. Public interest in allowing public to go safely about their business balanced against interest of the public in the cessation of offending by young persons such as TN. *W, A, M, P, T, N, B, H & S v The Registrar, Youth Court, Tokoroa* (CA166/69); *R v Mako* [2000] 2 NZLR 170 discussed. Given TN's age, cannot convict and transfer to District Court if dealt with by Youth Court. Principles of CYPFA; importance of rehabilitation of 15 year olds.

Decision:

Youth Court jurisdiction offered.

Police v C [2000] NZFLR 961 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v C [2000] NZFLR 961

Reported: [2000] 19 FRNZ 715
File number: 154/00
Date: 8 August 2000
Court: Youth Court, Otahuhu
Judge: Judge Carruthers
Key Title: Delay (s 322), Family Group Conferences: Timeframes/limits: Court ordered

LEXISNEXIS Summary:

Children and young persons - Application for dismissal of information - Young person charged with offence of sexual violation - Delay of seventeen months in charging the young person - Whether information should be dismissed for unnecessary and undue delay - Necessity for consultation prior to proceedings being instituted - Necessity for consultation - Meaning of "consultation" - Whether delay too great in this case - Children, Young Persons, and Their Families Act 1989, ss 56, 208, 245, 247, 249, 322.

Application

This was an application for the dismissal of an information laid against a young person on the ground of unnecessary and undue delay.

The defendant, aged 16 at the time of the offence and now aged 17, was charged with sexual violation by unlawful connection which was an indictable charge. It was alleged that the offence occurred in January 1999. In June 1999 a complaint was laid with the police. The complaint file was sent to the local Child Abuse team and an investigation was commenced. A referral was made to the Child, Youth and Family Services department in August 1999 and subsequently consultations occurred between the Police and the Service which continued until November 1999, A family group conference was held on 8 November 1999 and it was agreed that the young person would complete a six month plan that included counselling. The family group conference was reconvened in June 2000 following the raising of concerns about the young person by the counselling service. The conference agreed that the charge should be laid in the Youth Court and that matters should then be referred to the District Court because the young person was then 17 years of age.

Counsel for the young person argued that the information should be dismissed due to unnecessary and undue delay in bringing the matter before the Court.

Held

(dismissing the information)

1. Section 245 of the Children, Young Persons, and Their Families Act 1989 provided that proceedings were not to be instituted against a young person unless the Youth Justice Co-ordinator and the informant had been consulted and the matter considered at a family group conference. Consultation under the Act required a genuine attempt to confer with an open mind about other possibilities of intervening. There would be occasions when, for

extraordinary reasons which would have involved obtaining a number of assessments and reports, a consultation may take the length of time taken in this case. Therefore the extraordinary length of time taken did not in the circumstances invalidate a proper "consultation" within the meaning of the Act.

2. Whilst there were no strict time limits involved, the actions in this case in laying and proceeding with the information had been unnecessarily and unduly protracted. Given this and because the public interest would be better served by applying to have the young person made a ward of Court, the information would be dismissed.

Police v JT YC Hamilton CRN 9219035462, 24 August 2000

Filed under:

Police v JT

File number: CRN 9219035462
Date: 24 August 2000
Court: Youth Court, Hamilton
Judge: Judge Twaddle
Key Title: Databank Compulsion Order

Summary:

Whether non-denial of an offence in the Youth Court amounts to a finding by the Youth Court that a charge against a young person has been proved for the purposes of the Criminal Investigations (Blood Samples) Act 1995.

JT charged with indecent assault, not denied; record showed charge admitted at FGC; order made under s 283(c) of the CYPFA. Police applied for order under s 39 of the Criminal Investigations (Blood Samples) Act 1995 for Databank Compulsion Order requiring JT to give blood sample. Criminal Investigations (Blood Samples) Act 1995, s 2 provides that a conviction includes "a finding, by a Youth Court, that a charge against a young person is proved". *Cloke v Police* HC Hamilton AP45/00, 13 June 2000, where Hammond J said that it is only if there is a plea of guilty or the charge has been proved by evidence that a s 283(o) conviction and transfer can be made, and *Police v S* [2000] NZFLR 188 (YC) discussed; Judge found *Cloke* applied in this case as although *Cloke* related to whether an offence was proved for the purposes of s 283(o), "the propositions underlying that decision are broad in principle".

Decision:

Charge against JT not proved and application dismissed.

Police v Prime [2000] DCR 698 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v Prime [2000] DCR 698

File number: CR9048010748
Date: 16 August 2000
Court: District Court, Otahuhu
Judge: Judge Clapham
Key Title: Youth Court procedure; Jurisdiction of the Youth Court - Age

LEXISNEXIS Summary:

Children and young persons - Jurisdiction - Driving with excess blood alcohol - Application to determine if information was a nullity because it was laid in the District Court rather than the Youth Court - Whether proceedings invalid because defendant should have been dealt with in the Youth Court - Interpretation of s 205 Summary Proceedings Act 1957 - Whether a technicality as to filing an information in the District Court rather than the Youth Court should be determinative - Children, Young Persons, and Their Families Act 1989, ss 2,272 - Summary Proceedings Act 1957, ss 14,205 - Interpretation Act 1999, s 5.

Statutes - Interpretation - Jurisdiction - Application to determine if information was a nullity because it was laid in the District Court rather than the Youth Court - Whether a technicality as to filing an information in the District Court rather than the Youth Court should be determinative - Interpretation of s 205 Summary Proceedings Act 1957 - Summary Proceedings Act 1957, ss 14,205 - Interpretation Act 1999, s 5.

Argument

This was an argument as to whether or not an information was invalid because at the time of the alleged offence the defendant was entitled to be dealt with in the Youth Court, the information having been laid in the District Court. Section 205 of the Summary Proceedings Act 1957 was relied on.

The defendant who was born on 3 January 1982 was charged in the District Court that on 18 December 1998, he was driving a motor vehicle while the proportion of alcohol in his blood was excessive. He was only 16 at the time of the alleged offence.

The defendant first appeared before the Court on 29 March 1999 and was then variously remanded for a substantial period.

Because of the defendant's date of birth the information should have been laid in the Youth Court rather than the District Court. Clearly, the defendant was a "young person" in terms of the Children, Young Persons, and Their Families Act 1989.

The prosecution accepted that it relied on s 205 of the Summary Proceedings Act 1957. The prosecution submitted that in terms of that section no conviction, order, other process or proceeding should be held invalid by reason only that at the time a defendant was convicted he or she should have been dealt with in the Youth Court. The prosecution submitted that the section should not be read as being limited to instances where the defendant had been convicted, and applied prior to conviction.

Held

(finding the information valid)

1. Section 205 of the Summary Proceedings Act by use of the words "proceedings not invalid because defendant should have been dealt with in Youth Court" required those words should be given the intention that they meant, namely, that the information falling within the definition of proceedings, if the defendant should have been dealt with in the Youth Court but was not, did not render the proceedings invalid. *Police v Dabrowski* [1996] NZFLR 234, [1996] DCR 40, considered and distinguished.
2. The words "no conviction" in subs 205(1) was clearly an alternative to order, other process or proceedings. The words "no conviction" were not determinative of the words "order", "other process" or "proceeding". The direction of restriction within the subsection was that the proceedings should not be held invalid by reason only that at the time the defendant was convicted he or she should by reason of his or her age have been dealt with in the Youth Court.
3. No conviction had been entered. There was no requirement as provided in s 205(2) to grant a rehearing. The proceedings themselves were not invalid. The technicality as to filing in the District Court as opposed to changing the heading of the information so that it was filed in the Youth Court should not be a factor that was determinative of the proceedings.

Police v R (2000) 19 FRNZ 590 (YC)

Filed under:

Case summary provided by BROOKERS

Police v R (2000) 19 FRNZ 590

Reported: *Police v JR* [2001] NZFLR 49; also reported as *Police v Rangihika* [2000] DCR 866
File number: CRN 0255019855
Date: 8 September 2000
Court: Youth Court, Pukekohe
Judge: Judge McElrea
Key Title: Sentencing in the adult courts - Application of Youth Justice Principles, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Aggravated robbery, Orders - Supervision with Residence - s 283(n); Objects/Principles of the CYPFA; Principles of Youth Justice (s 208)

BROOKERS Summary:

Youth justice - Sentence - Transfer of proceeding - Aggravated robbery - Different sentencing regime provided for young people - Application of Criminal Justice Act regime - No automatic assumption that aggravated robbery must be dealt with in District Court - Offender could be effectively dealt with in Youth Court - Supervision with residence appropriate given seriousness of crime and defendant's involvement - Children, Young Persons, and Their Families Act 1989, ss 4, 208, 283(o), 284, 290; Criminal Justice Act 1985.

Sentence

This was a hearing to determine whether the offender should be sentenced in the Youth Court or convicted and transferred to the District Court for sentence under s 283(o) Children, Young Persons, and Their Families Act 1989.

The accused, R, had been a party to an aggravated robbery at the age of 15 years. Having previously obtained a soft airgun which was a replica of a semi-automatic pistol, he travelled to Central Auckland with his co-accused, T, and two female associates. They discussed committing a robbery but failed to find any suitable victims so decided to rob a 24-hour service station store. T approached the only staff member, pointed the pistol at him, and held him around the neck. R went to the cash register. As he could not open it, he removed the unit and left the store. When the victim tried to break free, T struck him on the head with the pistol and kicked him. T and R forced open the cash register and shared the $2,500 they found there between themselves.

The victim had been badly affected by the incident and had given up his job as a result. R had admitted guilt and written a letter of apology, and his family had offered to make reparation. He had no previous Court appearances, and his family hoped to support a programme which would keep him out of prison and further trouble. A family group conference failed to reach agreement on whether R should be sentenced in the Youth Court or convicted and transferred to the District Court.

Held

sentencing R to supervision with residence:

(1) The Children, Young Persons, and Their Families Act 1989 has its own special sentencing regime for young people. It is a very different sentencing regime from that applying to persons 17 years and over under the Criminal Justice Act 1985. However, if a young person is convicted and transferred to the District Court, the Court of Appeal's comments in *R v Mako* [2000] 2 NZLR 170; (2000) 17 CRNZ 272 concerning sentences for armed robbery are very relevant. While there may still be room for suspended terms of imprisonment coupled with community-based sentences in some cases, it could not be assumed that a case like the present would receive such treatment. (p 592, line 31)

- *R v Mako* [2000] 2 NZLR 170; (2000) 17 CRNZ 272 (CA) considered

(2) There is no automatic assumption that an aggravated robbery case must be dealt with in the District Court. While there were aggravated robbery cases where [(2000) 19 FRNZ 600, 591]only a term of imprisonment was appropriate, this was not, on balance, such a case. R was not so close to age 17 that there was no time left for him to be dealt with under Youth Court principles, and he did not have a previous record which suggested he was incapable of being dealt with in the Youth Court. (p 596, line 10)

(3) R should be treated as principal offender. However, the weapon used was not a real firearm, though just as terrifying for the victim, and the risk of injury was not the same. There had been minimal planning, and the degree of physical violence was not great. R's share of reparation could be made in full. Acknowledging the need to protect vulnerable employees of such businesses, R could be dealt with in the Youth Court by a sentence of 3 months at a Department of Child, Youth and Family Services residence followed by 6 months'

supervision, the most serious form of sentence the Youth Court could impose. (p 596, line 25).

Police v G FC Auckland CYPF No 088/24/00, 4 December 2000

Filed under:

Police v G

File Number: CYPF No 088/24/00
Date: 4 October 2000
Court: Family Court, Auckland
Judge: Judge Boshier
Key Title: Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261); Secure care (ss 367-383A).

Summary:

Application under s14(1)(e) CYPFA. Young person had a history of serious offending; specialist reports revealed that the young person had a long history of physical abuse including significant head injuries which resulted in behavioural problems and an inability to understand the consequences of his actions; plan proposed; principles in dealing with cases involving child offenders discussed; custody order in favour of Chief Executive made; support order and services orders made; reparation order inappropriate in this case; discussion about inability of Court to attach conditions to custody orders in the light of *Chief Executive v the Family Court* [2000] NZFLR 865; no conditions attached to custody order; case conference ordered.

Decision:

Secure care.

Police v Kane DC Otahuhu, 13 October 2000

Filed under:

Police v Kane

File number: not available
Date: 13 October 2000
Court: District Court, Otahuhu
Judge: Clapham DCJ
Key Title: Sentencing in the adult Courts - Aggravated Robbery; Sentencing in the adult Courts - Serious assault (including GBH)

Kane charged with aggravated robbery and assault with intent to rob after attack on a taxi driver and later assault on a 16-year-old male. In mitigation: guilty plea, Kane's youth, no

prior convictions; Aggravating features: pre-meditation and the application of force; offending while on bail and showing lack of remorse for first offence. Criminal Justice Act 1985, s5(a); starting point of 5 years; Judge considered matter in total rather than imposing a cumulative sentence in respect of the second offending.

Decision:

2.5 years on each charge.

R v A (2001) 20 FRNZ 205 (HC)

Filed under:

Case summary provided by BROOKERS

R v A (2001) 20 FRNZ 205

File number: T001586
Date: 2 November 2000
Court: High Court, Auckland
Judge: Williams J
Key Title: Jurisdiction of the Youth Court - Age; Objects/Principles of the CYPFA (ss 4 and 5); Principles of Youth Justice (s 208), Databank Compulsion Order; Admissibility of statements to Police/police questioning (ss 215-222): Reasonable compliance, Evidence (not including admissibility of statements to police/police questioning)

BROOKERS Summary:

Youth justice - Evidence - Application for orders that accused young person's statement and blood sample be ruled admissible - Fifteen-year-old charged with burglary and sexual violation - Police led to believe accused was an adult and treated him as such - Special protection afforded to young persons - Reasonable compliance - Children, Young Persons, and Their Families Act 1989, ss 2, 4(f)(ii), 208(h), 215, 221(2), 222, 224; Crimes Act 1961, s 344A; Criminal Investigations (Blood Samples) Act 1995.

After a burglary was disturbed in the early hours of 8 April 2000, investigating police found A hiding in the garden of a neighbouring property and took him to the police station for questioning. When asked his age, A told police he was 22 years old when he was only 15. There was nothing about A which suggested to police that the information he had given them was incorrect. A was a sturdy, well-developed young man with every physical appearance of being older than 15 years of age. A's 28-year-old de facto partner, who was pregnant with his child, also told police in her interview that A was 22. Although police gave A the usual cautions, A was not told that he could have a person nominated by him present while his statement was taken. The initial statements A made during the course of the morning were exculpatory, and A voluntarily agreed to a blood sample. A's DNA matched a semen sample from an alleged rape committed during a burglary in the same street one month earlier. Consequently, A was charged with sexual violation by rape and burglary. He was permitted to speak to his de facto partner in an interview room before being questioned again. After a half-hour discussion with his partner, A made a statement to police effectively admitting his participation in both burglaries. The police sought an order stating that A's statements and

blood sample were admissible. Alternatively, a juvenile compulsion order was sought requiring A to give a blood sample.

[Note: Consistent with the format of the issued judgment, paragraph numbers rather than line numbers are used in this report.]

Held, ruling the statement admissible, the blood sample inadmissible, and granting a juvenile compulsion order:

1. The overall thrust of the Children, Young Persons, and Their Families Act 1989 is that children and young persons should, unless there is clear indication to the contrary, be entitled to the protection which the statute provides. For the purpose of deciding whether a person is a 'young person' under the Act, the term 'marriage' does not extend to a person living in a 'relationship in the nature of [(2001) 20 FRNZ 205, 206]marriage'. Had Parliament intended young persons in a de facto relationship not to be covered, it would have said so. In the Act, Parliament set out an elaborate and detailed code of the way the authorities should treat children and young persons when offences are committed. That code is deliberately tailored to make the regime appropriate to the age and status of young persons. What is in issue is the extent to which they need the protective provisions of the Act. On the facts of this case, where all the evidence suggested to the police that the young person was conducting himself as a full adult, it may have been arguable that the protection of the statute should not apply to him, but these circumstances were sufficiently unusual that no broad exception should be made to the statute simply to accommodate that unusual situation. Extending the definition of 'marriage' would also impose an additional obligation on police to ascertain whether the young person was in a relationship 'in the nature of marriage', and this would be an unfortunate burden. The Act should supervene over what would amount to judicial legislation if the Court extended the definition of 'marriage' and the definition of 'young persons'. (p 209, para 15; p 211, para 19; p 212, paras 21-22)
2. The police breached s 215(f) by failing to inform A that he was entitled to have a person nominated by him present while his statement was taken, even though what occurred was not known to be a breach. In considering whether there was 'reasonable compliance' under s 224, the whole of the circumstances should be taken into account. In this case, A was able to stand up for himself as was evidenced by his denials during the morning. Police knew A had been living his life as an adult and had no reason to suppose he was a young person. A was given the opportunity to consult with his de facto partner before he made the statement. In these unusual circumstances there was reasonable compliance, and A's statements are admissible. (p 214, paras 30-32; p 214, para 35)
3. It was accepted that there was no attempt at compliance with the requirements of the Criminal Investigations (Blood Samples) Act 1995 as far as juvenile compulsion orders are concerned. There is no saving provision in that Act allowing the Court to order that samples taken in breach of the statute can be admitted where there has been reasonable compliance. The sample given voluntarily by A was inadmissible. However, there was good cause to suspect that A committed the offences with which he is charged. The application for a juvenile compulsion order was granted and A was ordered to give a sample of blood. (p 215, paras 37-39)

Cases referred to

- *Adoption of T, Re* (1992) 10 FRNZ 23, also reported as Re Adoption by Paul and Hauraki [1993] NZFLR 266
- *Excell v DSW* (1990) 7 FRNZ 239; [1991] NZFLR 241
- *Gaskin v McRoberts* (1991) 16 CRNZ 371
- *Police v C* (1998) 16 CRNZ 139
- *Police v G* [1997] 1 NZLR 455; (1996) 3 HRNZ 358
- *R v Accused* (CA311/91) (1991) 8 FRNZ 119; 7 CRNZ 539
- *R v Irwin* [1992] 3 NZLR 119; (1991) 8 FRNZ 487; 8 CRNZ 39
- *R v T* [1999] 2 NZLR 602, also reported as R v Accused (CA302/98) (1998) 17 CRNZ 49 (CA)
- *Ruka v DSW* [1997] 1 NZLR 154; (1996) 14 FRNZ 622; 14 CRNZ 196; [1996] NZFLR 913 (CA)[(2001) 20 FRNZ 205, 207]Thompson v DSW [1994] 2 NZLR 369; (1993) 11 FRNZ 402

Application

This was an application for an order that the young person's statement and blood sample were admissible.

Police v C YC Auckland CRN 0204004234-36, 21 December 2000

Filed under:

Police v C

File number: CRN 0204004234-36
Date: 21 December 2000
Court: Youth Court, Auckland
Judge: Judge Simpson
Key Title: Family Group Conference - Timeframes/limits: Intention to charge

Summary:

C's FGC delayed as Police provided insufficient details of victim's address; whether time limit set out in s 249(4)(b) CYPFA is a mandatory time limit.

Section 249(2) creates a mandatory time limit and failure to convene within 21 days invalidates the FGC and therefore removes the jurisdiction of the Court to consider the Information before it: *H v Police* [1999] NZFLR 996 (HC) per Smellie J.

Held:

No basis for distinguishing the decision in *H v Police*. Wording in ss 249(4)(b) and 249(2) sufficiently similar even though time periods for convening FGCs are different. Court satisfied that Youth Justice Co-ordinator not given adequate information and not able to give notice to the victim who was an entitled person. Repeated requests to the Police for further information failed to yield other details.

Decision:

No jurisdiction; Informations dismissed.

Police v E YC Manukau CRN 0287007441-42, 21 December 2000

Filed under:

Police v E

File number: CRN 0287007441-42; CRN 0257007828; CRN 025008385
Date: 21 December 2000
Court: Youth Court, Manukau
Judge: Judge Simpson
Key Title: Jurisdiction of Youth Court - Age; Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Other; Orders - type: Conviction and transfer to District Court for sentencing - s283(o): Aggravated robbery, Orders - type: Supervision with residence - s 283(n).

Summary:

E was 14 years, 3 months at time of serious offending; charges not denied. Whether person who is now 15 but who was 14 at the time of the offending can be convicted and transferred to District Court under s 283(o); and, if so, whether E should be so dealt with. Held: Cannot transfer E to District Court as only 14 at date of alleged offence; s 2(2) CYPFA; ss 4(2) and 8 Criminal Justice Act 1985. Can only impose penalties open to Court at time of offending. Maximum flexibility in sentencing is at the point of the decision on jurisdiction, namely whether the matter will be dealt with in the Youth Court or in the High Court. If Youth Court jurisdiction declined, then fullest range of sentencing options open, if not, then s 283(o) applies if defendant 15 or older. CYPFA s 290; suitable alternatives exist; special rehabilitative measures of Youth Court as recommended by social worker appropriate.

Decision:

Order - Supervision with residence s 283(n).

R v Baker DC Wanganui CRN 0283007459, 11 December 2000

Filed under:

R v Baker

File Number: CRN 0283007459
Date: 11 December 2000
Court: District Court, Wanganui
Judge: Judge Becroft
Key Title: Sentencing in the adult courts: Aggravated robbery, Principles of Youth Justice (s 208).

Summary:

Sentencing notes. Young person (15) charged with aggravated robbery; was declined opportunity to be dealt with in the Youth Court under s 276 CYPFA; guilty plea entered;

Judge considered mitigating and aggravating factors; aggravating factors: imprisonment inevitable, robbery planned, defendants armed, victims vulnerable. Mitigating factors: difficult upbringing; guilty plea; full-time employment found and employer wishing to support B's rehabilitation. Judge considered Youth Court principles; noted that the young person had reformed his behaviour but that there was a strong case that he should serve a term of imprisonment. Youth justice principles emphasise reform and rehabilitation.

Decision:

Sentence of two years imprisonment suspended for two years; supervision for 18 months; reparation of $1,000 to be paid to victims.

1999

Police v H (27 January 1999) YC, Hamilton, CRN 80219027561; 8219027567, Twaddle DCJ

Filed under:

Name: Police v H
Unreported
File number: CRN 80219027561; 8219027567
Date: 27 January 1999
Court: Youth Court
Location: Hamilton
Judge: Twaddle DCJ
CYPFA: s245
Charge:
Key Title: Family Group Conferences - Attendance; Family Group Conferences - Convened/Held

Summary: Jurisdiction of Court challenged on grounds that s245 CYPFA as to FGC not complied with. YJC unsuccessful in contacting H's mother despite many attempts; statement from victim's father obtained; YJC could not contact victim; YJC set FGC date but only YJC and Youth Aid Officer present at FGC; YJC did not adjourn conference but laid Informations in the YC; s245 CYPFA; s2 CYPFA definition of "convene"; s250 and s251 CYPFA; whether matter "considered" by FGC pursuant to s245(1)(c): *Re a Child* (1989) 6 FRNZ 44 considered; *Police v BM* (1993) 11 FRNZ 29 distinguished; s4(f) CYPFA; reasoning in *Police v L & G* (11 July 1990) YC, Wellington, Carruthers DCJ adopted although that case dealt with s281 CYPFA - reasoning of Carruthers DCJ equally applicable to s245. Held: H and his mother given every opportunity to attend, they failed or refused; YJC and Youth Aid Officer properly present at Conference and they considered the matter and decided that Informations should be laid in Court; s4(f) should be upheld.

Decision: FGC properly convened and properly considered the matters in terms of s245(1)(c) CYPFA.

Jones v Police [1999] DCR 182 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Jones v Police [1999] DCR 182

File number: CRN 8009033908, 41174; 7009023457 (1987); 1009006188 (1991); 8009022254 (1998)
Date: 12 February 1999
Court: District Court, Christchurch

Judge: Abbott DCJ
Key Title: Disqualification from Driving - s283(i); Youth Court procedure

LEXISNEXIS Summary:

Transport - Driving while disqualified - Application for rehearing - Whether disqualification orders made by Children and Young Persons Court or Youth Court were a 'conviction' for the purposes of section 30A Transport Act 1962 - Whether Court had jurisdiction to convict and sentence for breach of those orders - Transport Act 1962 - Children and Young Persons Act 1974 - Children, Young Persons, and Their Families Act 1989.

The applicant had pleaded guilty to two charges of driving while disqualified. In the course of sentencing the Judge considered that there might be a real issue as to whether at the time of the alleged offences the applicant was validly disqualified. The disqualification orders which had allegedly been breached were indefinite disqualifications. The applicant sought a rehearing in respect of those disqualification orders. The applicant also sought a rehearing as to both conviction and sentence in respect of a separate charge of driving while disqualified, and a rehearing as to conviction in respect of the current two charges.

Held (granting the application for rehearing)

The issue was whether, for the purposes of s 30A(1)(b) of the Transport Act 1962, the defendant had been 'convicted' of an offence when he had appeared in the Children and Young Persons Court, admonished, fined $200 and disqualified from holding a driver's licence for nine months. The scheme of the Children and Young Persons Act 1974 ('CYP Act') had been that a conviction would be entered against a young person only if the power contained in s 36(1)(j) of that Act was exercised, while s 283(o) of the Children, Young Persons, and Their Families Act 1989 ('CYPTF Act'), which replaced the former Act) was to similar effect (and s 290(2) of the latter Act now provided that the power to convict and transfer to the District Court was a power of last resort). In view of the fact that the CYP Act and the CYPTF Act respectively contained several 'deemed conviction' provisions, and in view of the fact that s 293A(4) of the CYPTF Act provided to that effect in respect of the power of the Youth Court to impose an indefinite disqualification under s 30A of the Transport Act, it would have been a simple matter for Parliament to have included an appropriate 'deemed conviction' provision in s 30A itself, in particular when s 293A was enacted. However it had not done so. Having regard to those matters as well as other legislation such as the Criminal Justice Act 1985 and the Criminal Investigations (Blood Samples) Act 1995, a disposition of a charge in either the Children and Young Persons Court (under the CYP Act) or the Youth Court (under the CYPTF Act) was not a conviction for the purposes of triggering the District Court's jurisdiction under s 30A(1)(b) of the Transport Act, unless a conviction was entered pursuant to s 36(j) of the CYP Act or s 283(o) of the CYPTF Act respectively. That was consistent with the rehabilitative rather than punitive objectives of the Youth Court. Accordingly rehearings were granted in relation to conviction and sentence for the applicant's previous offences.

Application

This was an application for rehearing pursuant to s 75 of the Summary Proceedings Act 1957.

Police v G YC Hamilton, 10 February 1999

Filed under:

Police v G

File number: unknown
Date: 10 February 1999
Court: Youth Court, Hamilton
Judge: Judge D R Brown
Key Title: Evidence (not including admissibility of statements to police/police questioning)

Summary:

G's fingerprints taken in connection with a burglary; G's counsel argued that the Police Act 1958, s 57 did not authorise that taking of fingerprints as 'person' in s 57(1) does not include children and young people. Further, that s 57(3) is evidence that no attention has been paid to the provisions of the CYPFA in the application of that subsection; use of word 'acquitted'.

Held:

'Person' in s 57(1) includes children and young people; as to s 57(3), when a charge against a young person is dismissed in the Youth Court, the generic term for this is acquittal; if someone is acquitted in the Youth Court their fingerprints are to be destroyed.

Decision:

Argument to exclude G's fingerprints dismissed.

Police v M (1999) 18 FRNZ 185 (DC)

Filed under:

Police v M (1999) 18 FRNZ 185

Case summary provided by BROOKERS

Reported: [1999] NZFLR 588 also reported as *Police v I [a young person]*.
File number: CRN8209004448
Date: 19 February 1999
Court: District Court, Christchurch
Judge: Judge Strettell DCJ
Key Title: Jurisdiction of the Youth Court: Age, Jurisdiction of the Youth Court: s 275 offer/election, Orders - type: Conviction and transfer to District Court for sentencing - s283(o): Aggravated robbery

BROOKERS Summary:

Youth justice - Jurisdiction - 15-year-old young person charged with aggravated robberies committed when aged 14 - Judge's jurisdiction to make order under s 283(o) Children, Young Persons, and Their Families Act transferring young person to District Court for sentence - No jurisdiction to transfer where young person under 15 at time of offending - Appropriateness of sentencing options - Importance of rehabilitation goals for young offenders - Option to hear and determine case in Youth Court - Children, Young Persons, and Their Families Act 1989, ss 2(2), 283; Criminal Justice Act 1985, ss 4(2), 8.

Rehearing

This was a rehearing of a Judge's decision to allow a young person charged with armed robbery to have his case heard and determined in the Youth Court.

M, a 15-year-old young person, faced two counts of aggravated robbery committed when he was 14 years old. The police opposed a family group conference recommendation that M be dealt with in the Youth Court and sought his transfer to the High Court for sentence. The Judge initially permitted M to remain in the Youth Court. He considered that s 283(o) Children, Young Persons, and Their Families Act 1989 allows the Court to make an order convicting a person 15 years old or over and ordering that person to be brought before a District Court for sentence. The Judge considered a transfer to the High Court inappropriate as a sentence of more than 5 years' imprisonment was unlikely.

The police applied for a rehearing. They claimed the Judge had no discretion to transfer M to the District Court for sentence and that the sentencing options in the Youth Court were inadequate to deal with such serious offences.

Held

Allowing M to elect to have the information heard and determined in the Youth Court:

(1) In the absence of any words limiting its scope, the meaning of s 4(2) of the Children, Young Persons, and Their Families Act 1989 is plain and unambiguous. It is that the only penalties which may be imposed on an offender are those available at the time of the offence. The inclusion of the words 'against the offender' make it plain that the Legislature had in mind the personal characteristics of an offender, including his or her age. (p 188, line 40)

(2) Where a young person, who has been given the option of being dealt with in the Youth Court, was 14 years old at the time of the offence but is 15 at the time of sentence, a Youth Court Judge has no power to convict the young person and transfer him or her to the District Court for sentence. If Parliament had chosen to make the application of s 283(o) dependent on the young person's age at sentence, it would have been a simple matter for the section to say so. (p 189, line 41)

- *Police v Edge* [1993] 2 NZLR 7; (1992) 9 FRNZ 659 (CA)
- *Police v W* [1995] DCR 756 considered, *Police v S* [1996] NZFLR 906 (DC) distinguished

(3) Where the exercise of a Court's discretion to allow a young person to be dealt with in a Youth Court is shown to be based on an erroneous understanding of the law, the Court has the inherent power to rehear the matter and execute its discretion based on a proper understanding of the law. (p 190, line 15)

(4) The Court's jurisdiction to make orders is limited by s 283 Children, Young Persons, and Their Families Act. Transfer to the High Court is not available under this section. The custodial sentencing options available to the Court are limited to residence with supervision, which may not reflect the nature and gravity of the offending. (p 190, line 28)

(5) If M admitted the charges and was declined the right to remain in the Youth Court, he would be transferred to the District Court for sentence. (p 191, line 7)

(6) In exercising its discretion under s 275 to allow a young person to have proceedings dealt with in a Youth Court, the Court must have regard to a number of factors. The seriousness of the offence alone is not determinative. Although the seriousness of these offences and M's part in them could not be doubted, M and his family had clearly approached the matter seriously and appropriately. They were conscious of M's obligation to be accountable for his actions. Although the robberies were traumatic for the victims they had not objected to the outcome and recommendations of the family group conference. (p 191, line 42; p 192, line 41)

(7) Rehabilitation of 15-year-olds must be a high priority in any sentencing process. As M was a first offender, the Youth Court, although limited as to length of sentence, had jurisdiction in relation to M for a further 2 years. It was open for further follow-up, such as counselling, to be available outside the specific sentencing options, and M's family appeared to support this. On balance it was appropriate to grant M the opportunity to have the information heard and determined in the Youth Court. (p 193, line 1)

Police v Y YC Otahuhu CRN 8204003909, 5 February 1999

Filed under:

Police v Y

File number: CRN 8204003909
Date: 5 February 1999
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Jurisdiction of the Youth Court - s 275 offer/election, Jointly charged with adult; Principles of Youth Justice (s 208)

Whether to offer YC Jurisdiction under s 275 CYPFA; question of sentencing options available in the DC and their relevance to the matters that should be considered by a Judge in the exercise of the discretion under s 275, including the principles of accountability and rehabilitation; discussion of sentencing options after a s 283(o) transfer; discussion of de facto severance by the exercise of the discretion under s 275. Y (16 at time of offence) and adult associate approached complainant outside his school; drove him to a beach location and threatened and intimidated him; alleged triad connection; complainant also the complainant in a previous matter currently before the Courts. Principles from *Police v R and Others* (YC Upper Hutt CRN 9278004028, 12 June 1990) and *Police v S and M* (1993) 11 FRNZ 322 considered in light of these facts particularly the public interest: *Police v W* (YC Otahuhu CRN 8248016224, 23 July 1998 per Carruthers DCJ). Where matter purely indictable and

transferred to DC under s 283(o) of the CYPFA, trial Judge does not have the option of considering the maximum sentences available under s 28F of the District Courts Act 1947: *R v M* [1986] 2 NZLR 172. It follows then that in the absence of specific legislative authority enabling a District Court Judge to impose maximum sentences, the Court is cast back to s7 of the Summary Offences Act where the Judge's sentencing powers are limited to a maximum of 5 years imprisonment. If Y is offered the discretion under s275 it will result in *de facto* severance; this factor should not predominate but it should be considered as an aspect of the public interest. Economy of time and money also not to be predominant but the desirability that the same verdict and the same treatment be returned against all concerned in the same offence must be important.

Held: given the seriousness of this case; that Y has allegedly committed these crimes against the complainant who is the complainant in another case; the limited sentencing options in the YC given that Y nearly 17; the need for deterrence and particularly in light of the public interest, this matter should be dealt with in the HC. Principles surrounding severance taken into account.

Decision:

YC jurisdiction declined.

R v O [1999] DCR 434 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: R v O
Reported: [1999] DCR 434
File number: T 982505
Date: 20 April 1999
Court: District Court
Location: Auckland
Judge: McElrea DCJ
Charge: Indecent Assault
CYPFA: s322
Key Title: Jurisdiction of the Youth Court - Age; Delay; Rights

LEXISNEXIS Summary:

Criminal procedure - Discharge - Abuse of process - Alleged offending occurred before defendant turned 17 years of age - Defendant initially charged in District Court - Proceedings re-laid in Youth Court but discharged as defendant had turned 18 years of age - Delay of 26 months from date charges first laid - Denial of right to Family Group Conference - Children, Young Persons, and Their Families Act 1989, s 332 - Crimes Act 1961, s 347 - New Zealand Bill of Rights Act 1990, s 25(b).

The defendant applied for a discharge under s 347 of the Crimes Act 1961 on the grounds of abuse of process. The defendant was charged with three counts of indecent assault. The

alleged offending came to light after the defendant turned 17 years of age, with the offending having been committed before the defendant turned 17. The defendant was aged 17 years and five months when charges were first laid. The defendant was initially, but mistakenly, charged in the District Court on middle band matters that were referred to the High Court. Shortly before trial in the High Court it was held that those proceedings were a nullity because of the defendant's young age. The proceedings were re-laid in the Youth Court, but were ultimately dismissed on the grounds that the Youth Court did not have jurisdiction, the defendant having turned 18 years of age. The charges were then re-laid again in the District Court. The procedures had taken a total of two and a half years.

Held (granting application for discharge)

1. The right to have the matter considered by a family group conference if it was not denied, the right to a family group conference before any summons was issued, and the right to be dealt with promptly, were important rights that ensured that matters concerning young persons were, where possible, dealt with by the family group conference process with its restorative justice underpinning.

2. It was profoundly unsatisfactory for the Court to have to choose between denying the complainant a trial of his allegations and requiring the defendant to proceed when delays not of his making had denied him rights which the law provided to all young persons. But it seemed repugnant to justice that the defendant should be forced on to trial in the adult jurisdiction by virtue of mistakes made by other people which together had deprived him of his rights given by law.

Observations

1. The defendant lost the potential benefit of the Youth Court in at least two respects - a conference convened prior to issuing a summons may have concluded that no charges need be laid, ie that the matter could have been dealt with on a diversionary basis; and if charges were laid, the defendant might have been advised not to deny the charges and to see if a satisfactory community based outcome could have been agreed at a family group conference.

2. There were three different legal bases for the application being advanced. One was the inherent power to dismiss for abuse of process; the second was s 25(b) of the New Zealand Bill of Rights Act 1990 affirming the right to be tried without due delay; and the third was s 332 of the Children, Young Persons, and Their Families Act 1989 which provided that a Youth Court Judge might dismiss any information charging a young person with the commission of an offence if the Judge was satisfied that the time that had elapsed between the date of the commission of the alleged offence and the hearing had been unnecessarily or unduly protracted.

3. The application was for a discharge under s 347 of the Crimes Act 1961. There was the alternative course of granting a stay. There was no reason why a defendant in this situation was not entitled to a complete discharge rather than a stay which simply left the proceedings afoot without bringing them to trial. Section 347(1)(c) entitled a Judge in his/her discretion after perusing the depositions and consideration of such other evidence and other matters as were submitted for consideration by the prosecutor or the accused, to direct that no indictment should be filed, or if it had been filed to direct that the accused should not be

arraigned thereon, and in either case to direct that the accused be discharged. Those provisions were wide enough to encompass the [current] situation.

4. The same result would probably have been reached applying the cases under the New Zealand Bill of Rights Act 1990, dealing with undue delay.

R v Drew (1998) 4 HRNZ 614, referred to.

Cases referred to in judgment

Martin v Tauranga District Court [1995] 2 NZLR 419
R v Drew (1998) 4 HRNZ 614

Application

The defendant applied for a discharge under s 347 of the Crimes Act 1961 on the grounds of abuse of process.

W & Ors v Registrar, Youth Court, Tokoroa [1999] NZAR 380 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: W & Ors v Registrar, Youth Court, Tokoroa
Reported: [1999] NZAR 380
File number: M 27/99
Date: 25 May 1999
Court: High Court
Location: Rotorua
Judge: Morris J
Charge: Aggravated Robbery
CYPFA: s276
Key Title: Jurisdiction of the Youth Court - s276 offer/election; General principles of sentencing eg Parity/Jurisdiction

LEXISNEXIS Summary:

Youth Court - Aggravated robbery - Youths refused opportunity to elect to be dealt with by Youth Court - Sent to District Court - Whether Judge erred in exercise of his discretion - Whether Judge gave too much weight to public interest consideration - Children, Young Persons, and Their Families Act 1989, ss 4,5,208,276(1),283(o),284.

The applicants were each charged with one count of aggravated robbery in four separate cases. Each had indicated in December 1998 that they would plead guilty. On 10 February 1999 the Youth Court Judge refused to give any of them the opportunity to elect to be dealt with in the Youth Court and ordered each to be brought before the District Court. The applicants sought a review of his decision and an order that each be dealt with by the Youth

Court. It was argued that the four judgments given by the Court all mirrored each other and were not specific judgments dealing with the case of each applicant. It was further submitted that the Youth Court failed to take into account all the matters it was required to consider under the Children, Young Persons, and Their Families Act 1989, and the Court gave too much weight to the public interest.

Held (dismissing the applications)

(1) It could not fairly be advanced that the Judge did not act within the sentencing principles consistent with the scheme and purpose of the Children, Young Persons, and Their Families Act 1989. In each of the four judgments, he detailed matters relating to the offence as well as to each applicant. In each case he referred to the volume of aggravated robberies in Tokoroa and surrounding areas. The Judge specifically referred to the factors that he was required to take into account in three of the judgments.

(2) The Judge was at pains to consider each applicant's case on its merits. The determining factor was the need for the public to be protected against aggravated robberies, which were prevalent in the area. Under s 208, the Judge was obliged to consider the public interest. This was always an important factor in any sentencing consideration. He was entitled to reach the view he did and to exercise his discretion to refuse the applications.

Cases referred to in judgment

R v M and C (1986) 1 CRNZ 694 (CA)
R v P (High Court, Auckland S 89/90, 14 September 1990, Gault J)
R v Police (1990) 6 FRNZ 538
S v District Court at New Plymouth (1992) 9 FRNZ 57

Judicial review

This was an application for judicial review of decisions made by the Youth Court Judge on 10 February 1999 that the applicants be sent to District Court for sentence.

R v M [a young person] (1999) 18 FRNZ 194 (HC)

Filed under:

Case summary provided by BROOKERS

R v M [a young person] (1999) FRNZ 194

File number: T990626
Date: 3 May 1999
Court: High Court, Auckland
Judge: Nicholson J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance.

BROOKERS Summary:

Youth justice - Evidence - Admissibility - Statement by young person to detective before video interview - Whether young person had been advised of his entitlement to have lawyer present during questioning - Whether young person had clearly indicated a wish to consult lawyer before questioning took place - Lack of reasonable compliance - Element of unfairness in nature of questioning - Children, Young Persons, and Their Families Act 1989, ss 208, 215(1)(f), 221(2)(b), 224.

Application

This was an application under s 344A of the Crimes Act 1961 for a ruling on the admissibility of a statement made to the police by a young person.

The Crown applied under s 344A of the Crimes Act 1961 for a ruling on the admissibility of a statement by the accused, M, which was given to L, the detective who had interviewed him. L visited M's house in the early morning with a search warrant, in connection with the stabbing of W. He asked M's parents to wake M. He then explained M's rights to M and his parents, including telling them that M was 'entitled to consult and instruct a lawyer without delay and in private' and to consult a nominated person. This advice was based on the police Youth Justice Checklist - pol 388. Both M and his parents indicated that they understood this right and were willing to go to the police station for an interview. When L then asked M if he wanted to contact a lawyer before being interviewed, M initially said, 'yeah' but after speaking to his mother indicated that he would 'be all right'.

In the interview room L repeated his earlier advice and M indicated that he understood this. Both M and his mother agreed to talk without a lawyer being present. L then asked for the names of the people involved in the stabbing of W. M admitted his part in the stabbing, who else was involved, where the weapon had come from and what had been done with it. Later L started a video interview with M and M's mother. When L repeated his advice during the video interview, M said that he wanted to speak to a lawyer before continuing with the interview. The police then arranged for a lawyer. After M and his mother had consulted the lawyer, M's mother told L that she would take the lawyer's advice and that M would not say any more. M was later charged with W's murder.

M's counsel sought to have M's statements before the video interview declared inadmissible on the grounds that ss 215 and 221 of the Children, Young Persons, and Their Families Act 1989 were not complied with. In evidence, M said that he had initially said 'yeah' when asked if he wanted a lawyer so he could get help. However, he later said that he would be all right because he thought that the lawyer would not have turned up at the time and he wanted a lawyer straight away.

Held:

Ruling that the statements were inadmissible:[(1999) 18 FRNZ 194, 195]

1. It was clear and understandable that L had relied on the police Youth Justice Checklist - pol 388 in explaining M's rights to him. The checklist made no mention of entitlement to the presence of a lawyer while being questioned. Having regard to L's evidence it was likely that L did not explain to M before questioning him that M was entitled to make or give any statement in the presence of a lawyer. Accordingly s 215 of the Act was not complied with. (p 200, line 41)

2. When M was informed of his right to consult a lawyer, he clearly advised L by his answer, 'yeah', that he wished to do so. L should then have arranged for M to consult with a lawyer before questioning him further. There was no compliance with s 221(1)(b) of the Act. (p 201, line 15)
3. The two instances of failure to comply with the Act were substantial and not technical in nature. The cumulative effect of non-compliance amounted to lack of reasonable compliance with the requirements of the Act. There was a strong element of unfairness in the form and content of the questioning which pressurised M into agreeing that he had stabbed W. (p 201, line 44)

R v Accused (1991) 8 FRNZ 119, (1991) 7 CRNZ 539

R v Irwin [1992] 3 NZLR 119, (1991) 8 FRNZ 487, (1991) 8 CRNZ 39

R v S (1997) 16 FRNZ 102, (1997) 15 CRNZ 214 followed

Observation

L may have been led into the trap of not advising M of his entitlement to have a lawyer present by the absence of any reference to presence in the police Youth Justice Checklist. It is recommended that the police consider amending the checklist to include reference to entitlement to have a lawyer present during questioning. (p 202, line 9)

R v Wikitoa HC Rotorua T990342, 28 May 1999

Filed under:

R v Wikitoa

File Number: T990342
Date: 28 May 1999
Court: High Court, Rotorua
Judge: Nicholson J
Key Title: Admissibility of statements; Nominated person

Summary:

Unsuccessful challenge to admissibility of statement made by W; admissibility of statement challenged on grounds that:

1. It was in breach of s 221 of the CYPFA as person nominated by W to be present, namely his parents, not present and the Police took no reasonable steps to contact them to ensure their presence;
2. nominated person who did attend was unsuitable;
3. nominated person failed to fulfil the role required by s 222(4) of the CYPFA;
4. Police failed to notify the parents as required by s 229(1)(b) of the CYPFA and this amounted to unfairness so as to make the statement inadmissible; conflicting evidence.

Held:

1. Evidence of nominated person and Police accepted; Police acted reasonably; evidence as to availability of W's mother at home not accepted;
2. Nominated person, an experienced Youth Aid Officer, was a suitable person;
3. steps required under s 222(4) were taken;
4. context in which steps taken was basically fair. Law proceeds on assumption that the nominated adult must take a proactive role and ensure the accused is aware of their rights before and during questioning; ensure young person not disadvantaged because of their youth; not sufficient for the nominated person simply to monitor the procedure.

Decision:

Statement admissible.

Police v T YC Otahuhu CRN 9248006223, 8 June 1999

Filed under:

Police v T

File Number: CRN 9248006223, 225, 226, 232, 234, 241, 242, 233, 243.
Date: 8 June 1999
Court: Youth Court, Otahuhu
Judge: Judge Boshier
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Explanation of Rights, Evidence (not including admissibility of statements to police/police questioning)

Summary:

Principal issues were admissibility of a statement, examination of whether the evidence proved beyond reasonable doubt, guilt of accused; defendant under surveillance, Police alleged that the defendant was selling cannabis; discussion of when defendant made aware of his rights in relation to statement presented to Court, Court concludes that he was made aware of his rights in accordance with CYPFA before he made statement or that there was 'reasonable compliance' with the Act.

Decision:

T found guilty of possession of cannabis for sale or supply.

Police v Andrew [2000] DCR 607 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v Andrew [2000] DCR 607

File number: CRN 922008506
Date: 20 August 1999

Court: Youth Court, Napier
Judge: McElrea DCJ
Key Title: Jurisdiction of the Youth Court: Age; Jointly charged with adults (s 277)

LEXISNEXIS Summary:

Children and young persons - Jurisdiction of Youth Court - All four defendants alleged to have taken some physical part in offences - Two defendants likely to be transferred to District Court from Youth Court because they would be 18 by the time the matter was heard - Whether indictable offence can be divided to be heard in the Youth Court - Whether depositions must be held in the Youth Court - Serious charges of sexual violation of unconscious victims - Children, Young Persons, and Their Families Act 1989, ss 275,277,283(o).

Six defendants, four of whom were aged under 17 at the time of the offending, were charged with sexual violation by means other than rape. The violations were of a serious nature and were carried out on two victims who were unconscious through the imbibing of excessive alcohol. All four youth offenders took an active part in the assaults and either victim could have died from intoxication.

The question before the Court involved the jurisdiction of the Youth Court. Firstly whether the Youth Court had jurisdiction to hear depositions where some of the defendants were youths and some adults; and secondly whether it was appropriate when the charges were proceeding indictably, to divert the hearing of charges against the young persons to the Youth Court from the District Court or High Court, which would inevitably involve severance of trials.

Held: (accepting that depositions should be held in the Youth Court but refusing the Youth Court jurisdiction to hear the charges)

(1) Section 275 of the Children, Young Persons, and Their Families Act 1989 required a Youth Court Judge to hear and preside over depositions of young persons so that he or she can then make the decision as to whether Youth Court jurisdiction was being offered to the young person. In all cases where young persons were involved in purely indictable matters jointly charged with adults, the depositions must be conducted in the Youth Court.

(2) It follows that the two defendants who were aged 17 years or over at the time of the alleged offending must be tried by Judge and jury either in the High Court or the District Court.

Police v Manuel (1998) 16 CRNZ 62, followed.

(3) There were several considerations to weigh in deciding whether to exercise the discretion and grant the four youth defendants a separate hearing in the Youth Court. Firstly the nature of the offence; secondly the part the defendants played; thirdly the sentencing consequences; fourthly the forum in which the case was likely to be heard first; fifthly one has to consider the principles of the Children, Young Persons, and Their Families Act.

Police v Richard (Youth Court, Upper Hutt, 12 June 1990, Judge Lee), adopted.

(4) Having looked at all those aspects the question of severance arose because to offer the young people Youth Court jurisdiction would involve having two trials instead of one.

(5) Weighing all those matters in the balance, there was a compelling case for saying that all defendants should be tried together in a jury jurisdiction and that none of the young persons should be offered the opportunity of forgoing the right of trial by jury and having their case dealt with in the Youth Court.

Cases referred to in judgment

- *Police v Manuel* (1998) 16 CRNZ 62
- *Police v Richard* (YC Upper Hutt 12 June 1990 per Judge Lee)
- *Police v W* (1996) NZFLR 902

Application

This was an application by the Crown to determine the jurisdiction of the Youth Court to hear depositions and charges proceeding indictably where some of the offenders were adults and some young persons.

Police v A Young Person FC Hamilton, 18 August 1999

Filed under:

Police v A Young Person

File number: unknown
Date: 18 August 1999
Court: Family Court, Hamilton
Judge: Judge Twaddle
Key Title: Care and Protection cross over (s 280): Family Group Conference/Care and Protection (s 261); Custody (s 238): CYFS

Summary:

Young person (15.5) appeared on 10 charges of performing anal intercourse on persons under the age of 16 and 3 charges of indecent assault. Court also required to review an order granting custody of the young person to the Director-General of Social Welfare under the care and protection provisions of CYPFA. Youth and Family matters dealt with together.

Young person had long history of aggressive, sexualised and antisocial behaviour, a conduct disorder and was under 24 hour surveillance. At Family Group Conference family and victims recommended young person should attend the Christchurch Adolescent Offender Rehabilitation Programme; police sought conviction and transfer to District Court.

Custody order made in favour of Director-General of SW and Director-General to be young person's sole guardian - review directed for 12 months time. Necessary to make final effort to rehabilitate young person. Youth justice matters require timely disposition but Christchurch programme not delivered in residence registered under the Act's youth justice provisions.

Accordingly young person cannot be placed there under Youth Court orders and admission must be by way of care and protection proceedings. This weighed against immediate final disposition of the criminal charges. Sections 104 and 105 relied upon to ensure young person remained at the Programme.

Decision:

Custody and sole guardianship orders made.

W v The Registrar of the Youth Court (Tokoroa) (CA) [1999] NZFLR 1000; 18 FRNZ 433

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: W v The Registrar of the Youth Court (Tokoroa)
Reported: [1999] NZFLR 1000; 18 FRNZ 433
File number: CA 166/99
Date: 23 September 1999
Court: Court of Appeal
Location: Wellington
Judge: Thomas, Gallen and Doogue JJ
Charge: Robbery; Aggravated Robbery
CYPFA: s4; s5; s276
Key Title: Jurisdiction of the Youth Court - s276 offer/election; Objects; Principles

LEXISNEXIS Summary:

Youth offenders - Appeal - High Court decision confirming decision of the Youth Court refusing to allow nine youths to be dealt with in the Youth Court and referring them to the District Court for sentencing - Youth Court Judge had considered it against public interest for the youths to be dealt with in the Youth Court - Serious offending by youths - Whether the Judge had sufficient regard to the general principles of youth justice - Whether the Judge had separately considered the circumstances of each of the youths - Comments concerning jurisdiction to appeal the exercise of the Youth Court Judge's discretion - Children, Young Persons, and Their Families Act 1989, ss 4, 5, 276(2).

The nine appellants in this case were all youths who had been charged with serious robbery and aggravated robbery offences in the Tokoroa region and who had appeared before a Youth Court Judge on the same day. For reasons primarily concerned with the public interest, the Youth Court Judge exercised his discretion to refuse to allow the youths to be dealt with in the Youth Court and referred them to the District Court for sentencing. The appellants had subsequently appealed to the High Court where it was held that the Youth Court Judge had not erred in the exercise of his discretion. The High Court considered that the Youth Court Judge had been at pains to consider each appellant's case on its merits. The appellants appealed the High Court decision, by way of judicial review, to the Court of Appeal. Counsel for the appellants submitted that the Youth Court Judge had erred in the exercise of his discretion by having insufficient regard to the general principles of youth justice, by not

separately considering the circumstances of each of the youths, by not adequately considering the wide range of sentencing options available in the Youth Court and by placing too much weight on considerations relating to the public interest.

Held (dismissing the appeal)

(1) The Youth Court Judge was not in error in deciding, in the exercise of his discretion, to decline jurisdiction and refer the offenders to the District Court for sentencing; the Youth Court Judge had not given insufficient weight to the principles of youth justice. Whilst the emphasis of the Act is on restorative justice and the rehabilitation of young offenders there is also recognition in the legislation and case law that serious offending may call for stronger penalties than the Act provides. The Youth Court Judge had not failed to adequately consider the wide range of sentencing options available in the Youth Court and had had regard to the options available in the District Court. Although he did not deal with the nine youths separately, the Youth Court Judge had not failed to consider the case of each youth. The circumstances of each offender had been addressed and differences in culpability and attitude amongst them had been recognised. The Youth Court Judge had not given undue regard to the public interest. The Judge had been entitled to conclude that violent offending by youths in the Tokoroa area had reached alarming levels.

(2) There was merit in the Youth Court Judge's expressed view that it would be preferable for the same District Court Judge to hear and determine the sentences of all offenders.

(3) There is no jurisdiction to challenge the exercise of a Youth Court Judge's discretion under s 276(2) of the Children, Young Persons, and Their Families Act by way of appeal.

Cases referred to in judgment

Cooper v Police (High Court, Hamilton, AP 106/98, 12 November 1998)
R v M and C (1985) 1 CRNZ 694
R v P (High Court, Auckland, S 89/90, 14 September 1990, Gault J)
R v Police (1990) 6 FRNZ 538
S v District Court at New Plymouth (1992) 9 FRNZ 57

Appeal

This was an appeal by way of judicial review from a decision of the High Court upholding a Youth Court Judge's decision to refer nine youth offenders to the District Court for sentencing.

S v Police [2000] NZFLR 380 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

S v Police [2000] NZFLR 380

File number: AP 139/99
Date: 23 September 1999

Court: High Court, Auckland
Judge: Potter J
Key Title: Orders - Conviction and transfer to the District Court for sentencing - s 283(o): Serious assault (including GBH), Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other, Appeals to High Court/Court of Appeal: Jurisdiction, Family Group Conferences: Report from, Reports: Social Worker

LEXISNEXIS Summary:

Youth Offenders - Sentencing - Injuring with intent to injure - Transfer to District Court for sentencing - Whether decision to transfer was wrong at law - Appellant had been involved in serious offending and only fell within the youth offender framework by a matter of days - Failure to give regard to matters essential to transfer decision - Social Worker had recommended discharge - Crimes Act 1961, s 189(2) - Children, Young Persons, and Their Families Act 1989, ss 283, 284.

Appeal

This was an appeal against an order transferring sentencing from the Youth Court to the District Court.

The appellant appealed against a decision of the Youth Court to transfer sentencing to the District Court. The appellant had pleaded guilty to three charges of which the most serious was injuring with intent to injure under s 189(2) of the Crimes Act 1961. The other two charges related to recklessly driving a motor vehicle and presenting an airgun. The appellant had only fallen within the youth offender framework by a matter of days. A family group conference had been held and its recommendations were admonishment in respect of the charge of injuring with intent and a discharge in respect of the other two charges. A social worker was also commissioned to provide a report requested to gain the input of the victim who was in jail facing other charges. The report recommended a six month suspended sentence. The Youth Court Judge was concerned about the proximity of the charges and their seriousness. He found that the social worker's report gave him no information about the appellant. He declined to discharge the appellant and convicted him and transferred the matter to the District Court for sentencing.

The appellant appealed on the basis that the Youth Court Judge had failed to give adequate consideration to the principles of the Act and its system of restorative justice. It was submitted that the Judge had failed to have regard to the mandatory considerations under s 284(b) of the Act including the history, social circumstances and personal characteristics of the young person and also the family group recommendation as required by s 284(h). It was further argued that an order could not be made under s 283(o) unless the provisions of s 290(l) were satisfied. That required that the offences were purely indictable, that the circumstances were such that if the young person were an adult a full custodial sentence would have been imposed on conviction and that the Court be satisfied that because of the special circumstances of the offence or the offender any order of a non-custodial nature would be clearly inadequate. This was a case where if the appellant had been an adult offender s 5 of the Criminal Justice Act would have applied. However it was submitted that in this case there were special circumstances such as the fact that the appellant was acting under extreme provocation.

Held

(quashing the transfer order and ordering a rehearing as to sentence before the Youth Court)

(1) The Youth Court Judge had been plainly wrong in ordering a transfer in this case. The decision was brief. It did not develop in any detail the matters which were necessary to found jurisdiction under s 290. While some matters were considered other relevant matters were not detailed. Though this was serious offending the appellant was entitled to have his case fully examined under the Youth Justice system before a transfer was ordered. As this did not occur the decision was incorrect.

Police v D [2000] NZFLR 237 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v D
Reported: [2000] NZFLR 237
File number: CRN 9255025991
Date: 17 September 1999
Court: District Court
Location: Papakura
Judge: Hole DCJ
Charge: Burglary
CYPFA: s5(f); s322
Key Title: Delay

LEXISNEXIS Summary:

Youth Offenders - Delay - Assessment of time frame from receipt of information through to completion of implementation of any decision - Police had delayed in speaking to informant - Offender was then spoken to - Whether delays were too great having regard to young person's age and his sense of time - Young person was aged 14 years - Discretion to dismiss proceedings - Children, Young Persons, and Their Families Act 1989, s 322.

The young person, D at the centre of these proceedings was charged with burglary. The police had received information from a possible informant on 25 January 1999 and it was recommended that she be spoken to. Though her address and school was known and it was understood that she was not on the phone she was not in fact spoken to until 20 May. D was then spoken to three days later and denied the offence. The matter was referred to the Manurewa Youth Aid centre which contacted D's parents advising that a family group conference would be set down. The information was laid on 10 August 1999, presumably after that conference had been held.

D applied to have the information dismissed either under s 322 of the Children, Young Persons, and Their Families Act or under the Court's inherent jurisdiction on the basis of delay. D submitted that the Court must have regard to s 5(f) of the Act which required that

decisions affecting the young person should be made within a timeframe appropriate to the child or young person's sense of time.

Held (Dismissing the information)

(1) The Court was entitled to look at the chronology and consider whether any period amounted to unnecessary or unduly protracted delay. It appeared that there was such delay between 10 February 1999 and 23 May 1999. D had been contacted little was done until the middle of June. This was enough to dispose of the application in itself.

(2) The Court was also entitled to exercise its inherent jurisdiction and have regard to the principle set out in s 5(f). The Court was required to ask itself whether decisions affecting D who was 14 could be made and implemented with a timeframe appropriate to his sense of time. Any sentence imposed, even for a minimum term would take the matter through to the beginning of the year 2000. That meant a period of one year from the receipt of the information to the end of the matter. That was simply too long, even having regard to the serious nature of the offence. And the Court could dismiss the proceedings under its inherent jurisdiction as well.

Cases referred to in judgment

Police v BRR (1993) 11 FRNZ 25

Application

This was an application to dismiss an information laid against D on the grounds of unnecessary or unduly protracted delay.

Police v M YC Otahuhu CRN 8248025626, 28 September 1999

Filed under:

Police v M

File number: CRN 8248025626
Date: 28 September 1999
Court: Youth Court, Otahuhu
Judge: Boshier DCJ
Key Title: Youth Court procedure

M charged with aggravated robbery; YC jurisdiction not offered under s 276 CYPFA; M committed to High Court for sentence; sentenced to 4 years imprisonment. M appealed to Court of Appeal arguing non-compliance with Summary Proceedings Act 1957, s 153A in that no proper plea was taken. Court of Appeal allowed the appeal, and the conviction and sentence were set aside (*R v Matagiaga* CA155/99, 22 July 1999 per Richardson P, Doogue J, Goddard J); matter remitted to Youth Court pursuant to Crimes Act 1961 for proper plea to be taken 'according to law'; YP endorsed the Information 'I plead guilty to the within information' pursuant to Summary Proceedings Act 1957, s 153A. Youth Court Judge noted

this statement was more relevant to Summary Proceedings Act 1957, s168; s153A includes no requirement to endorse the Information; Judge requested a written request to be completed pursuant to s153A(2) to establish jurisdiction. Judge opted not to offer s 276 jurisdiction as matter had already been before the High Court; guilty plea; thus matter should be dealt with according to Summary Proceedings Act 1957, s 153A, not CYPFA s 276.

Decision:

Defendant remanded to High Court for sentence.

H v Police [1999] NZFLR 966; 18 FRNZ 593 (HC)

Filed under:

Case summary provided by BROOKERS

Name: H v Police
Reported: [1999] NZFLR 966; 18 FRNZ 593
File number: AP 71/99
Date: 13 October 1999
Court: High Court
Location: Hamilton
Judge: Smellie J
Charge: Robbery; Burglary
CYPFA: s245; s247; s249; s250; s251
Key Title: Family Group Conference - Timeframes/limits; Family Group Conference - Attendance

BROOKERS Summary:

Children and young persons - Young person facing charges of robbery and burglary - Charges referred to Youth Court - Jurisdiction of Court to hear charges against young person because no family group conference had been held before the informations were laid against him - Failure to convene family group conference within 21 days of referral - Whether fatal to the hearing of the informations - Whether absence of young person's family at the family group conference meant that the case had not been considered properly - Whether family group conference should have been adjourned - Children, Young Persons, and Their Families Act 1989, ss 2, 4, 5, 6, 208, 245, 247, 249, 250, 251, 258, 262, 351-360.

At the date of the alleged offending the appellant was 14 years of age. On 14 September 1998 a Youth Justice Co-ordinator accepted a referral from the informant pursuant to s 245 of the Children, Young Persons, and Their Families Act 1989 in respect of the appellant for the two alleged offences of burglary and robbery. After attempting to make contact with the appellant and his mother on a number of occasions the Co-ordinator convened a family group conference for 22 October 1998 and informed the appellant and his mother by letter. This was more than 21 days after the referral on 14 September 1998. On the day of the conference the Co-ordinator received a message that the appellant's mother was unwell and unable to attend. As the Co-ordinator and the informant were of the view that the mother was making excuses, they decided to lay the matters in the Youth Court.

The appellant now appealed against two related judgments given in the District Court. The first concerned a challenge to the Court's jurisdiction to hear charges of robbery and burglary against the appellant because no family group conference had been held before the informations were laid against him. The second challenged the finding of guilt in respect of the robbery.

The grounds relied upon were that as no family group conference was convened within the mandatory 21 days, the Court had no jurisdiction to entertain the informations laid; there was no consideration by a family group conference because of the absence of the appellant and his mother; there was no family group conference because a unilateral decision had been made by the Co-ordinator rather than the conference not to adjourn; the evidence relied on by the District Court Judge did not support proof of robbery beyond reasonable doubt.

Held

(1) Given the statutory history and the need to impose time limits to ensure that the conducting of family group conferences were not drawn out to unacceptable lengths, it was clear that s 249 (2) of the Act enacted mandatory time limits. Thus the failure to convene within 21 days invalidated the conference and therefore removed the jurisdiction of the Court to consider the information regarding the robbery.

(2) Even in the absence of the young person and his mother, the Youth Justice Co-ordinator and the Youth Aid police officer were able to make valid decisions at a family group conference. This was because it could not have been the intention of Parliament that a young person and his family could avoid the laying of an information in respect of alleged offending simply by staying away from a conference.

(3) While the lack of cooperation by the appellant and his family up to 22 October 1998 raised the suspicion that the explanation was not genuine, there was no reliable foundation upon which it could be dismissed out of hand. However any adjournment should be on the basis that it will be for a limited period and that further adjournments on the ground of ill health will only be considered upon production of a medical certificate and confirmation that no other family member can attend.

(4) There was sufficient evidence to support a conclusion that guilt had been proved beyond reasonable doubt.

Cases referred to in judgment

A Child CYPF 1/89, Re (1989) 6 FRNZ 44
Police v Linda & Graham (Youth Court, Wellington 11 July 1990, Judge Carruthers)
Trompert v Police (1984) 1 CRNZ 324

Appeal

This was an appeal against two related judgments of the District Court and concerned the Court's jurisdiction to hear criminal charges against a young person because no family group conference had been held before the informations were laid and challenged the finding of guilt in respect of one of the charges.

Police v K (5 October 1999) DC, Otahuhu, CRN 8255014302-8; 8255018342, Harvey DCJ

Filed under:

Name: Police v K
Unreported
File number: CRN 8255014302-8; 8255018342
Date: 5 October 1999
Court: District Court
Location: Otahuhu
Judge: Harvey DCJ
CYPFA: s296
Charge:
Key Title: Review of orders; Community Work Order

Summary: Application for cancellation or other consideration of a community work order; community work order has expired; social worker recommended the matter be transferred to the District Court as K was now over 17 and a half; nothing to act upon; no jurisdiction to review or cancel; the order should have been suspended thus keeping it alive pending the review proceedings but this was not done in this case.

Decision: Defendant released from custody as no jurisdiction to deal with the application for review.

Police v B (6 October 1999) YC, Hamilton, CRN 9219024334/24318-9, Twaddle DCJ

Filed under:

Name: Police v B
Unreported
File number: CRN 9219024334/24318-9
Date: 6 October 1999
Court: Youth Court
Location: Hamilton
Judge: Twaddle DCJ
CYPFA: s5(f); s322
Charge: Sexual Violation; Indecent Assault
Key Title: Delay

Summary: B (14 at time of alleged offences) charged with sexually violating a female and two charges of indecent assault of a 9-year-old girl; charges denied; application to dismiss charges on grounds that time elapsed between offences and hearing unnecessarily and unduly protracted pursuant to s322 CYPFA. Complaint made on 20/11/98, hearing date still not set on 6/10/99. Nine months of this delay due to Police workloads, annual leave, unavailability of suitable nominated person. Section 5(f); s322 CYPFA; *Police v C* (Undated, circa 1990, YC, Wellington, CR 0285015569, Carruthers DCJ) and *Police v BRR* (1993) 11 FRNZ 23l

discussed; also *R v Mackenzie* (20 June 1995, YC, Blenheim, CRN 4218004914, McAloon J) where *Martin v DC Tauranga* 12 CRNZ 509 and Bill of Rights Act 1990, s25(b) referred to: "the fact that delay is systemic does not justify it", McAloon J in *R v Mackenzie* adopted this statement as relevant to s322 delay and added that the seriousness of the offending does not have any relevance to the exercise of the discretion under s322. Held: Delay of nine months between file being received and Informations being laid unnecessary. Taking into account the length of the delay to date and that by the time of the hearing the delay will be more than 15 months and having regard to s5(f), delay would be unduly protracted and unnecessary; no need for any particular criticism for finding that passage of time unduly protracted.

Decision: Information dismissed.

Re AM [2000] NZFLR 97 (FC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Re AM [2000] NZFLR 97

File number: CYPFS 048/73/97
Date: 30 November 1999
Court: Family Court, Otahuhu
Judge: Judge Boshier
Key Title: Care and protection cross-over (s 280): Family Group Conferences/Care and Protection (s 261), Medical treatment (s 306(2)), Report: Psychiatric, Guardian.

LEXISNEXIS Summary:

Children and young persons - Child in need of care and protection - Young person had propensity for sexual offending - Young person currently under the guardianship of the Family Court - Wish to have young person treated with the drug Prozac - Treatment opposed by young person's mother - Whether appropriate for Family Court to order Prozac treatment programme - Directions appropriate for conduct of programme - Children, Young Persons, and Their Families Act 1989, ss 110, 117, 120 - Guardianship Act 1968, ss 8, 10B,10D.

Application

This was a hearing to determine whether it was appropriate for a treatment programme involving a young person under the guardianship of the Family Court to be treated with the drug Prozac.

A declaration that the young person (A), now aged 17, was in need of care and protection had been made in December 1995. A had been the subject of a custody order in favour of the D-GSW. This followed several incidents of A committing sexual indecencies on young girls. Further offences occurred after 1995. In June 1999 A was placed under the guardianship of the Family Court pursuant to s 10B and was staying with caregivers. The independent psychiatrist's report obtained by the Court advised that A was at a very high risk of sexually re-offending. The psychiatrist concluded that Prozac would be an appropriate treatment for A

and suggested that it be prescribed as a trial. A's mother opposed treatment fearing side effects and long-term consequences.

A had indicated that he would like to stay with his present caregivers and would like to try Prozac.

Held

(appointing the Chief Executive of the Department of Child, Youth and Family Services as the Court's agent pursuant to s 10D of the Guardianship Act 1968 to facilitate and oversee a medication programme for A)

1. Given the likelihood of A reoffending; the devastating and long-term consequences of sexual offending on young children; and A's informed consent to a trial period of Prozac, the Court concluded that a trial period of Prozac was responsible and should be undertaken.
2. When the Court made an order that A be placed under the guardianship of the Family Court the making of that order automatically caused the cessation of the guardianship order under the Children, Young Persons, and Their Families Act. The position in law at present was that although A had been under the guardianship of the D-GSW, and more recently the Chief Executive of the Department of Child, Youth and Family Services, he was no longer under that guardianship. The Family Court now had the responsibility to see through A's immediate destiny.
3. Orders were made as to commencement of the programme and future reporting and contact between A and members of his family.

1998

R v Mahoni (1998) 15 CRNZ 428 (CA)

Filed under:

Case summary provided by BROOKERS

R v Mahoni (1998) 15 CRNZ 428

Court of Appeal
File number: CA405-407/97; CA433/97
Date: 25 February 1998
Judge: Eichelbaum CJ, Richardson P, Gault, Keith, Tipping JJ
Key Title: Sentencing in the adult courts: Application of Youth Justice principles, Sentencing in the adult courts: Aggravated Robbery, Sentencing in the adult courts: Sexual violation by rape, Sentencing in the adult courts: Sexual violation by unlawful sexual connection, Sentencing - General Principles (e.g. parity/jurisdiction)

BROOKERS Summary:

Sentence - Sexual offences - Whether sentences manifestly excessive - Multiple defendants and multiple offences - Weight to be given to mitigating factors such as guilty plea and age of defendants.

Sentence - Youth offenders - Sexual offences - Whether sentences manifestly excessive - Multiple defendants and multiple offences - Weight to be given to mitigating factors such as guilty plea and age of defendants.

Appeal

Appeal against sentence.

The four appellants were members of 'The Central Soldiers', a street gang with a stated objective of obtaining recognition and notoriety through committing crimes. The appellants appealed against sentences imposed for offences committed in a series of incidents. The gang targeted cars occupied by couples in vehicles parked at One Tree Hill, Bastion Point, and Mount Roskill in Auckland. Having selected their victims, they parked their own vehicle, and approached the target car simultaneously from both sides. Attacks were carried out with a wheel brace, a steering lock bar, or a tyre lever. They forced their way into the car and assaulted the male, robbing him of valuables. Simultaneously, in three of the four cases, the female was sexually harassed or assaulted. In the third (and the most serious case), the female victim was subjected to a brutal gang rape.

In the end, all appellants pleaded guilty to two counts of aggravated robbery, and three of sexual violation, by rape, oral sex, and digital anal penetration respectively. Tangitau and Tongotongo also pleaded guilty to two further charges of aggravated robbery, which took place at Mount Roskill.

The appellants Tangitau, Tongotongo, and Mahoni were 16 at the date of the offending and 17 when sentenced. The appellant Sinamoni was just over 15 at the date of the offending.

The sentencing Judge held that the only mitigating aspects were the age factor and some allowance for the pleas of guilty.

The appeal was based on the ground that the Judge's starting point was too high. It was not specified precisely, but if some of the Judge's remarks suggested it was 20 years, in the appellant's submission this was excessive. If on the other hand, as another passage might have suggested, the starting point was 15 years in the case of the three older offenders, and 13 years for Sinamoni, no sufficient allowance was made for mitigating factors.

Held

1. because of the endless variety of circumstances that come before the Courts on sentencing, an absolute rule cannot be laid down relating to whether a cumulative or concurrent approach should be adopted, or how, as a matter of mechanics, the starting point is to be approached. In this case, the Judge did not have any real option but to fix sentences for the sexual offending which reflected the totality of each offender's culpability, and impose concurrent sentences for the lesser (although still serious) offending. (p 435, line 18)
2. As to the assessment of the head sentence, in situations akin to the present, the preferred mode is likely to be the familiar process of fixing a starting point and making deductions from it for the factors in mitigation. Here, although in the end result the longest sentences would be imposed in respect of the sexual violation counts, clearly the starting point would have to be influenced by the totality of the offending of the particular accused. Commencing with the sexual offending accompanying the third incident, this was a very bad case. It comes into the 'very severe and exceptional' group referred to in *R v Morris*. (p 435, line 25)
   R v Morris [1991] 3 NZLR 641; (1991) 7 CRNZ 26 (CA) referred to
   R v Pira CA328/92, 9 December 1992
3. In the 'ordinary' case, where conviction for sexual violation by rape follows a trial where guilt has been contested, the conventional starting point is 8 years. In cases as the present, in the highest category, the figure does not have much more relevance than to remind the sentencer that that is the benchmark for cases of much lesser gravity. If here, as seems probable, the Judge took 20 years as the starting point, then this is not criticisable. (p 436, line 23)

R v A [1994] 2 NZLR 129 (CA) referred to

4. In relation to matters of mitigation, the Judge's remarks on sentencing appear to understate the weight to be given to a plea of guilty in the circumstances which occurred. Although on the face of things the pleas were delayed, there was still substantial benefit to the victims in not having to give evidence, and the avoidance of public time and expenditure on a lengthy trial. Although in the circumstances of this case the appellants could not expect to receive the most liberal allowance, nevertheless their pleas merited substantial recognition. (p 436, line 30)
5. In relation to the issue of allowance for youth, the principle that for a variety of reasons, youth may lead to a reduction in an otherwise appropriate sentence is not an absolute principle and there are situations where it must yield to public interest. Also, an allowance would be made more readily in a case having features encouraging leniency. No such circumstances are present here. The attacks were planned, repeated, and in conformity with

the creed of the gang from the outset. The sentencing Judge was not therefore required to make a large reduction on account of age. (p 436, line 44; p 437, line 3)

R v Wilson [1989] 2 NZLR 308; (1989) 5 CRNZ 165 (CA) referred to

6. In relation to Tangitau and Tongotongo, an effective reduction of 6 years made sufficient allowance for the totality of the factors discussed. It can be seen as including a 4-year allowance for the plea of guilty, and therefore the sentences were not manifestly excessive. (p 437, line 29)
7. Had Mahoni's offending stood alone, the 14-year sentence imposed on him might have been sustainable. The difficulty with the sentence is that when standing alongside those imposed on Tangitau and Tongotongo, there was no differentiation for the three additional incidents in which they were involved. Each was serious offending meriting a substantial prison sentence. Applying the conventional principle in disparity cases the objective observer, aware of all the facts, would have to conclude that justice had miscarried. In this case, the sentence of 14 years was quashed and 11 years' imprisonment substituted. That difference reflects the serious nature of offending to which he was not a party. (p 437, line 33)

R v Lawson [1982] 2 NZLR 219 (CA) applied

8. Sinamoni received substantial additional allowance for the fact that by a margin of some 18 months, he was the youngest of the offenders. Leaving his 12-year sentence to stand would create unjustifiable disparity between Mahoni and himself. His sentence of 12 years was replaced with a sentence of 11 years to reflect his youth and non-involvement in two of the four incidents. (p 437, line 44)

Police v TGW [1998] NZFLR 296

Filed under:

Case summary provided by LEXISNEXIS

Police v TGW [1998] NZFLR 296

File number: CYPF 0004/132/97
Court: District Court, Auckland
Date: 19 March 1998
Judge: Judge Boshier
Key title: Secure Care (ss 367-383A); Care and Protection cross over (s 280): Family Group Conferences/Care and Protection (s 261)

LEXISNEXIS Summary:

Children and young persons – Care and protection orders - Extreme and dangerous behaviour exhibited by young person - Need for secure care from time to time - Consent order made placing young person in custody of DGSW to attend a rehabilitation programme but on the basis that the young person would be immediately placed in secure care if the need arose - Jurisdiction of the Court to make an order in these terms - Director-General the only person who could make the placement in secure care - Direction from the Court that young person be placed in one residence but would be moved to another residence with secure unit

if necessary - Children, Young Persons, and Their Families Act 1989, ss 83, 86, 101, 103, 105, 125, 128, 162, 202, 361, 364, 367, 368, 370 – Guardianship Act 1968, s 11.

Application

This was an application to determine the validity of a condition attached to a custody placing the young person in the care of the D-GSW directing the placement of the young person in secure care where necessary.

A declaration that TGW was in need of care and protection was made in August 1997. TGW, now aged fourteen, had been demonstrating extreme anti-social behaviour and had regularly offended throughout 1997. It was considered that TGW would benefit from a therapeutic programme such as that offered by the Youth Horizons Trust. However concern was expressed by a psychiatrist and counsel for the child that while the Youth Horizons Trust could cope with TGW, it had no secure facility and the need for a secure facility would undoubtedly arise from time to time. An order was then made by consent placing TGW in the custody of the D-GSW pursuant to s 101 of the Children, Young Persons, and Their Families Act 1989. A further order by consent was made that if at any time during the custody order the Youth Horizons Trust considered a situation had arisen which required TGW to be accommodated in up to 72 hours of secure care, the D-GSW, through the Northern Residential Centre was to forthwith provide that facility.

The Head Office of the DSW later refused to acknowledge the validity of the order so far as the provision for secure care was concerned. It was argued that 'secure care' could only mean containment in a residence as provided for in part VII of the Act and accordingly it was for the D-GSW alone to place any child or young person in a secure unit under the grounds for placement as prescribed by s 368. It was argued that the effect of the order was to usurp the D-GSW's discretion and to circumvent the statutory restrictions as to placement in secure care as set out in s 368.

Held

(varying the order)

1. In so far as the condition attached to the custody order that required the D-GSW to supply up to 72 hours of secure care when requested, it was ultra vires. When use of secure care was sought, the only means of achieving it was for the D-GSW to make the placement into secure care and upon the grounds specified in s 368. The present order which contemplated that it was the Youth Horizons Trust who might make the request for secure care was therefore outside the Court's jurisdiction.
2. The Court could direct as a part of the term or condition that TGW be placed in one residence but be moved to another so as to require the D-GSW to at least consider use of the secure unit. Notwithstanding the provisions of s 105, the Court was able to direct, as terms or conditions, as long as it was in the child's best interests, aspects which might otherwise have been left to the D-GSW pursuant to s 105.
3. The order was varied so that if, pursuant to the D-GSW's placement, TGW's placement at Youth Horizons Trust could not, in the opinion of the Trust be immediately continued, the D-GSW or a social worker would forthwith place TGW in a residence of the kind specified in s 364 of the Act.

R v N [1998] 2 NZLR 272, (1998) 15 CRNZ 481 (CA)

Filed under:

Case summary provided by BROOKERS

R v N [1998] 2 NZLR 272, (1998) 15 CRNZ 481

Court of Appeal
File number: CA499/97
Date: 21 April 1998
Judge: Richardson P, Henry, Thomas, Blanchard, Tipping JJ
Key Title: Sentencing in the adult Courts: Sexual Violation by rape; Sentencing in the adult Courts - Sexual violation by unlawful sexual connection; Sentencing in the adult courts: Indecent Assault/Indecent Act; Reports - psychological; Reports - psychiatric

LEXISNEXIS Summary:

Sentence - Sexual violation - Youth offender - Appeal by Solicitor-General - Sentence of 2 years' imprisonment suspended for 2 years - Whether appellant's offending too serious for non-custodial sentence - Opportunities for treatment and counselling for respondent if in prison - Criminal Justice Act 1985, ss 5, 128B(2).

Sexual violation - Sentence - Youth offender - Appeal by Solicitor-General - Sentence of 2 years' imprisonment suspended for 2 years - Whether appellant's offending too serious for non-custodial sentence - Opportunities for treatment and counselling for respondent if in prison - Criminal Justice Act 1985, ss 5, 128B(2).

Application

Application by Solicitor-General for leave to appeal against sentence.

The Solicitor-General sought leave to appeal against the sentence imposed on the respondent in the High Court. The respondent pleaded guilty to seven charges involving three complainants: one of sexual violation by rape, four of sexual violation by unlawful sexual connection, and two of indecent assault.

The respondent was sentenced to 2 years' imprisonment suspended for the maximum period of 2 years under s 21A of the Criminal Justice Act 1985. The respondent was also sentenced to supervision for a period of 2 years on the condition that he attend the SAFE Adolescent Sexual Offenders Treatment Programme or another programme recommended by the Probation Officer. Supervision was to be served concurrently with the suspended term of imprisonment. The Solicitor-General's argument was that the respondent's offending was simply too serious for a non-custodial sentence to be contemplated, and that while the respondent was entitled to a substantial discount on account of his age, the shortest sentence which could have been imposed in the circumstances was one of 4 years' imprisonment.

The respondent was 14 years 7 months of age at the time the offending began and 15 years 6 months old at the end of the period covered in the charges. The respondent sexually abused three complainants, an 8-year-old boy named A, a 5-year-old girl named L, and a 3-year-old

infant named H, when he was residing in a foster home. When spoken to by the police, the respondent admitted the offending. As at that date, he had already received private counselling and then entered the SAFE programme. His explanation for his actions was that he had been sexually abused by his older brother when he was younger. Between the disclosure of the offending and pleading guilty when he was arraigned, the respondent continued to attend the SAFE programme.[(1998) 15 CRNZ 481,482]

The respondent was first referred to a Mr L, a clinical psychologist, working for the SAFE Adolescent Sex Offender Programme. Mr L completed two reports for the Court relating to the respondent's progress and treatment and his needs for future therapy. At the time of the first report, the respondent had only been receiving treatment for a short time. In his conclusion, Mr L confirmed that the respondent had made good progress in treatment up to that date and appeared genuinely motivated to change. He would need to remain in treatment at the SAFE programme for up to 2 years. The second report was written about 7 months later. Although still in the initial phases of treatment, the respondent had been making good progress. He made clear disclosures of his sexual offending and had accepted full responsibility for it. The respondent needed to continue in the SAFE programme so he received specialist counselling to address his sexually abusive behaviour. If he continued in the programme, his prognosis was positive.

Another clinical psychologist provided three reports. He expressed the view that, should the respondent receive a custodial sentence, he would not receive the appropriate treatment programme that was specifically designed to meet his development and social needs. The respondent had made good progress and if he continued treatment, the likelihood of reoffending was low.

Held

1. the sentence of imprisonment of only 2 years was not open to the sentencing Judge in this case. Having regard to the seriousness of the offending and making due allowance for the offender's youth, his plea of guilty, and the other mitigating factors, it was not possible to arrive at a sentence as low as 2 years' imprisonment. That being the case, a suspended sentence under s 21A was not permissible. (p 493, line 3)
2. With the suspended sentencing option not available, the question the sentencing Judge was required to address if, in all the circumstances of the case he was still moved to impose a non-custodial sentence, was whether ss 5(1) and 128B(2) necessitated imprisonment. Before he could avoid the imposition of a prison term the Judge would have had to be satisfied that, because of the special circumstances of the offence or of the offender, he should not impose a full-time custodial sentence. (p 493, line 10)
3. The factors of the youth of the respondent, his own severe sexual abuse, the environment in which he was placed following his own trauma, and his progress toward and prospects of rehabilitation did not constitute special circumstances for the purposes of ss 5(1) and 128B(2) in this case. Whether taken in isolation or in conjunction with each other they were neither unusual or exceptional. While it is accepted that a combination of factors, including the youth of the offender and the desirability of rehabilitation for that particular offender, may at times amount to special circumstances, such a combination did not exist in this case. Even if there were special circumstances, the Court could not properly exercise its discretion under ss 5(1) and 128B(2) to depart from a non-custodial sentence in this case. The respondent's age and prospects of rehabilitation could not be viewed in isolation and the offending, especially the repeated rape of H, was too serious not to impose a sentence of imprisonment. It is a matter for Parliament whether that legislative direction requires review

in the case of young sexual offenders. Therefore, ss 5(1) and 128B(2) do apply in this case. (p 495, line 17)

4. There were extensive mitigating factors to reduce the term of imprisonment imposed. Foremost among those were the factors put forward as special [(1998) 15 CRNZ 481,483] circumstances: the youth of the respondent, the apparent extensive abuse which he was subjected to in his own formative years, and the prospect of rehabilitation if he continues to receive satisfactory treatment. The plea of guilty, although delayed, must also count for something. Some importance must also be placed on the harshness of prison to a person of the respondent's age who has committed sexual crimes on child victims. However, nothing less than a significant custodial sentence is required to recognise the impact on the victims and the need to protect the public and mark society's denunciation of such violent sexual offending. (p 500, line 1)
5. Having regard to the age of the respondent, the appropriate sentence would be in the range of 4 to 5 years. However, to recognise the respondent's progress towards rehabilitation, a reduction should be allowed and therefore a sentence of 3.5 years' imprisonment is appropriate. (p 500, line 24)

Observation

1. Courts must be cautious before acting on a psychiatrist's or psychologist's expression of opinion as to the relative seriousness of abuse. Psychiatry and psychology are not exact sciences, and psychiatrists and psychologists cannot guarantee that an offender who has received counselling and treatment will not reoffend. At most, the risk can be assessed as being low, even where good progress has been made. That is the situation in this case. The rehabilitative option open to the Court is an option to promote rehabilitation which, if successful, will reduce the risk of reoffending. While the task of achieving the right balance between the competing interests of the offender and potential victims is not without difficulty, the risk that an offender who is otherwise making good progress will reoffend outside the more ordered environment in which he is receiving treatment requires deliberate consideration. (p 494, line 28)
2. It is important that counselling and treatment services are available to the respondent in prison. If young offenders who have committed a violent sexual crime are to be given a custodial sentence in accordance with Parliament's intent as expressed in ss 5(1) and 128B(2), effective treatment is required in prison if they are not to emerge from custody hardened recidivist sex offenders with the consequence that other children or persons will be put at serious risk. (p 500, line 30)

P v Police (1998) 17 FRNZ 33 (HC)

Filed under:

Case summary provided by BROOKERS

Name: P v Police
Reported: (1998) 17 FRNZ 33
File number: AP 40/98
Date: 21 April 1998
Court: High Court
Location: Auckland
Judge: Williams J

Charge: Aggravated Robbery
CYPFA: s283(o); s284, s290
Key Title: Conviction and transfer to the District Court; Orders - Conviction and transfer to the District Court for sentence - s283(o); General principles of sentencing eg Parity/Jurisdiction; Youth Court procedure

BROOKERS Summary:

Youth justice - Procedure - Jurisdiction - Appellant involved in aggravated robbery - Appellant convicted and sentenced in District Court jurisdiction - Co-accused dealt with in Youth Court - Not convicted - Failure by District Court Judge to follow family group conference recommendations - Children, Young Persons, and Their Families Act 1989, ss 4, 5, 6, 208, 284, 290.

In January 1998 the appellant ("P") and two other youths robbed a takeaway bar. They entered the premises disguised and armed with two weapons. P stood guard over the employees and threatened them with an air rifle, while his associates took chocolates and cigarettes. At the time P was 15 years old and his co-accused were 16 years old.

A family group conference was held. It was unanimously agreed by those present that both charges against P should be retained within the Youth Court jurisdiction. A detailed plan, designed to encourage his reformation in accordance with the principles of the Children, Young Persons, and Their Families Act 1989 was implemented. The social worker's report concurred with these recommendations.

However, when the matter came before him, Judge McElrea declined to accept the recommendations. He transferred P to the District Court and sentenced him to 8 months' imprisonment suspended for 8 months, together with 12 months' supervision, provided P carried out all of the family group conference's recommendations. P's co-offenders were dealt with by different District Court Judges on different days. In each of their cases the Court accepted the conference's recommendation that the charges against them be retained in the Youth Court.

P appealed on two grounds: that the charges against him should not have been transferred to the District Court, having regard to the principles of the Children, Young Persons, and Their Families Act 1989 (ss 4, 5, 6, 208, and 290); and that the Court was required to consider other alternatives before transferring the proceedings and the factors to be taken into account on sentencing.

Held, allowing the appeal and remitting the matter to the Youth Court for reconsideration:

(1) The District Court Judge had considered the appropriate legal requirements before transferring the appellant's charges to the District Court. It was open to the District Court Judge and the Youth Court Judge to treat the appellant as being the major offender. The appellant was the only offender to carry an operable weapon. He played a major part in the robbery and continually threatened the takeaway occupants. His co-offenders played a lesser part. (p 35, line 35; p 37, line 13)[(1998) 17 FRNZ 33, 34]

H v Police (1997) 15 FRNZ 678

R v Brown unreported, 29 November 1994, CA347/94

R v Cuckow unreported, 17 December 1991, CA312/91

R v Lawson [1982] 2 NZLR 219 (CA)

R E v Police (1995) 13 FRNZ 139; [1995] NZFLR 433 discussed

(2) Had the District Court Judge been aware of all the circumstances concerning the other two offenders, it is conceivable that he may have reached a different decision. He may have considered that it was demonstrably unfair for the appellant to have a conviction against his name, when the co-accused did not. Though the appellant was the major offender, his level of culpability did not seem to have been so substantially different as require treatment which would result in a conviction when he and his co-offenders must all comply with the agreements reached at their family group conferences. Because of these circumstances the Court concluded that the disparity between the sentences imposed on the appellant and those of the co-offenders invited reconsideration. (p 37, lines 29; 41)

Comments, steps had since been taken to endeavour to overcome the difficulties faced by District Court and Youth Court Judges in circumstances such as these, where none of the three District Court Judges who dealt with each of the offenders was aware of all the details of the other two cases when they dealt with the offender before them. (p 37, line 21)

Statutes and regulations referred to

Children, Young Persons and Their Families Act 1989, ss 4, 5, 6, 208, 284, 290

Cases referred to

H v Police (1997) 15 FRNZ 678
R v Brown unreported, 29 November 1994, CA347/94
R v Cuckow unreported, 17 December 1991, CA312/91
R v Lawson [1982] 2 NZLR 219 (CA)
R E v Police (1995) 13 FRNZ 139; [1995] NZFLR 433

Appeal

This was an appeal against the transfer of an aggravated robbery charge against the appellant from the Youth Court to the District Court and his subsequent conviction on that charge.

Police v T [1998] DCR 538 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v T [1998] DCR 538

File number: CRN 8248020853
Date: 7 May 1998

Court: Youth Court, Otahuhu
Judge: McElrea DCJ
Key Title: Arrest without warrant (s 214); Rights

LEXISNEXIS Summary:

Children and young persons - Powers to arrest and detain - Young person arrested and detained on charge of minor theft - Whether a single charge of shoplifting was sufficient to arrest a young person to stop him from committing further offences - Detention in police custody - Young person's rights to be brought to Court promptly - Children, Young Persons, and Their Families Act 1989, ss 214(1),239(2) - New Zealand Bill of Rights Act 1990.

Statutes - Interpretation - Young person arrested and detained on charge of minor theft - Power to arrest and detain - Children, Young Persons, and Their Families Act 1989, ss 214(1), 239(2) - New Zealand Bill of Rights Act 1990.

Preliminary question of law

This was a preliminary question of law whereby the Court was asked to rule on the propriety of the defendant's arrest and continued detention in police custody and the failure to have the defendant brought to Court promptly.

The defendant, T, was a young person of 14. On 6 May 1998 he was leaving a Superette with two packets of biscuits and one packet of chips without paying. A police officer who happened to be in the Superette, instructed him to stop. T did not. He discarded the food items as he was jumping a property fence, was apprehended, arrested, placed in police custody and charged with shoplifting of goods worth nine dollars. At the time T was the subject of a supervision order relating to 17 charges. T remained in police custody until he was brought to Court, just over 24 hours later. The Youth Advocate questioned the basis of the arrest, the fact that T was not brought to Court and dealt with promptly and the basis of T's continued detention in police custody. The police submitted that the arrest was necessary to stop T from committing further offences.

Held (finding procedural failures by the police, granting bail to defendant, directing a Family Group Conference and directing that the decision be sent to the appropriate authorities)

1. The continuation of the arrest unnecessarily was in breach of the letter and the spirit of s 214 of the Children, Young Persons, and Their Families Act (the Act). While the initial arrest might have been justified by the fact that the defendant was trying to escape, the time-frame in question must be the time between the arrest and when the defendant could be brought to Court. The mere fact that the defendant had other charges and was the subject of a supervision order did not mean that he could be arrested whenever he re-offended. A single charge of shoplifting was not such as to suggest that the defendant without arrest would continue shoplifting or commit any other offence.
2. Failure to bring the defendant to Court constituted a breach of the young person's rights under the New Zealand Bill of Rights Act to have the matter dealt with on the same day. A person arrested in the morning ought to be dealt with that afternoon except possibly in unusual circumstances.
3. The fact that the young person had spent 24 hours in police custody including a night in police cells was a serious breach of the law. Given the very limited grounds for the Court to

remand a young person in police custody under s 239(2) of the Act, the police should be particularly careful not to hold young persons in custody unnecessarily.

R v Jury and Others HC Auckland S 17/98, 4 May 1998

Filed under:

R v Jury and Others

File number: S 17/98
Date: 4 May 1998
Court: High Court, Auckland
Judge: Paterson J
Key Title: Jurisdiction of the Youth Court: s 276 offer/election

Four young people charged with robbery and GBH; indication that charges would not be denied; decision given declining YC jurisdiction and ordering that all cases be called in the HC; HC decided that the matter should be remitted back to the YC.

Held: YC Judge elected not to give the young persons an opportunity of foregoing the right to trial by jury (s 276) but did not then ask the young people to plead; Judge has right to decide that the option of Youth Court jurisdiction not be given to young people but once that decision is made the Judge must take a plea from the young person; not done here; must deal with young person in accordance with Summary Proceedings Act 1957, s 153A. *R v D* (1989) 5 FRNZ 549 per Holland J. Young person must be given right to elect trial by jury or plead guilty; not done here so committals invalid and matter should be reconsidered by Youth Court.

Decision:

Matter remitted to Youth Court.

Police v D [1998] NZFLR 577 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v D
Reported: [1998] NZFLR 577
File number: CRN 7244026503
Date: 6 May 1998
Court: District Court
Location: North Shore
Judge: McElrea DCJ
Charge:
CYPFA: s322
Key Title: Delay

LEXISNEXIS Summary:

Children and young persons - Young person appearing on criminal charges - No family group conference held - Three prior adjournments - Unnecessary and unduly protracted delay - Informations dismissed - Children, Young Persons, and Their Families Act 1989, s 322.

The young person was appearing in Court on a variety of charges. A family group conference had been directed in February 1998. No conference had yet been held and the Court had received three certificates on form SW 854 explaining the reasons for the delays - firstly, no summary of facts had been received, secondly the co-ordinator assigned had been taken ill and thirdly co-ordinators were unavailable.

A request for a further adjournment was now made.

Held (refusing the adjournment and dismissing the informations):

(1) The time that had elapsed between the date of commission of the offences and the hearing had been unnecessarily and unduly protracted by reason of the department's failure to convene a conference. The Court was not prepared to give the department a fourth opportunity to convene a conference.

(2) The word "hearing" in s 322 referred simply to a matter being dealt with in Court, as opposed to a defended hearing.

Application

This was an application for an adjournment of the hearing of information against a young person, no family group conference having yet taken place.

Police v R [1999] NZFLR 312 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v R
Reported: [1999] NZFLR 312
File number: CRN 8219005845
Date: 10 June 1998
Court: Youth Court
Location: Hamilton
Judge: Twaddle DCJ
Charge: Theft
CYPFA: s208; s214; s215
Key Title: Admissibility of statements; Arrest without warrant; Principles

LEXISNEXIS Summary:

Children and young persons - Young person charged with theft - Challenge to the admissibility of some of the evidence - Whether police officer had reasonable grounds to suspect that the young person had committed an offence - Whether reasonable grounds had existed for police officer to arrest the young person - Consequences of a breach of s 214 of the Children, Young Persons, and Their Families Act 1989 - Test to be applied - Whether overall interests of justice required the informations to be dismissed - Children, Young Persons, and Their Families Act 1989, ss 208, 214, 215, 221, 223, 245 - Crimes Act 1961 ss 315, 347 - New Zealand Bill of Rights Act 1990 s 22.

The defendant (R), a young person, aged sixteen at the time of the alleged offences, faced five charges of theft. R was a passenger in a car stopped by the police. The police had received information that the vehicle was of interest in respect of a shoplifting offence. The police officer saw a large amount of new clothing in the foot space area of the seat in which R had been sitting. He obtained R's name and began questioning her about the clothing. After having established where the property had come from and whose it was the police officer decided to arrest R. He cautioned her, telling her she was not obliged to say anything, and that she could consult a lawyer without delay and in private. Then he arrested her and took R to the police station. She declined to make a formal statement.

At the conclusion of the prosecution case, two issues were raised on behalf of R in respect of compliance with ss 215 and 214 of the Children, Young Persons, and Their Families Act 1989.

Held (dismissing the informations)

(1) It was a question of fact whether there were reasonable grounds to suspect a young person of having committed an offence. The test was an objective test, the state of the officer's mind was not relevant. There were reasonable grounds in this case for the police officer to have suspected R had committed an offence before he began questioning her. In those circumstances the officer had an obligation to explain the matters referred to in s 215 of the Act. As he did not do so, the answers obtained from questioning R were inadmissible. Nevertheless a prima facie case had been made out on the admissible evidence.

(2) Having regard to the fact that R had given her name to the officer, and that it was difficult to see how the arrest of R would preserve the clothing, no reasonable grounds existed for the officer to arrest R.

(3) The approach to be taken where there was a breach of s 214 was whether the overall interests of justice required the informations to be dismissed. Rather than focusing on one single factor, this approach took into account all aspects of the case, including the requirements contained in s 208(a) and (h) of the Act to afford special protection to young people from intrusive state powers, the need to maintain the integrity of the criminal process and the public interest.

(4) Applying the test to this case, and having regard to the facts that being arrested had denied R the opportunity of being dealt with by another means, the relatively minor nature of the offences and the fact that all the property was recovered, it would not be in the interests of justice for the legal process to continue in this case.

Cases referred to in judgment

Bennett v Police (High Court, Auckland AP 180/91, 22 August 1991, Robertson J)
K v Police (1993) 11 FRNZ 335
McMenamin v Attorney-General [1985] 2 NZLR 274
Police v BG [a young person] (1993) 10 FRNZ 157
Police v PA [1995] DCR 204
Police v Schumann [1992] DCR 342
Practice Note [1962] 1 All ER 448
R v Goodwin (No 2) [1993] 2 NZLR 390
R v Hartley [1978] 2 NZLR 199 (CA)
R v Irwin [1992] 3 NZLR 119
R v Taylor (1996) 14 CRNZ 426
R v Te Kira [1993] 3 NZLR 257
Simpson v A-G [Baigent's Case] [1994] 3 NZLR 667

Application

This was an application to have informations against a young person dismissed for failures by the police to comply with the requirements of the Children, Young Persons, and Their Families Act 1989.

R v P and G YC Invercargill T 981064, 25 June 1998

Filed under:

R v P and G

File number: T 981064
Date: 25 June 1998
Court: Youth Court, Invercargill
Judge: Judge Macdonald
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated person.

Summary

Defendant challenged admissibility of videotaped interview on grounds of non-compliance with ss 221 and 222 of the CYPFA. Defendant charged with burglary and arson; advised of her rights, father unavailable to be nominated person; fire officer acted as nominated person but played a passive role; nominated person to give active support before and during the interview: *Lord v R* HC Wanganui, 3 December 1997 per Gallen J; should talk privately with the accused whether or not they want this opportunity - it should be imposed upon them.

Held

Nominated person should have discussed situation with defendant; explained his role; videotaped interview thus inadmissible. Defendant in house when fire lit; found in possession of property from the house thus s 347 Crimes Act 1961 application refused.

Decision

Videotaped interview inadmissible; s 347 of the Crimes Act application refused.

Police v T (20 July 1998) YC, Auckland, CRN 8204003603/ 8204003607, McElrea DCJ

Filed under:

Name: Police v T
Reported
File Number: CRN 8204003603 / 8204003607
Date: 20 July 1998
Court: Youth Court
Location: Auckland
Judge: McElrea DCJ
Charge:
CYPFA: s263
Key Title: Family Group Conference - Non-agreement

Summary: Youth Aid Officers attending Family Group Conferences concerning aggravated robberies with a pre-determined view as to how such matters should be dealt with; attendees at Family Group Conferences are not to come in with pre-conceived ideas; discusses "spirit of the conference"; likely consequence of coming with pre-conceived ideas, apart from fact that conference is unlikely to be successful, is that the Court will disregard the views expressed by that person.

Decision: Minute of Judge - no decision.

Police v P W [1999] NZFLR 190; (1998) 17 FRNZ 340

Filed under:

Case summary provided by BROOKERS

Police v PW [1999] NZFLR 190; (1998) 17 FRNZ 340

File number: CRN 8248016224
Date: 23 July 1998
Court: Youth Court, Otahuhu
Judge: Carruthers DCJ
Key Title: Jointly charged with adult (s 277)

BROOKERS Summary:

Youth justice - Joint charge - Whether a young person could be prejudiced by police failure to follow procedure set under s 277(2) Children, Young Persons, and Their Families Act 1989.

Youth justice - Joint charge - Severance.

The defendant, a young person, was jointly charged with several adults with possessing cannabis for supply. The information against the defendant was laid summarily in the Youth Court, despite the joint charge, because of his youth. This did not strictly follow the procedure set out in s 277(2) Children, Young Persons, and Their Families Act 1989. The youth advocate therefore argued that the defendant would suffer unfair prejudice if the matter simply proceeded.

The Judge also called for submissions on whether the Court had the power to direct that the defendant be dealt with separately, notwithstanding the police election to lay the informations jointly.

Held, dismissing the application and ordering a separate trial in the Youth Court:

1. Failure to comply with the procedural requirements of s 277 was not fatal. It was likely that the defendant would be in exactly the same position (facing a summary trial in the Youth Court) even if the procedure had been properly followed. (p 342, line 5)
2. In deciding to proceed separately and on a summary basis for the young person, the police had themselves precluded the possibility of a joint trial and dictated the necessary severance. Therefore, there was no prejudice to the defendant. (p 342, line 30)

Cases referred to

- *Police v Nolan* [1997] DCR 495

Application

This was an application by a young person that charges against him be dismissed on the grounds of procedural irregularity leading to unfair prejudice.

Police v W YC Otahuhu CRN 824 8016224, 23 July 1998

Filed under:

Police v W

File number: CRN 824 8016224
Date: 23 July 1998
Court: Youth Court, Otahuhu
Judge: Carruthers DCJ, Principal Youth Court Judge (1996-2001)
Key Title: Youth Court Procedure; Jointly charged with adult (s 277)

Whether non-compliance with s 277 CYPFA results in a nullity or merely an irregularity; W jointly charged with adults with having in his possession cannabis plants for supply; charges denied; charges against W laid summarily in Youth Court; charges against adults laid indictably in District Court; s 277(2) CYPFA procedures not followed. W argued charges should be dismissed as will suffer unfair prejudice if matter proceeds; Summary Proceedings Act 1957, s 204, CYPFA s 440; *Police v Nolan* [1997] DCR 495 at 498-499.

Held: s 277 has the purpose of administrative expediency (illustrated by the provisions of sub-sections (4) and (5)) and this, along with the expansive language of s 440 and its purpose of saving proceedings from unmeritorious challenge, adds weight to the conclusion that non-compliance with s 277 is not fatal. W would be in the same position if the correct procedure had been followed; no prejudice to W through the irregularities in this case.

Court also considered whether it could direct that, notwithstanding Police election to lay matters jointly, it had the power to direct matters proceed separately. Here no possibility of a joint trial as young person dealt with summarily and adults dealt with indictably and this dictated the necessity of severance.

Decision:

Separate trial in YC for young person.

Police v T YC Hamilton CRN 8219018899/900-06, 29 July 1998

Filed under:

Police v T

File number: CRN 8219018899/900-06
Date: 29 July 1998
Court: Youth Court, Hamilton
Judge: Brown DCJ
Key Title: Youth Court Procedure

One information laid in Youth Court; 7 others laid in District Court at Hamilton; 7 Informations laid wrongly in District Court and therefore dismissed. Cannot lay Information against young person in District Court; Youth Court information to continue.

Decision:

7 Informations dismissed; 1 Youth Court Information remanded; bail to continue; FGC to be held and could consider the 7 dismissed offences.

F v Police [1998] NZFLR 910 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: F v Police
Reported: [1998] NZFLR 910
File number: AP98/98
Date: 5 August 1998
Court: High Court

Location: Auckland
Judge: Elias J
Charge: Burglary; Receiving; Resisting a Constable; Wilful Damage; Depositing Dangerous Litter; Disorderly Behaviour; Assault with Intent to Rob; Common Assault
CYPFA: s352
Key Title:

LEXISNEXIS Summary:

Youth Court - Appeal by parent against order of Court - Defendant had been sentenced to three months' supervision - No sentencing notes on Court file - Inability of Court to deal with appeal without sentencing notes - Mother distressed at being separated from son - Children, Young Persons, and Their Families Act 1989, s 352.

The defendant had been charged with burglary, receiving, resisting a constable, wilful damage, depositing dangerous litter, disorderly behaviour, assault with intent to rob and common assault. In accordance with the recommendations of the social worker the defendant had been sentenced to three months' supervision with activity on Great Barrier Island. A further supervision order was made with the Pacific Motu Trust to assist the rehabilitation of the defendant. The mother appealed against the orders of the Court pursuant to s 352 of the Act. She indicated distress that she had been separated from her son. It appeared that he was living in a tent and was unhappy. There were no sentencing notes on the file when the Court came to consider the appeal and the sentencing Judge could not remember the details of the matter.

Held (directing a rehearing)

The Court was unable to deal with the mother's appeal without the sentencing notes. The only option was to refer the matter to the Youth Court for a rehearing.

Appeal

This was an appeal by the mother of the defendant against orders of the Youth Court pursuant to s 352 of the Children, Young Persons, and Their Families Act 1989.

Police v H [1998] DCR 834 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v H
Reported: [1998] DCR 834
File number: CRN 822012788-89
Date: 18 August 1998
Court: Youth Court
Location: Hastings
Judge: von Dadelszen DCJ
Charge: Murder; Wounding with Intent to Cause Grievous Bodily Harm

CYPFA: s239
Key Title: Bail

LEXISNEXIS Summary:

Criminal procedure - Custody of young person pending hearing - 15-year-old charged with murder - Legal presumption as to granting of bail - Possibility of further offending - Place of residence - Ability of police to ensure bail conditions were observed - Children, Young Persons, and Their Families Act 1989, ss 238,239.

The young person, H, aged 15 years, was charged with one charge of murder and one charge of wounding with intent to cause grievous bodily harm. H was remanded for a pre depositions hearing. There was a legal presumption that a young person was to be granted bail. In submissions on H's behalf it was proposed that H would reside with his uncle, D, at Porangahau. The police preferred that H reside at Hastings with his father. There was the possibility of further offending. The alleged offence was committed in the early hours of the morning and H was believed to have consumed alcohol. Due to police manning levels, police would have difficulty in ensuring that bail conditions would be observed if H was to reside at Porangahau.

Held (granting bail subject to conditions)

(1) The presumption that bail would be granted outweighed any community expectations that persons charged with a crime as serious as murder should be kept in custody pending hearing.

(2) The onus on the prosecution was to satisfy the Court, on the balance of probabilities, that a young person was likely to abscond or might commit further offences or be violent. (obiter)

Case referred to in judgment

I v Police (1991) 7 FRNZ 674

Application

This was an application for bail by a young person in the Youth Court.

Police v Manuel (1998) 16 CRNZ 62; (1998) 17 FRNZ 394

Filed under:

Case summary provided by BROOKERS

Police v Manuel (1998) 16 CRNZ 62; (1998) 17 FRNZ 394

File number: CRN 8009030441
Date: 21 August 1998
Court: Youth Court, Christchurch
Judge: Bisphan DCJ
Key Title: Jointly charged with adult (s 277)

BROOKERS Summary:

Children, young person, and their families - Youth justice - Jurisdiction - Adult charged jointly with three young persons - Depositions for all four defendants conducted in Youth Court - Young persons elected trial in Youth Court - Whether adult defendant could be committed to Youth Court for trial before Judge alone - Circumstances in which adult defendant could be dealt with in Youth Court - Children, Young Persons, and Their Families Act 1989, s 277.

The four defendants were jointly charged with wounding with intent to injure, a purely indictable offence. Defendant C M was an adult for the purposes of the proceedings. The other defendants were young persons. The Judge found sufficient evidence for trial and the defendants indicated they would not plead guilty. The Judge decided that the defendant young persons should have the option of trial in the Youth Court, and that option was taken up. The issue remained as to where C M should be tried.

Held, committing the defendant C M to the High Court for trial

1. Where depositions are held in the Youth Court in respect of young persons and adults jointly charged, if there is sufficient evidence to put the adult on trial then that person must be committed to the appropriate Court (either District Court or High Court). The adult cannot be dealt with either on the basis of a defended hearing or in a sentencing context in the Youth Court. (p 399, line 15)
2. In this case it followed that once the young persons had been given the election to be dealt with in the Youth Court, there was no option but to commit C M to the High Court for trial. (p 398, line 42)
3. The Court preferred to interpret s 277 of the Children, Young Persons, and Their Families Act 1989 as applying to the following:
    a. Murder, manslaughter and purely indictable offences, but only up to and including depositions;
    b. Indictable offences (where the maximum penalty is over 3 months' imprisonment) where jury trial is elected but only up to and including depositions;
    c. Indictable offences where summary jurisdiction is elected;and
    d. All other offences. (p 399, line 5)

Cases referred to

- *C v District Court at Dunedin* (1993) 10 CRNZ 260
- *Police v W* [1996] NZFLR 902 (DC)
- *Police v Whitehead* [1995] DCR 533
- *S v District Court at New Plymouth* (1992) 9 FRNZ 57; 8 CRNZ 241, also reported as *S v New Plymouth District Court* [1992] 3 NZLR 508

Application

This was an application for young persons to be given the opportunity of foregoing the right of trial by jury and have the information heard and determined in the Youth Court. The question then arose as to where the jointly charged adult defendant should have his case heard.

Police v H (23 December 1998) YC, Hamilton, Brown DCJ

Filed under:

Name: Police v H
Unreported
File number:
Date: 23 December 1998
Court: Youth Court
Location: Hamilton
Judge: Brown DCJ
CYPFA: s214
Charge: Robbery, Theft
Key Title: Arrest without warrant

Summary: Application to dismiss Information on basis that arrest unlawful. H (16) and others threatened and robbed complainants who were eating sweets at bus stop; H taken home by Police; no interview as H's father not in agreement; H arrested; Police believed arrest necessary to prevent loss and destruction of evidence relating to offence (CYPFA s214(1)(a)(iii)). Held: Police officer did have reasonable grounds to believe arrest necessary to prevent loss or destruction of evidence; should apply the standard in the CYPFA and the standard should "be applied sensibly with as broad a sense of the realities of the situation as the Court can muster".

Decision: Application dismissed.

Police v W [1999] NZFLR 577 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v W [1999] NZFLR 577

Reported: (1998) 18 FRNZ 203
File number: CRN 8277008566
Date: 14 December 1998
Court: District Court, Tokoroa
Judge: Whitehead DCJ
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Explanation of rights, Admissibility of statements to police/police questioning (ss 215-222): Nominated persons, Custody (s 238): CYFS, Rights

LEXISNEXIS Summary:

Children and young persons - Young person arrested on serious charge - Young person held overnight in police cells - Whether young person should have been held - Admissibility of statements made by young person to police - Young person's rights under Bill of Rights Act 1990 and Children, Young Persons, and Their Families Act 1989 accorded to him - Whether

young person's solicitor or mother should have been contacted prior to him making his statements - Conduct of CYPS staff - Children, Young Persons, and Their Families Act 1989, ss 215, 221, 222, 224, 234, 235, 236, 237, 238, 321, 436 - New Zealand Bill of Rights Act 1990.

Application

This was a hearing to determine a number of preliminary issues relating to the arrest and charging of a young person on a charge of aggravated robbery, including the admissibility of statements made to the police and whether the requirements of the Children, Young Persons, and Their Families Act 1989 had been complied with.

W, a young person, was charged with the aggravated robbery of a Putaruru residence. He had been interviewed three times by the police, once before being charged and twice after his arrest. On the uncontested evidence of the police officer, he had on each occasion been made aware of the Bill of Rights, the general caution and the rights under the Children, Young Persons, and Their Families Act 1989 to the young person. On the latter two interviews that had been verified and corroborated by the evidence of the nominated person.

At issue in this hearing was the admissibility of statements made by W and whether W should have been held in the police cells overnight following his arrest. The nearest District Court to where W was arrested was not sitting on the date in question. The police officer had taken no steps to inquire as to the possibility of a Court being convened either before a Judge or a Justice of the Peace to determine issues of bail. The police were going to oppose bail due to the seriousness of the charge and W's past history of offending. The police officer did consult with a social worker who advised that there were not sufficient facilities available for W's detention and safe custody. The social worker then signed a certificate pursuant to s 236 of the Children, Young Persons, and Their Families Act 1989 enabling W to be held for a period in excess of 24 hours and until appearance before a Court.

Also at issue at this hearing was whether W's solicitor and mother should have been contacted when he asked to speak to the police on the occasion of his second and third interviews.

Held

1. The combination of the violent nature of the offence and the current spate of aggravated robberies within the Tokoroa area gave reasonable grounds for the police and the social worker to believe that the young person may be likely to abscond or be violent. Given the unavailability of suitable facilities for the detention and safe custody of the young person available to the Director-General, the failure to bring the young person before the Court on the day of his arrest was not fatal to his detention as, in terms of s 237, he shall be brought before a Youth Court 'as soon as possible'.
2. From the evidence it was clear that the young person made a decision in the form of an expressed acknowledgment on the second interview, and in respect of the third interview, acquiesced in his declination not to consult a lawyer and there was nothing on the evidence that would enable the Court to conclude that the statutory provisions had been breached. The same applied in respect of the absence of his mother.
3. In each interview the young person had been provided, in a manner and language appropriate to his age and understanding, his rights under the Bill of Rights Act, the general

caution required to be given, and the Children, Young Persons, and Their Families Act. The young person's statements were admissible in evidence and did not contravene the provisions of the Children, Young Persons, and Their Families Act.

4. Objections as to the involvement by CYPS staff immediately prior to and during the interviews were rejected. There was no conflict of interest in the social worker signing the s 236 certificate and her subsequent attendance on the second interview.

1997

R v Police (1997) 14 CRNZ 590 (HC)

Filed under:

Case summary provided by BROOKERS

R v Police (1997) 14 CRNZ 590

File number: AP35/96
Date: 23 April 1997
Court: High Court, Masterton
Judge: Neazor J
Key Title: Evidence (not including statements to police/police questioning), Youth Court Procedure

BROOKERS Summary:

Procedure - Amendment of charge - Amendment made by Youth Court Judge as part of decision after evidence completed and information proved - Weight of authority against existence of power to substitute without giving defendant opportunity to be heard before a final decision made on the substituted charge - Whether s 204 can save a proceeding if omission or deficiency occurred at time when Judge had no jurisdiction to act - Summary Proceedings Act 1957, ss 43, 204.

Evidence - Child complainant - Jurisdiction of Youth Court to use videotaped evidence - Existing authority provides sufficient basis for Judge with jurisdiction to try case without jury to modify procedures required by Evidence Act provisions so far as circumstances of case make necessary - Evidence Act 1908, ss 23C-23F, 23H.

Videotape evidence - Child complainant - Jurisdiction of Youth Court to use videotaped evidence - Existing authority provides sufficient basis for Judge with jurisdiction to try case without jury to modify procedures required by Evidence Act provisions so far as circumstances of case make necessary - Evidence Act 1908, ss 23C-23F, 23H.

Evidence - Child complainant - Practice to be followed in Youth Court where child complainant gives evidence - Judge must obtain from complainant requisite promise to tell truth.

Appeal

Appeal against determination by Youth Court that appellant committed an offence under s 133(1)(b) of the Crimes Act 1961.

The appellant appealed against a determination by the Youth Court that he had committed the offence of doing an indecent act on a girl under the age of 12 years. The appellant was aged 15 at the time of the offence and 16 at the time of hearing. He was originally charged with attempting to commit sexual violaton, but this was amended by the Judge as part of his

decision after the evidence was completed and the information was found to be proved. The appellant was sentenced to 3 months' supervision.

The complainant was aged 7 years 9 months at the time of the offending and 8.5 at the time of hearing. After the police became involved, the complainant was interviewed by the Children and Young Persons Service on the basis that the interview would be recorded on videotape for use as an evidential video.

At the hearing in the Youth Court, the Judge recorded that a late application was made to him by the police to view the videotape. A request was made under s 23E of the Evidence Act 1908 that the complainant's evidence-in-chief be given by videotape and that when any oral evidence was given by her, she should be screened from the appellant. Counsel for the appellant reluctantly consented to both applications. The Judge decided that the complainant should not be present during the playing of the videotaped evidence.

The videotaped record of the interview was viewed by the Judge, who accepted it as evidence. The complainant did not view the videotape. The Judge then made inquiries of the complainant as a preliminary to determining whether she could give evidence, and sought from her a promise that she would tell the truth. It was determined that it was proper to accept her as a witness, a promise was obtained, and cross-examination by counsel for the appellant followed.

The appeal was based on the following grounds:

a. The Judge should not have permitted the complainant's evidence to be admitted by way of videotaped record.
b. The tape failed to comply with the minimum standards prescribed by the Evidence (Videotaping of Child Complainants) Regulations 1990.
c. The Judge was wrong to admit the complainant's oral evidence as there was insufficient evidence for him to be satisfied that the complainant had understood the need to tell the truth and had promised to do so.
d. The Judge was wrong to amend the charge and convict the appellant on it without complying with s 43 of the Summary Proceedings Act 1957.
e. Either hearsay evidence about the appellant's alibi was wrongly admitted by the Judge or there was misconduct on the part of the prosecution.
f. Complaint evidence given by the mother of the complainant was wrongly admitted and given weight contrary to the rules relating to complaint evidence.
g. The decision was not supported by the evidence and the conviction ought to be set aside.

Held

1. It is not necessary to rely on any inherent jurisdiction in deciding whether the Youth Court has jurisdiction to receive evidence under s 23E Evidence Act and the regulations, as this case is within the categories referred to in s 23C of the Evidence Act and ss 23C to 23F and 23H are not limited in application to jury trials. Principles derived from *Clifford v CIR* [1966] NZLR 201 (CA) and *R v Moke* [1996] 1 NZLR 263; (1995) 13 CRNZ 386; 14 FRNZ 75 (CA) provide sufficient basis for a Judge who has jurisdiction to try the case without a jury to modify the procedures required by the Evidence Act provisions so far as the circumstances of the case make necessary. If that is wrong, the decision in Moke would give the Court jurisdiction. It should be noted by the prosecution that s 23D requires the prosecutor to apply to the Judge for directions as to the mode of a young complainant giving evidence in

sexual cases when there has been a committal for trial. The same step should be taken in advance of trial when a case is to be heard in the Youth Court. (p 597, line 45)

2. With regard to the fact that the child did not see or hear the video and that the child was not qualified as a witness before the videotape was played as evidence, the reason for the Judge's direction was understandable. However, the proper course in the Youth Court is usually to follow the practice laid down in *R v Lewis* [1991] 1 NZLR 409; (1990) 6 CRNZ 350 (CA) and *R v S* [1993] 2 NZLR 142; (1992) 9 CRNZ 201 (CA) that unless there is some particular reason in any case, before the child complainant gives evidence, the Judge must obtain from him [(1997) 14 CRNZ 590,592] or her the requisite promise to tell the truth. In this case, there was a procedural error under s 440 but no miscarriage of justice, so the video evidence should not be excluded. (p 598, line 12; p 599, line 27)
3. It was open to the Judge to accept that the interviewer complied with the requirements of the regulations and that the videotaped record was admissible. (p 601, line 34) *R v S* (CA105/92) [1993] 2 NZLR 142; (1992) 9 CRNZ 201 (CA) applied.
4. Whether a child witness is capable is always a difficult decision for a Judge to make because it has to be made on the basis of what the Judge knows of the child as a result of his or her questions (and in this case from what was on the videotape). In this instance, the Judge was not wrong to accept that the child was able to give evidence. (p 602, line 4)
5. The substance of authority in New Zealand is against the Judge having power to amend or substitute the offence charged, once the proceedings in open Court have been concluded by reserving decision. A strong support for such a view is that, unless special steps are taken, the benefit of the protection of s 43 of the Summary Proceedings Act will be lost. The weight of authority is against there being power to substitute without giving the defendant the opportunity to be heard before a final decision is made on the substituted charge. It cannot be the case that s 204 could ever save a proceeding if the omission or other deficiency occurred at a time when the Judge had no jurisdiction to act. (p 605, line 15)
6. In view of the determination that the conviction cannot stand, it is unnecessary to make any decision on the other grounds of appeal. (p 605, line 36)

Blaikie v Registrar of Youth Court in Kaikohe [1997] NZFLR 478; 16 FRNZ 9

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Blaikie v Registrar of Youth Court in Kaikohe
Reported: [1997] NZFLR 478; 16 FRNZ 9
File number:
Date: 5 May 1997
Court: District Court
Location: Kaikohe
Judge: Carruthers DCJ
Charge: Rape
CYPFA: s325
Key Title: Youth Advocate's Costs

LEXISNEXIS Summary:

Youth Court - Costs - Taxation of bill of costs by Registrar of Youth Court - Application for review of Registrar's decision - Manner in which claims for costs should be considered - Children, Young Persons, and Their Families Act 1989, ss 275, 325.

The applicant had acted as youth advocate for the defendant in a rape trial. There had been difficult matters relating to the defendant's family and whanau and to the general circumstances. It was a case where a great deal of time was required to deal not only with the young person, but also the young person in the context of his family.

The applicant sought a review of the Registrar's decision as to his costs in taxing the account. The Registrar said the claim had been considered similarly to the way claims were considered by the Legal Services Committee in respect of adult offenders facing similar charges.

Held (directing the applicant's account to be paid in full)

(1) The legal circumstances which related to the representation of adult offenders were different from those which related to young offenders pursuant to the Children, Young Persons, and Their Families Act. No such guidelines as were applicable to adult offenders were available. The circumstances of each young offender could vary considerably and the importance of the involvement of the family at each part of the process was emphasised by the Act.

(2) In this case there was no reason to limit the applicant's account. The hourly rate of $110 was restrained. The costs were fair and reasonable and should be paid in full.

Cases referred to in judgment

Burger-Ringer v Burger-Ringer [1995] NZFLR 895
Sage v Registrar of Youth Court Auckland [1996] NZFLR 477

Application

This was an application to review the Registrar's decision as to the costs of the youth advocate pursuant to s 325 of the Children, Young Persons, and Their Families Act 1989.

R v McLeish CA 219/97, 22 July 1997

Filed under:

R v McLeish

Court of Appeal
File number: CA 219/97
Date: 22 July 1997
Judge: Robertson J
Key Title: Jointly Charged with Adult (s 277); Sentencing - General Principles (e.g. Parity/Jurisdiction)

Appeal against sentence. McLeish (17) and co-offender (16 years, 10 months) picked up a prostitute in parent's car, drove to a secluded place and attacked and robbed her in the back of the car. Co-offender dealt with in Youth Court; received fine, supervision and community service. McLeish sentenced in District Court to 12 months imprisonment as District Court Judge took view that Criminal Justice Act 1985, s5 applied and expressed concern at culture developing where youth indulged and serious crimes downplayed or ignored. Appeal on grounds that Judge did not consider possibility of suspension and the disparity between the treatment of the two offenders. Held: Suspension did require to be considered once Judge determined that the appropriate avenue was a custodial sentence of 6 months to 2 years (*R v Petersen* [1994] 2 NZLR 522). Disparity test in *R v Lawson* [1982] 2 NZLR 219; common enterprise; offenders only 9 weeks apart in age; co-accused "more of the aggressor"; no great damage to victim; no weapon used; McLeish admitted guilt early on; McLeish only 17 years and 1 week old; no previous convictions. Fact that offenders were dealt with in different jurisdictions could not be used as a general blanket to ignore the reality of the consequences for each of them.

Decision:

Imprisonment reduced to 3 months due to disparity; Order for suspension confirmed.

H v Police (1997) 15 FRNZ 678 (HC)

Filed under:

Case summary provided by BROOKERS

H v Police (1997) 15 FRNZ 678

File number: AP63/97
Date: 18 July 1997
Court: High Court, Hamilton
Judge: Hammond J
Key Title: Sentencing - General Principles (e.g. Parity/Jurisdiction); Principles of Youth Justice (s 208); Order - type: Conviction and transfer to District Court for sentencing - s 283(o): Aggravated burglary; Orders - type: Conviction and transfer to District Court for sentencing - s283(o): Serious assault (including GBH), Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Other

BROOKERS Summary:

Child, young persons, and their families - Youth justice -Young person transferred to District Court for sentencing - Risk of gross disparity of sentence with co-offender - Sentence to be least restrictive appropriate and to maintain and promote development of young person - Challenge to District Court sentence premature - Seriousness of offending required remittance - Children, Young Persons, and Their Families Act 1989, ss 208, 283, 284, 290, 344.

Appeal

This was an appeal against a Youth Court Judge's decision to transfer a young person to the District Court for sentence under s 283(o) of the Children, Young Persons, and Their Families Act 1989.

H, aged 15, was convicted of wounding with intent, aggravated burglary, and unlawfully interfering with a motor vehicle, together with W, also aged 15, and a 12-year-old. Both 15-year-old offenders were brought before the Youth Court. W was transferred to another Youth Court, where he was ordered to undertake supervision with residence, followed by 6 months' supervision under s 283(n) of the Children, Young Persons, and Their Families Act 1989. Although the police disputed this sentence, no appeal was lodged.

H was remanded to a family group conference which did not reach agreement on an appropriate sentence. The Youth Court Judge transferred H to the District Court for sentence, considering that, in the light of H's history and the nature of the attack, against an elderly woman, a deterrent sentence was required. H appealed on the grounds that a custodial sentence in the District Court would result in gross disparity with W's sentence and that, in remitting H to the District Court, the Youth Court Judge failed to recognise the requirements of s 208 of the Children, Young Persons, and Their Families Act, and the potential family support available to H.

Held

Dismissing the appeal:

1. Any question of the appropriateness of District Court sentencing was premature as the Court had not yet passed sentence. Parity in sentencing may well be an issue for the Court. If that principle was infringed, H would have the right to appeal. (p 680, line 13)
2. The second ground of appeal was essentially against the exercise of a discretion. The Judge's finding could not be said to be plainly wrong. Given the nature of the report under s 344 of the Children, Young Persons, and their Families Act, there was ample evidence to support a finding that H's family would not support him in making reparation and an apology to the victim. The appeal was dismissed. (p 680, line 27).

Herewini v Police HC Hamilton AP 85/97, 19 September 1997

Filed under:

Herewini v Police

File number: AP 85/97
Date: 19 September 1997
Court: High Court, Hamilton
Judge: Hammond J
Key Title: Sentencing in the adult Courts - Aggravated burglary; Sentencing in the adult courts - Serious assault (including GBH); General Principles of Sentencing - e.g. Parity/Jurisdiction

Summary

Appeal against sentence. H (15 yrs 3 months at time of offending) pleaded guilty to charges of aggravated burglary, wounding with intent to cause grievous bodily harm and unlawfully getting into a vehicle; H first appeared in Youth Court; proceedings removed to District Court for sentencing; appeal against that decision dismissed: *H v Police* HC Hamilton AP63/97, 18 July 1997 per Hammond J. H effectively sentenced to two years imprisonment concurrent on the two more serious charges, and discharged on the third charge; H appealed against sentence. Co-offender (15) dealt with in Youth Court by way of a constructive rehabilitation programme; parity issue; in lower Court circumstances of offenders were considered to be different as co-offender was remorseful and had family support; notable that some of H's supporters were not present at his Family Group Conference. Viewed objectively, the administration of justice had miscarried: *R v Monica* CA484/93, 25 March 1994.

Decision

Appeal allowed, suspended prison sentence substituted.

Lee v Police HC Auckland AP 180/97, 9 September 1997

Filed under:

Lee v Police

File number: AP 180/97
Date: 9 September 1997
Court: High Court, Auckland
Judge: Salmon J
Key Title: Sentencing in the adult Courts - Aggravated Robbery

Summary:

Appeal against sentence. L [age not indicated] appealed against a sentence of two years imprisonment imposed by the District Court on a charge of aggravated robbery. L and co-offender had gone to a Japanese restaurant where they had eaten, made arrangements to pay the following day but returned later and attacked the restaurant owner, robbing him of over $3,000; chair leg and diver's knife used as weapons; serious violence. Whether the two year sentence should be suspended. *R v Moananui* [1983] NZLR 537 and *R v Petersen* [1994] 2 NZLR 533 considered; this case falls within second category in *R v Moananui*; Criminal Justice Act 1985, s 5: imprisonment appropriate unless there are special circumstances which would justify avoiding a full-time custodial sentence. *R v Hodge* CA 471/94, 28 November 1997 distinguished.

A fine of $10,000 was imposed, of which $7,500 was to be paid to the victim, along with the 2 year sentence of imprisonment. Concern of the sentencing Judge was the degree of violence involved and the need for a deterrent sentence; but considered the youth of the offender and that it was his first offence.

Held:

deliberate and unprovoked attack; not satisfied that the sentencing Judge was wrong or that the sentence was manifestly excessive.

Decision:

Appeal dismissed.

R v S (1997) 15 CRNZ 214 (CA)

Filed under:

Case summary provided by BROOKERS

R v S (1997) 15 CRNZ 214

Court of Appeal
Reported: (1997) 16 FRNZ 102
File number: CA220/97
Date: 4 September 1997
Judge: Eichelbaum CJ, Gault, Henry, Thomas, Keith JJ
Key Title: Reports - Cultural, Admissibility of statements to police/police questioning: Nominated persons, Rights

BROOKERS Summary:

Youth justice - Right to consult lawyer - Decision not to consult lawyer - Whether compliance with s 221(2)(b) Children, Young Persons, and Their Families Act 1989 - Unfairness - Cultural factors - Children, Young Persons, and Their Families Act 1989,ss 221(2)(b) 222(4); Crimes Act 1962,s 344A New Zealand Bill of Rights Act 1990.

Application

This was an application under s 344A of the Crimes Act 1961 to appeal against a pre-trial order admitting video evidence.

The applicant, S, a 15-year-old Samoan, was one of three young persons jointly charged with murder. He applied for leave to appeal a pretrial order determining that a police videotape of his evidence was admissible at trial. He claimed that for cultural reasons he had deferred to his mother, who was present at the interview, in deciding not to consult a lawyer. S's mother had told him that the most important thing was to tell the truth, and that a lawyer was not necessary. At the conclusion of the interview, S was arrested and charged, and elected to consult a lawyer. The order was challenged on two grounds: first, that s 221(2)(b) of the Children, Young Persons, and Their Families Act 1989 operated to make the evidence inadmissible, and secondly, that S's mother had unduly and unfairly dissuaded S from his initial wish to see a lawyer.

Held

dismissing the application for leave to appeal:

1. The appropriate standard of proof to establish the admissibility of a statement under s 221(2), as established by analogous cases under the Bill of Rights, is the balance of probabilities, having regard to the gravity of the particular issue. There is no good reason to elevate the test under the Children, Young Persons, and Their Families Act 1989 to "beyond reasonable doubt", and to add a second exception to the ordinary rule governing incidental trial issues. (p 219, line 14). *R v Fitzgerald* HC Auckland T183/90, 30 October 1990 not followed, *Police v Kohler* [1993] 3 NZLR 129 (CA); *R v Te Kira* [1993] 3 NZLR 257 (CA) applied
2. S had effectively made a decision not to consult a lawyer, which was translated into an express acknowledgement that he did not want a lawyer. In the absence of true coercion or compulsion, it was difficult to see how a decision, even if taken on persuasive advice, ceased to be a decision or to represent that person's "wish". Where a person expressly elects not to consult a lawyer, it will generally require an extreme case to hold that the statutory provision has nevertheless been breached. (p 220, line 2)
3. When enacting s 222(4), the Legislature did not envisage a comprehensive judicial inquiry into the nature and quality of support given in any particular case. Obvious difficulties arise if such an inquiry is conducted. Cultural issues may surface, and the age, knowledge, and understanding of the young person will vary, as may individual or family concepts of the appropriate course of action. Given the Children, Young Persons, and Their Families Act 1989 emphasis on the family, it was not for the Court to gainsay S's mother's advice. (p 220, line 35)

Obiter

There may well be instances where the requisite support has not been made available in a real sense, and that has led to a situation where a child or young person has been left in an unacceptable or unfair state of vulnerability. (p 220, line 44)

DPP v Blake [1989] 1 WLR 432; (1989) 89 Cr App R 179 referred to

Police v W (15 September 1997) DC, Whangarei, CYPF 88/251/97, Boshier DCJ

Filed under:

Name: Police v W
Unreported
File Number: CYPF 888/251/97
Date: 15 September 1997
Court: District Court
Location: Whangarei
Judge: Boshier DCJ
Charge:
CYPFA: s101, s86(1)(a), s83(1)(b)
Key Title: Child offenders

Summary: Child offender; discussion of preparation of long-term social work plan; suggested rehabilitative programme; final custody and services order made subject to conditions; directions to revisit court if necessary; transfer of file and filing of new plan.

Decision: Custody order and plan.

Re an application by Ewen [1998] NZFLR 193 (FC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Re an application by Ewen
Reported: [1998] NZFLR 193
File number: CYPF 048/171/97
Date: 11 November 1997
Court: Family Court
Location: Otahuhu
Judge: Adams DCJ
Charge: Sexual Assaults
CYPFA: s238(1)(d)
Key Title: Care and protection cross-over - s280; Custody - CYFS

LEXISNEXIS Summary:

Children and young persons - Care and protection orders - Application for declaration in respect of 15-year-old youth - Young person already under the care of the Director-General pursuant to an order made under s 238(1)(d) of the Children, Young Persons, and Their Families Act 1989 - Whether order could be made under s 78 of the Children, Young Persons, and Their Families Act 1989 - Children, Young Persons, and Their Families Act 1989, ss 68. 70, 78, 238.

An application by the Youth Advocate was made that the young person in question (D) was in need of care and protection. D, who was fifteen years old, and who was alleged to have engaged in a number of sexual assaults, was in the care of the Director-General pursuant to an order made under s 238(1)(d) of the Children, Young Persons, and Their Families Act 1989. The Youth Advocate argued that D's needs for care and protection were not receiving appropriate attention and sought leave to bring the application under s 68(c).

Held (granting leave to bring the application and making an interim order placing the young person in the custody of the Director-General):

(1) A case that D was in need of care and protection had been made out.

(2) Although the circumstances in which an order might be made under s 78 where there was already an order under s 238(1)(d) was likely to be rare, there was good purpose in making a s 78 order in this case because otherwise it seemed that attention would not be paid to D's care and protection needs. The s 78 order would not supplant the order under s 238 but would

simply lie in the same position with the purpose of unlocking Part II of the Act for the benefit of the young person involved.

Application

This was an application for a declaration that a young person was in need of care and protection pursuant to s 78 of the Children, Young Persons, and Their Families Act 1989.

Katherine J Ewen, Youth Advocate

Police v SM [1998] DCR 120 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v SM [1998] DCR 120

File number: CRN 7048030108
Date: 7 November 1997
Court: District Court, Otahuhu
Judge: Judge Moore
Key Title: Evidence (not including admissibility of statements to police/police questioning)

LEXISNEXIS Summary:

Evidence - Child witness - Application for order that 10-year-old complainant in summary trial for indecent assault give evidence by video tape and closed circuit television - Whether procedure set out in Evidence (Videotaping of Child Complainants) Regulations 1990 could be followed in a summary case - Ambit of judicial activism in this area of criminal procedure - Recent Court of Appeal and High Court decisions expanding the adjectival law outside the statutory regime - Evidence Act 1908, s 23C - Evidence (Videotaping of Child Complainants) Regulations 1990.

Application

This was an application for an order for a child complainant to give evidence in accordance with the provisions of the Evidence (Videotaping of Child Complainants) Regulations 1990 by videotape.

The defendant was charged with indecent assault of a 10-year-old girl and had exercised his right to be tried summarily. The prosecution submitted that the complainant should be able to give evidence-in-chief by videotape compiled in accordance with the Evidence (Videotaping of Child Complainants) Regulations 1990. The issue was whether the District Court had the power to permit this to be done in a summary trial.

Held:

(ruling that the complainant could give her evidence by videotape and closed circuit television)

1. The District Court was a Court of statutory jurisdiction and had no inherent jurisdiction. It did however have inherent power to do what was necessary to enable it to exercise the functions, powers and duties conferred upon it by statute. It also had the duty to see that its process was used fairly. *McMenamin v Attorney-General* [1985] 2 NZLR 274, 276 and *Department of Social Welfare v Stewart* [1990] 1 NZLR 697, 701, applied.
2. There was a recent judicial willingness to be active in expanding the adjectival law. In particular there were Court of Appeal and High Court decisions allowing the giving of evidence outside the statutory regimes of the Evidence Act 1908. The Court of Appeal had allowed children who were the alleged victims of non-sexual abuse to be interviewed in accordance with the procedures prescribed in the Evidence (Videotaping of Child Complainants) Regulations 1990, although there was no statutory basis to have the evidence so placed before the Court as it was not a sexual case. *R v Moke and Lawrence* [1996] 1 NZLR 263, *R v Police* (1997) 14 CRNZ 590 (HC), considered.
3. The Evidence (Videotaping of Child Complainants) Regulations 1990 and provisions of the Evidence Act 1908 provided both a specific regime in respect of a particular type of case, namely an offence of a sexual nature which would ultimately be tried by jury, and at the same time afforded a measure of guidance as to the proper restraints and protections appropriate where the Court, in the exercise of its inherent powers, made orders in relation to the mode of adducing evidence in cases outside the statutory regime.
4. The statutory regime provided by the Evidence (Videotaping of Child Complainants) Regulations 1990 was available where summary jurisdiction was elected.

Police v M [1998] NZFLR 307 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v M
Reported: [1998] NZFLR 307
File number: CRN 72040033923-3925
Date: 1 December 1997
Court: Youth Court
Location: Otahuhu
Judge: Carruthers DCJ
Charge: Indecent Assault
CYPFA: s2; s246; s247
Key Title: Jurisdiction of the Youth Court - Age; Youth Court Procedure

LEXISNEXIS Summary:

Children and young persons - Indictable charges laid against 18-year-old youth - Charges laid in the Youth Court - Jurisdiction of Youth Court - Discretion of police to file proceedings in Youth Court rather than the District Court - Children, Young Persons, and Their Families Act 1989, ss 2, 246, 247, 270, 322 - Crimes Act 1961, s 140(1)(A).

The defendant was aged 18 years of age. He faced charges laid indictably in the Youth Court of indecent assault on a young boy. The alleged incidents occurred between July 1993 and

July 1996. The charges had originally been laid by error in the District Court and the defendant had been committed to trial in the High Court following a depositions hearing in August 1997. At that time the defendant had been under the age of 18 years and when the error in his date of birth was noticed, the present informations were laid.

The Youth Advocate now raised the question of the Youth Court's jurisdiction and as to whether or not the police had a discretion to file proceedings in the Youth Court, notwithstanding that the defendant had now attained the age of 18 years and even though under s 2(2)(c) of the Children, Young Persons, and Their Families Act 1989 no family group conference could be directed or authorised.

Held (finding that the Youth Court had no jurisdiction and dismissing the informations)

(1) The police did not have a discretion whether to lay the informations in the Youth Court or in the District Court. Pursuant to s 2(2)(d) the police were "required" to lay the informations in the District Court.

(2) There was no provision in the Act for these charges to be laid indictably in the Youth Court.

Cases referred to in judgment

Police v Edge [1993] 2 NZLR 7
Police v W (1990) 6 FRNZ 711
Police v W (1995) DCR 756

Application

This was a hearing to determine whether the Youth Court had jurisdiction to consider criminal charges laid indictably against a youth now aged 18 years.

1996

Police v TDA [1996] DCR 367, [1996] NZFLR 409

Filed under:

Police v TDA [1996] DCR 367, [1996] NZFLR 409

File number: CR 5027007163/4/6-9
Date: 13 March 1996
Court: Youth Court, Kaikohe
Judge: Harvey DCJ
Key Title: Youth Court Procedure; Jurisdiction of the Youth Court: s 276 offer/election

Young person faced five charges of sexual violation by rape and one charge of sexual violation by digital penetration; purely indictable offences; initially offences were denied; later TDA indicated he wished to plead guilty. Issue: when s 276 offer not made, upon what statutory authority, following an indication of a plea of guilty, may a YC Judge commit a young person to the HC for sentence. Further, does s 153A Summary Proceedings Act 1957 apply and if not, by what other authority may the committal be made other than through a depositions hearing. Discussion of CYPFA s 274, s 321(1); Summary Proceedings Act s 153A, s 209. Defendant argued that s 153A did not apply and, even where a guilty plea is indicated, a preliminary or 'depositions' hearing should take place. Held: provisions of s 153A SPA are available, not due to s 321 CYPFA, but through s 274 CYPFA; s 274 incorporates all of Part V Summary Proceedings Act; this includes those sections relating to matters that arise before a preliminary hearing; the wording of s 153A makes it clear that it may apply during the course of a hearing as well as before it. Legislation should be interpreted so as to make it work and to achieve its goal; policy arguments - need to avoid delays.

Decision:

Matter can be dealt with in the Youth Court on the basis of s 153A should the Youth Court Judge decline to offer the court's jurisdiction.

Police v W [1996] NZFLR 902 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v W [1996] NZFLR 902

File number: CRN 6090007669-70, CRN 5290028717, CRN 5090028719, CRN 5090028721
Date: 22 March 1996
Court: District Court, Henderson
Judge: McElrea DCJ
Key Title: Jointly Charged with Adult; Adult co-offenders; Jurisdiction of the Youth Court - s275 offer/election

LEXISNEXIS NZ Summary:

Children and young persons - Kidnapping charge - Two adults jointly charged with young person - Forum for defended hearing - Whether young person should be dealt with in Youth Court - Whether the proceedings should be dealt with in the Youth Court or elsewhere - Children, Young Persons, and Their Families Act 1989, ss 275, 277.

The defendants, a woman aged 43 years and her two sons aged 20 and 16 years, together set about detaining the complainant, a young man of 14 years, in order to ensure that his girlfriend, the woman's daughter, returned home. The complainant and the daughter had previously run away. The complainant was severely beaten by the defendants. At a preliminary hearing evidence was given and a case conceded in respect of each defendant. The questions before the Court were firstly, whether the young person ought to be given the opportunity to be dealt with by a Youth Court Judge in the Youth Court by way of a defended hearing on the kidnapping charge. And secondly, whether the proceedings should be heard in a Youth Court or elsewhere because of the two adults jointly charged with the young person.

Held (declining jurisdiction and directing that matters proceed to the High Court)

1. The seriousness of the particular offending and the part played by the young person were in favour of the matter being dealt with by Judge and jury.
2. If the charge against the young person were to be dealt with in the Youth Court, the consequence would be that there would have to be separate trials or all three would be dealt with in the Youth Court. The Court did not consider it desirable to have three separate trials.
3. It was also not desirable to have all three dealt with in the Youth Court as two of the three persons were adults, the young person himself was almost of District Court jurisdiction, the nature and seriousness of the charges made it appropriate for trial by Judge and jury, and there was opportunity to impose more appropriate sentences in the High Court.

Application

This was an application to have a young person dealt with in the Youth Court and to have the two adults jointly charged also dealt with in the Youth Court.

Sage v Registrar of Youth Court Auckland [1996] NZFLR 477 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Sage v Registrar of Youth Court Auckland
Reported: [1996] NZFLR 477
File number:
Date: 3 April 1996
Court: Youth Court
Location: Auckland
Judge: McElrea DCJ

Charge:
CYPF no: s325(1)
Key Title: Youth Advocate's Costs
LEXISNEXIS Summary:

Costs - Youth advocate's accounts - Hourly rate of $110 approved - Whether rate to be inclusive or exclusive of GST - Whether remuneration of $110 inclusive of GST was fair and reasonable - Children, Young Persons, and Their Families Act 1989, s 325(1).

The applicant, an experienced youth advocate, applied for review of the decision of the Registrar directing that payment of her account be at the rate of $110 per hour inclusive of GST. It was noted that although the practice of the Auckland Youth Court was to pay at a rate of $110 per hour inclusive of GST, the Wellington Court paid at a rate of $110 per hour plus GST.

Held (directing that the applicant be paid $110 per hour plus GST)

The real question was whether a figure of $110 per hour inclusive of GST was fair and reasonable. Given the experience of the advocate and given the higher rates of remuneration applicable to counsel for the child, counsel to assist the Family Court or counsel appointed under the Protection of Personal and Property Rights Act 1988, a figure of $110 per hour inclusive of GST was not fair and reasonable. Further it was desirable that there be uniformity throughout the country.

Case referred to in judgment

Patchett v Leathem (1949) 65 TLR 69

Application

This was an application for review of a Registrar's decision directing that payment of a youth advocate's account be at a rate of $110 per hour inclusive, as opposed to exclusive, of GST.

Page 478; [1996] NZFLR 477

Application for review of decision of Registrar as to amount of a youth advocate's bill of costs.

Police v WF and MR [1996] NZFLR 644 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v WF and MR [1996] NZFLR 644

File number: CRN 620400332427
Date: 23 May 1996
Court: Youth Court, Auckland
Judge: McElrea DCJ

Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated persons, Arrest without warrant (s 214)

LEXISNEXIS NZ Summary:

Evidence - Admissibility of videotaped interviews of young persons - Young persons detained for questioning without arrest - No general power to detain - Evidence obtained unlawfully - Role of nominated person - Obligation of police to explain role of nominated person - Children, Young Persons, and Their Families Act 1989, ss 215, 221, 222, 229, 231, 234, 235.

Application

This was an application for a ruling as to the admissibility of evidence of two young persons obtained by video.

The two young persons had been taken to the police station for questioning in relation to attempted unlawful interference with a motor vehicle. They were not placed under arrest but were told by the police that they 'would not be going anywhere' after one had said she wanted to go home. The mother of one of the young persons was asked to come down to the station but was not told anything about the child's rights or about her role as a nominated person.

Charges followed. The young persons challenged the admissibility of their statements obtained by way of video.

Held (ruling that the evidence was inadmissible)

1. The evidence was obtained in breach of the rights of the young persons under the Children, Young Persons, and Their Families Act 1989. It was also obtained in breach of the rule that the police have no authority to hold persons for questioning against their will. There had been no statutory basis for the police to advise them that they were not going anywhere. Unless s 235 applied and the police believed, or had reasonable grounds for believing, that the young people were unlikely to appear before the Court or might commit further offences or might interfere with evidence, the young persons were free to return home.
2. If a young person said he or she wanted to leave, that amounted to withdrawing of consent, at which point the police were obliged to allow the young person to leave unless they were going to make an arrest.
3. The police had a statutory obligation to ensure that the nominated person was informed of the matters specified in paragraphs (c) to (f) of s 215(1) of the Act, which included the right to withdraw consent to making a statement;

Page 645; [1996] NZFLR 644. Further, the police should ensure that the nominated person is aware of his or her role under the statute and is thereby enabled to perform that role.

Case referred to in judgment

R v Goodwin (No 1) [1993] 2 NZLR 153

The Queen v Bruno Sanelle Polo HC Auckland S91/96, 7 June 1996

Filed under:

The Queen v Bruno Sanelle Polo

File Number: S91/96
Date: 7 June 1996
Court: High Court, Auckland
Judge: Tompkins J
Key Title Sentencing in the adult Courts - Aggravated Robbery; Sentencing in the adult Courts - Serious assault (including GBH)

Summary:

15 year old; 16 at time of sentencing; parents request to take 16 year old back to Samoa; Judge says that request cannot be granted - prison sentence must follow serious crime; for aggravated robbery three year sentence for each charge considered appropriate but reduced to two and a half years on each charge due to early guilty plea; for wounding with intent, sentence of four years for each charge, each charge reduced by six months due to early guilty plea and statements of remorse; sentences are concurrent but each group of sentences are cumulative; total sentence is 6 years.

Decision

Six years imprisonment.

Police v BCS [1996] DCR 985 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v BCS [1996] DCR 985

File number: CRN 6243003239,3403
Date: 17 July 1996
Court: District Court, New Plymouth
Judge: Harding DCJ
Key Title: Jurisdiction of the Youth Court - Age; Appeal to the High Court/Court of Appeal: Jurisdiction, Election of jury trial.

LEXISNEXIS Summary:

Youth Court - Practice and procedure - Statutes - Interpretation - Ruling on power of Youth Court to commit a young person aged 14 years six months at the time of offending to the High Court or District Court for sentence, the young person having forgone his right to trial by jury - Whether there was jurisdiction for the Youth Court to send the young person to the High Court for sentence - Whether there was jurisdiction for the Youth Court to send the young person to the District Court for sentence - Children and Young Persons Act 1974, s 34 - Children, Young Persons, and Their Families Act 1989, ss 2(2), 274, 275, 283(o)

Ruling

This was a ruling on whether, after a young person was given the opportunity of forgoing his right to trial by jury and elected to be dealt with in the Youth Court pursuant to s 275 of the Children, Young Persons, and Their Families Act 1989, he could be committed to the High Court or District Court for sentence.

BCS, at the time of offending, was aged 14 years and six months. He was charged with sexual violation and indecent assault, the former being purely indictable. The preliminary hearing took place in the Youth Court before a District Court Judge, who found that there was sufficient evidence to put BCS on trial for sexual violation. BCS was given the opportunity of forgoing his rights to trial by jury, and did so. He pleaded guilty to both charges. After a family group conference, it was agreed that the appropriate jurisdiction for sentencing was the High Court.

The question was whether the Youth Court had power to commit BCS to the High Court for sentence, or alternatively to the District Court for sentence, because he had forgone his right to trial by jury and because of his age at the time of offending.

Held (ruling that the defendant should be dealt with in the Youth Court)

1. Where a young person aged 14 years six months at the time of committing sexual violation and indecent assault offences (the former being a purely indictable offence) pleaded guilty after depositions to the offences; and, pursuant to s 275 of the Children, Young Persons, and Their Families Act 1989, the young person having been given the opportunity of forgoing his rights to trial by jury, which the young person accepted; there was no jurisdiction for the Youth Court to send the young person to the High Court for sentence. R v M (an accused) [1986] 2 NZLR 172, (1986) 1 CRNZ 694 (CA), considered and followed. *S v New Plymouth District Court* (1992) 8 CRNZ 241, considered.
2. There was similarly no jurisdiction to send the young person to the District Court for sentence, because his age at the date of the offences, pursuant to s 283(o) of the Children, Young Persons, and Their Families Act 1989, 'shall be that person's age for the purpose of . . . The proceedings taken' (s 2(2) of the Children, Young Persons, and Their Families Act). The young person was under 15 years of age at the time of the offences, 15 years being the age at which a young person could be sent to the District Court.

Police v S [1996] NZFLR 906 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Police v S [1996] NZFLR 906

File number: CRN 6243003239,3403
Date: 12 July 1996
Court: District Court, New Plymouth
Judge: Harding DCJ
Key Title: Jurisdiction of the Youth Court - s 275 offer/election

LEXISNEXIS NZ Summary:

Children and young persons - Charges of sexual violation and indecent assault - Matter heard in Youth Court through choice - Appropriate jurisdiction for sentencing - Whether Youth Court had jurisdiction to remand to High Court for sentencing - Children, Young Persons, and Their Families Act 1989, ss 274, 275, 283(o) Children and Young Persons Act 1974, ss 34, 36; Summary Proceedings Act 1957, ss 44, 185(B), Part V.

Application

This was an application to determine the appropriate jurisdiction for sentencing a young offender.

The defendant was 14 years and 6 months at the time he committed the offences. In January 1996 he was charged with sexual violation and indecent assault. Because the sexual violation charge was a purely indictable one, s 274 of the Children, Young Persons, and Their Families Act 1989 applied and the preliminary hearing took place according to Part V of the Summary Proceedings Act 1957, except that it took place in a Youth Court. The Court was of the opinion that there was sufficient evidence to put the defendant on trial and this brought s 275 into play. The defendant was given the opportunity of forgoing his rights to trial by jury and electing to have the matter heard in the Youth Court; he elected to have the matter heard in the Youth Court. The defendant entered guilty pleas in respect of both charges. The matter was remanded for a family group conference and decision as to the jurisdiction for sentencing. All those at the family group conference agreed that the appropriate jurisdiction for sentencing was the High Court. The case returned to the Youth Court following a query as to its jurisdiction to remand to the High Court for sentencing.

Held (declining jurisdiction to remand to the High Court)

1. For the reasons set out in *R v M* [1986] 2 NZLR 172 there was no jurisdiction for the Court to send the defendant to the High Court for sentencing.
2. Similarly there was no jurisdiction to send the defendant to the District Court for sentencing, as the defendant was 14 years old when he committed the offence.

R v T [1997] 1 NZLR 341 (HC)

Filed under:

Case summary provided by BROOKERS

R v T [1997] 1 NZLR 341

Reported: [1996] NZFLR 961; 14 FRNZ 705
File number: T17/96
Date: 11 September 1996
Court: High Court, Rotorua
Judge: Baragwanath J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Persons; Rights; Principles of Youth Justice (s 208)

BROOKERS Summary:

Children, young persons, and their families - Rights - Young person charged with attempted murder, causing grievous bodily harm with intent, and aggravated burglary - Videotaped interview by police with accused - Respondent informed of his right to have nominated person present during interview - Respondent's father not available - Numerous attempts made to contact persons from nominated persons' list - Police eventually contacted duty social worker and asked him to "sit in" on the interview with the respondent - Social worker had no private consultation with respondent - Statutory responsibilities of nominated person - Whether right of private consultation if relevant nomination is made by police officer - Whether videotaped interview admissible - Children, Young Persons, and Their Families Act 1989, ss 208(h), 215(1)(f), 221, 222(3).

Application

This was an application to have a video interview adduced in evidence.

The respondent, T, was charged with attempted murder or, alternatively, causing grievous bodily harm, and with aggravated burglary. On 5 November 1996 a police officer spoke with T's father advising him that he wished to speak to T and asking the father if he would be T's nominated person during the police interview with the respondent. T's father declined, explaining that he had been having difficulties with his son who was regularly sniffing solvents and abusing alcohol. The father was the only parent living with T. Later that day a detective called at T's home and found him at the back of the house sniffing petrol. T appeared to be somewhat affected by the petrol sniffing. He accompanied the detective to the police station.

At the police station T was shown a list of persons who made themselves available for interviews in the absence of a "nominated person". When T approved the list, the detective attempted unsuccessfully to contact the listed persons. Eventually the detective told T that he would try to contact the duty social worker. T raised no objection. The duty social worker was contacted and agreed to "sit in" on the interview between T and the police. T did not have a private consultation with the duty social worker before the interview.

T contended that as he was not given the opportunity to consult with the nominated person the subsequent videotaped interview was inadmissible. The Crown applied to have the interview tape admitted as evidence, arguing that as the relevant nomination was made by the detective, and not T, there was no right of private consultation.

Held

declining the application:

The principle of s 208(h) Children, Young Persons, and Their Families Act 1989 recognises the vulnerability of young persons and calls for their special protection. Accordingly ss 215(1)(f) and 222(3) of the Children, Young Persons, and Their Families Act 1989 must be read as providing the same obligations for nominated persons whether they are nominated by the young person or by an enforcement officer. The respondent faced his interview without the active protection contemplated by Parliament as part of a nominated person's role. The statement was therefore inadmissible in terms of s 222. (p 712, line 32; p 713, line 34)

Police v Turipa DC Tauranga CRN3270010963, 3 February 1994 approved.

M v Police (1996) 15 FRNZ 167 (HC)

Filed under:

Case summary provided by BROOKERS

M v Police (1996) 15 FRNZ 167

File number: AP102/96
Date: 11 December 1996
Court: High Court, Rotorua
Judge: Anderson J
Key Title: Appeals to the High Court: Jurisdiction; Family Group Conferences: Convened/Held.

BROOKERS Summary:

Children, Young Persons, and Their Families - Youth justice - Appeal from decision of Youth Court exercising discretion not to grant s 276(1) election - Aggravated burglary and sexual violation by unlawful sexual connection - Interpretation of s 276 - Purpose of family group conference - Children, Young Persons, and Their Families Act 1989, ss 272(3), 274(2), 276(1), 283(o).

Appeal

This was an appeal from a Youth Court decision relating to s 276(1) Children, Young Persons, and Their Families Act 1989.

M, a 14-year-old, was arrested on 4 August 1996 for alleged sexual violation by unlawful sexual connection, aggravated burglary, and being found on premises without legal excuse. The victim was a young woman who was significantly hearing-impaired and slightly visually impaired. M broke into the residence where the young woman was sleeping and threatened her with a knife. He covered the victim's face with a pillow and indecently assaulted her. After stealing some money from her purse he absconded.

On 4 October 1996 M appeared in the Youth Court and intimated a desire to plead guilty. The presiding Judge, as a matter of discretion (s 276(1) Children, Young Persons, and their Families Act 1989), declined to give M the opportunity of forgoing the right to trial by jury and electing to be dealt with in a Youth Court by a Youth Court Judge, and convicted M. The Judge noted the aggravating circumstances of the offending and other factors including public interest as the reasons for his decision. After erroneously being remitted to the District Court for sentence, M was remitted to the High Court for sentence.

M appealed the validity of the presiding Judge's exercise of discretion on the basis that he had not had the opportunity to obtain advice and information on the elective decision from a family group conference, which was general practice in such cases.

Held, dismissing the appeal:

Family group conferences are not to be convened merely for the sake of talk. Their purpose is to achieve some creative outcome, as they do in many cases. The decision to grant the election is the Judge's alone. The special features of this case, as stated by the Judge, made it entirely appropriate for him to adopt the course he did. (p 172, line 6)

Obiter, it is apparent from the fairly restrictive scope of ss 351 and 354 that it is still an open question whether an appeal against an interlocutory order made in the Youth Court will found an appeal. The indications from the High Court and Court of Appeal are that applications by way of review on interlocutory matters are not to be encouraged. This observation is made in the context of statutory barriers to [(1996) 15 FRNZ 167, 168] appealing interlocutory decisions of a purely procedural nature without at least leave of the Court appealed from. (p 171, line 33)

Police v Tupe DC Kaikohe CRN 6227004887, 19 December 1996

Filed under:

Police v Tupe

File number: CRN 6227004887
Date: 19 December 1996
Court: District Court, Kaikohe
Judge: Judge Cooper
Key Title: Sentencing in the adult courts: Sexual violation by rape

Summary:

Notes on Sentencing; Tupe found guilty of sexual violation by rape after a defended hearing in YC; Tupe (then 14) raped his 13 yr old second cousin and verbally abused her after the incident. Tupe (now 16.5 yrs) a good sportsman; dependent on cannabis; intending to return to school; supportive family; letter of apology written to victim. Probation report recommends community programme including drug and alcohol and anger management counselling and 200 hrs community work, as an alternative to a custodial sentence.

Aggravating features: complainant only 13.5 yrs; took advantage of relationship with second cousin; Mitigating factors: no violence beyond the act itself; youth of offender; no criminal history; remorseful (although no plea of guilty and abusive towards victim after the event). Criminal Justice Act 1985, s 5; Crimes Act 1961, s 128B(2); cases dealing with sentencing youth offenders canvassed: *R v C* CA332/95, 28 September 1995; *R v Cuckow* CA312/91, 17 December 1991; *R v Powell* CA273/96, 24 October 1996; *R v Hodge* CA471/94, 28 November 1994. *R v Carmichael* CA521/94, 23 March 1995 applied - there pre-emption

given to restorative aspects of sentencing as it was noted that unless a rehabilitative approach was taken there was the potential for the defendant to spiral into further serious offending.

Decision:

Taking into account the above factors a sentence of two years imprisonment suspended for two years, pursuant to s21A Criminal Justice Act, was imposed plus 12 months on proposed community programme.

1995

Police v DH [1995] NZFLR 473 (YC)

Filed under:

Name: Police v DH
Reported: [1995] NZFLR 473
File number: CRN 4290021633
Date: 25 January 1995
Court: Youth Court
Location: Henderson
Judge: Harvey DCJ
CYPFA: s5(f), s322
Charge: Indecent Assault
Key Title: Delay

Summary: D (16 at time of offence) now almost 18; charged with indecent assault; charge denied. Offence allegedly took place on 18/6/93; considerable delays; matter set for hearing in the week of 25/1/95. Application to dismiss the information pursuant to s322 CYPFA; whether delays unnecessary or undue. Section 5(f) timeframe includes the words "wherever practicable", so this is not an absolute requirement; there may be certain external factors which may impact upon the ability to swiftly dispose of cases; including human difficulties and systemic difficulties within bureaucracies, such as Social Welfare, the Police and the Courts. *BRR v Police* 11 FRNZ 25: necessary for some explanation for the delay; *Police v C* (Undated, YC Wellington, CRN 0285015569, Judge Carruthers) considered. Held: "Unnecessary" per s322 CYPFA, connotes an action should have been taken which was not or there is some lack of explanation for an action; here, explanations have been given for the delays considering the nature of the offence, the investigative steps undertaken quite properly by Social Welfare, the Police, the necessity for a FGC prior to the laying of the information and the difficulties attendant upon the laid information. The delays have not been unnecessarily protracted. The law in this particular type of case is designed to protect as much the complainant as the defendant. When considering whether delays have been unduly protracted the Court must consider the question of prejudice to the defendant. Here, the defendant's ability to prepare his defence has not been prejudiced.

Decision: Application refused.

Police v B (16 February 1995) YC, Auckland, CRN 5290005852-4, Harvey DCJ

Filed under:

Name: Police v B
Unreported
File number: CRN 5290005852-4
Date: 16 February 1995
Court: Youth Court

Location: Auckland
Judge: Harvey DCJ
CYPFA: s276
Charge: Aggravated Robbery
Key Title: Jurisdiction of Youth Court - s276 offer/election

Summary: B (15) charged with aggravated robbery as robbed a store at knifepoint; indicated a desire to plead guilty. Whether case should be dealt with in YC. Police not opposed to YC jurisdiction. Aggravating factors: B armed with a knife, drunk, threat of violence made to complainant; Mitigating factors: no actual physical injury to complainant, remorseful, first offence, family and victim supportive. Public interest a difficult factor here; community requires retributive approach but need for rehabilitation important so YC jurisdiction offered but Judge emphasised that FGC proposal should contain a substantial punitive element with close supervision; Judge tired of seeing FGC reports requiring a minimum of community work which demonstrate no understanding of the seriousness of the offending. *Police v James* [A Young Person] (1991) FRNZ 628 referred to.

Decision: YC jurisdiction offered.

R v Carmichael CA521/94, 23 March 1995

Filed under:

R v Carmichael

Court of Appeal
File number: CA 521/94
Date: 23 March 1995
Judge: Eichelbaum, Gault, Williamson JJ
Key Title: Sentencing in the adult courts: Sexual violation by rape; Sentencing in the adult Courts - application of Youth Justice Principles; Reports - Psychological

Summary:

Application by Solicitor-General for leave to appeal against 2 years imprisonment suspended for 2 years with 2 years supervision. Defendant (15 at time of offence) sexually violated 15 year old girl who lived at the same home for youth at risk; victim traumatised. Defendant had severely limited intellectual capacity; no previous convictions but history of aggressive and inappropriate behaviour; no remorse. Psychologist reports conclude prison inappropriate as this would heighten defendant's criminal tendencies. Exceptional case; rehabilitative approach in defendant's and community's interests. Precedents for regarding youth of offender or offender's limited mental development as grounds for sentence markedly below the usual tariff listed: *R v Kircher* CA 239/87, 30 September 1987; *R v Accused* [1989] 1 NZLR 656 (CA); *R v Accused* [1989] 1 NZLR 643; *R v McKay* CA 131/93, 11 June 1993; *R v Hodder* T 58/91, 29 September 1991 per Roper J. These cases all prior to increase of the maximum for rape but this increased maximum would not have affected the broad approach of the Courts that the youth or mental state of the accused may justify an exceptional response. Here youth and mental retardation present and thus Judge's view was within the range of his discretion; selection of shortest time possible in accordance with Art 37(b) 1985

United Nations Convention on the Rights of the Child. As to suspension Judge entitled to regard that situation as within the principles laid down in *R v Peterson* [1984] 3 NZLR 533, 538.

Decision:

Solicitor-General's application for leave dismissed.

E v Police (1995) 13 FRNZ 139, [1995] NZFLR 433 (HC)

Filed under:

Case summary provided by BROOKERS

E v Police (1995) 13 FRNZ 139; [1995] NZFLR 433

File number: AP328/94
Date: 2 March 1995
Court: High Court, Christchurch
Judge: Williamson J
Key Title: Appeal to High Court/Court of Appeal: Jurisdiction, Jointly charged with Adult; Orders - type: Conviction and transfer to the District Court for sentence - s283(o): Other, Victims, Reports: Psychiatric, Sentencing - General Principles (e.g. Parity/Jurisdiction).

Brooker's Summary:

Youth justice - Jurisdiction - Appeal from decision of Youth Court that young person be dealt with in District Court - Burglary charges - Adult co-offenders received strict sentences - Appellant had been through process required in Youth Court - Whether appropriate to insist on uniformity between co-offenders - Persons of appellant's age entitled to special consideration under Children, Young Persons, and Their Families Act - Order wrong in principle - Incorrect weight given to some factors - Children, Young Persons, and Their Families Act 1989, s 351.

Appeal

This was an appeal from the decision of a Youth Court Judge making an order that the appellant, a 16-year-old woman, be dealt with in the District Court. The order appealed from was made under ss 283(o) and 290(1)(c) Children, Young Persons and Their Families Act 1989.

The appellant faced criminal charges for the first time. She initially appeared in the Youth Court on six charges of burglary and one charge of making a false statement. She was remanded for a family group conference. Seven of the victims of the offences attended the conference and concluded that they did not want the appellant punished further, but wanted her helped. At the conference the appellant had apologised and undertaken to try to recover some of the stolen property. A psychiatric report under s 333 was recommended, and the psychiatrist concluded that it was important for the appellant to receive ongoing help. He thought it important for the appellant to continue her work and that any sentence imposed should not affect that work.

The family group conference was reconvened, and recommended that the appellant make a donation to each victim, and be subject to informal supervision for 6 months. During this time she was to perform community work, have counselling with a psychiatrist, take any further treatment recommended by her social worker or psychiatrist, and not to reoffend.

The appellant appeared in the Youth Court again following that conference and was remanded so that further updates could be obtained on the victim impact and social work reports. When the appellant subsequently appeared in the Youth Court, the Judge made the decision appealed from. The reasons expressed for that decision were that the charges were very serious, the appellant was heavily involved in the offending, the co-offenders had been sent to prison and there was a need for consistency and parity, and no sufficient penalty was available in the Youth Court. The most important of those reasons was the need for uniformity between the co-offenders.

The appellant argued that the District Court Judge failed to give sufficient weight to the new and enlightened policy of youth justice. The appellant contended that Parliament deliberately created a different system for offenders under age 17, and that to equate the sentences of persons under 17 with those over 17 was wrong in principle. The appellant also submitted that the District Court Judge had not given sufficient weight to several other relevant factors.

Held

allowing the appeal and quashing the order made in the Youth Court:

1. The Crown submitted that the District Court Judge was entitled to have exercised his discretion in the way he did and that it had not been dependent only on questions of parity. However, the Crown's submission that the fact that the female co-offender was only 3 months older than the appellant created an injustice if there was not parity between them was not supported by authority. That submission appeared contrary to authority, which stated that persons of the appellant's age were entitled 'to the special consideration reflected in the philosophy underlying the Children, Young Persons, and Their Families Act 1989'. (p 143)
   R v Brown CA347/94, 29 November 1994 considered
   R v Le Marquand CA17/91, 16 May 1991 considered
2. The order made by the District Court Judge was wrong in principle, and in arriving at it he gave undue weight to some factors and insufficient weight to others. It was relevant that the appellant had undergone the process required in the Youth Court, and that positive and thoughtful recommendations had been made by the conferences which accorded with the report obtained from a specialist. (p144).

Police v JSF (31 March 1995) YC, North Shore, McElrea DCJ

Filed under:

Name: Police v JSF
Unreported
File number:
Date: 31 March 1995

Court: Youth Court
Location: North Shore
Judge: McElrea DCJ
CYPFA:
Charge:
Key Title: Youth Advocate's Costs

Summary: Application to review a decision of the Registrar of the North Shore District Court concerning a Bill of Costs submitted by a Youth Advocate. Youth Advocate charged for 36 minutes but length of time in Court was 10 minutes; Judge found that this was reasonable given the Youth Advocate had spent time explaining the Court process to JF outside the Courtroom. To allow only 10 minutes would not allow the young person to be "properly advised and represented and would tend to down-grade the importance of the role of the advocate and the importance of young people being properly advised". Judge did not agree that where less than 6 minutes was spent on a matter it could be charged at the minimum rate of one unit. The six minute units were a matter of convenience. However, as the reading of the short letter in this instance, that had been charged at one unit, had also included a telephone conversation and supplying the letter to the Court, the Judge thought that one unit was reasonable.

Decision: Youth Advocate's costs to be paid in full. Judge advised that Youth Advocate should keep more detailed records.

Police v PA [1995] DCR 204

Name: Police v PA
Reported: [1995] DCR 2004
File number: CRN 4254009389-92
Date: 6 April 1995
Court: Youth Court
Location: Palmerston North
Judge: Toomey DCJ
CYPFA: s214, s245
Charge: Wounding with Intent to Cause GBH; Possession of an Offensive Weapon with Intent to Commit Bodily Injury; Party to Assault with a Weapon; Ill-treating an Animal
Key Title: Arrest without Warrant; Objects; Principles

Summary: H (14 at time of arrest) charged with wounding with intent to cause GBH; possession of an offensive weapon with intent to commit bodily injury; assault with a weapon and ill-treating an animal. Police Constable arrested H for obstructing Police during altercation involving several young people, one of whom attacked a Police officer with a baseball bat. Whether arrest in compliance with s214 and thus legal, if not, must comply with s245. Discussion of objects and principles of CYPFA: s4, s5, s208 CYPFA; consideration of s245; s214 and s245 are designed to ensure that the principles fixed in s208 are not overlooked or avoided, particularly s208(a) and s208(h); Police officer had no reasonable cause to suspect H had committed a purely indictable offence or that the arrest of the young person was required in the public interest (s214(2)), which in the context of s214 must refer to something more than the purposes set out in s214(1)(a). Where the validity of an arrest without warrant is challenged the prosecution must prove beyond reasonable doubt that the conditions contained in s214(a) and (b) have been satisfied: *K v Police* [1993] 11 FRNZ 335,

339. Held: provisions of s214 have not been complied with by the informant and alternative procedures to bring young person to Court pursuant to s245 not complied with either, thus, the Informations are invalid and must be dismissed.

Decision: Informations dismissed.

Police v B (No 2) YC Levin CRN 524003780-3, 20 June 1995

Filed under:

Police v B (No 2)

File number: CRN 524003780-3
Date: 20 June 1995
Court: Youth Court, Levin
Judge: Judge Inglis QC
Key Title: Evidence

Summary:

Whether videotaped evidence was admissible or whether the complainant should give the whole of his evidence-in-chief orally.

B charged with sexual violation and indecent assault; Youth Court jurisdiction offered and accepted; complainant's evidence had been videotaped; Counsel argued that Evidence Act, ss23D and 23E allowing the use of videotaped evidence not applicable to Youth Court proceedings which are summary proceedings by virtue of CYPFA s321(1); Summary Proceedings Act 1957, ss 60 and 67(4); *Palmer v Attorney-General* [1992] NZLR 375 per Hillyer J.

Held:

The Evidence Act, ss 23D to 23I was intended to protect young complainants from the embarrassment of giving oral evidence-in-chief in open Court; this protection potent for this complainant up until point where s 275 election made; Judge would not accept that protection should be withdrawn simply because of the operation of s 275, which in this case operated effectively to substitute trial in the Youth Court for trial by jury. The mode of trial seems immaterial to the principle and policy behind ss 23D to 23I, especially as s 23H expressly contemplates the possibility of trial by Judge alone. If unintentional gap exists, then the Court is entitled to bridge it: *Northland Milk Vendors Assn Ltd v Northern Milk Ltd* [1988] 1 NZLR 530 (CA) at 537 per Sir Robin Cooke P. Proceedings here not transformed into purely summary proceedings for the purposes of ss 23D to 23I, as s 321 incorporates the Summary Proceedings Act, Part II, but 'with such modifications - as are necessary'. One such necessary modification here is that a complainant's evidence-in-chief need not be given orally, but may be given as prescribed by s 23E.

Decision:

Complainant's evidence-in-chief to be given in the form of the videotape.

Police v W [1996] NZFLR 15 (YC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v W
Reported: [1996] NZFLR 15
File number: CRN 50480117139-40
Date: 20 June 1995
Court: Youth Court
Location: Otahuhu
Judge: McElrea DCJ
Charge: Armed Robbery
CYPF no: s272; s277
Key Title: Jurisdiction of the Youth Court - Age
LEXISNEXIS NZ Summary:

Children and young persons - Youth of seventeen had pleaded guilty to charges of armed robbery - Jurisdiction of Youth Court to sentence him - Children, Young Persons, and Their Families Act 1989, ss 272, 277, 283.

The defendant, aged seventeen, had pleaded guilty to two charges of armed robbery committed after he had turned seventeen. His two co-defendants were under seventeen and had been remanded to the Youth Court for a family group conference. The question was whether the Youth Court had any further jurisdiction in the defendant's case given that he had pleaded guilty to the charges.

Held (declining jurisdiction)

There was no jurisdiction for the Youth Court to deal with somebody over the age of seventeen, that is, who was "adult" for the purposes of the Children, Young Persons, and Their Families Act 1989, if they plead guilty. The appropriate course, and what was envisaged by the Act, was that they were then referred off to the appropriate adult Court to be dealt with as adults. The only need for them to be dealt with by a Youth Court was where the proceedings must proceed in tandem with those relating to young people and so it was only where there was a defended hearing, involving both a young person and somebody over the age of seventeen, that there was any need for the adult to remain. Further, the powers of the Act relating to directing or convening family group conferences were limited to children and young persons.

Application

This was an application for an order that a youth, aged seventeen, be allowed to remain in the Youth Court and be dealt with by that Court, notwithstanding his age.

R v Wakely DC Napier CRN 4241009095, 13 July 1995

Filed under:

R v Wakely

File number: CRN 4241009095
Date: 13 July 1995
Court: District Court, Napier
Judge: Thompson DCJ
Key Title: Sentencing in the adult Courts - Sexual violation by rape

Summary:

W charged with violent and callous rape; W transferred to the District Court for sentence following FGC recommendation and social worker's report. Rape was not accompanied by further violence or other acts of degradation; no remorse until recently; W has showed signs of maturing and improvements in his attitude recently.

Held:

Sentence of imprisonment required as a very clear signal that this behaviour will not be tolerated. Special consideration to be given to youth offenders: *R v M* CA131/93, 11 June 1993. Suspended sentence not appropriate bearing in mind s 128B of the Crimes Act 1961 but special consideration in terms of length of imprisonment in view of offender's age and mitigating factors.

Decision:

Sentence of two years imprisonment.

Timo v Police [1996] 1 NZLR 103 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Timo v Police [1996] 1 NZLR 103

File number: not available
Date: 8 August 1995
Court: High Court, Christchurch
Judge: Williamson J
Key Title: Bail (ss 238(1)(b)), Orders - type: Conviction and transfer to the District Court for sentence - s283(o): Aggravated robbery

LEXISNEXIS NZ Summary:

Criminal law - Bail - Appeal against refusal of bail in District Court - Youth Court previously finding unrelated charge against accused proved - Whether finding of Youth Court a conviction for specified offence under s 318(6) of Crimes Act 1961 - Whether accused

having burden of proof in application for bail - Crimes Act 1961, s 318(6) - Children, Young Persons, and Their Families Act 1989, s 283(o) - Summary Proceedings Act 1957, ss 2, 68(1) and 70(1).

The appellant (T) was refused bail on serious charges in the District Court. On T's appeal to the High Court, the Crown argued that in applying for bail T bore the burden of proving he would not reoffend as he had previously been convicted for a specified offence under s 318(6) of the Crimes Act 1961, namely a charge of aggravated robbery "found proved" against him in the Youth Court. The issue was whether the Youth Court's finding was a conviction. The Crown did not oppose bail if s 318 did not apply.

Held: Unless a Youth Court specifically entered a conviction under s 283(o) of the Children, Young Persons, and Their Families Act 1989, a finding that a charge was proved was not a conviction within s 318(6) of the Crimes Act 1961 since (a) the 1989 Act referred to a charge being proved rather than that the young person had been convicted; (b) ss 2, 68(1) and 70(1) of the Summary Proceedings Act 1957 were excluded from the 1989 Act; and (c) it was unnecessary to deem Youth Court findings to be convictions for the purpose of a rehearing application under s 75 of the 1957 Act if they were in fact convictions. Accordingly, s 318 of the 1961 Act did not apply and bail would be granted subject to conditions (see p 104 line 51, p 105 line 13).

Kohere v Police (1994) 11 CRNZ 442 followed.

Appeal allowed.

Police v T YC Papakura CR 5255004502/6648-50, 25 August 1995

Filed under:

Police v T

File Number: CR 5255004502/6648-50
Date: 25 August 1995
Court: Youth Court, Papakura
Judge: Judge Harvey
Key Title: Evidence (not including admissibility of statements to police/police questioning)

Summary:

T (16) faced three charges of sexual violation and one of indecent assault; complainant 7 and 8 years old at the time of the alleged offences; complainant's credibility and reliability assessed; applying *Galbraith* [1981] 2 All ER 1060 and the Practice Note of Lord Parker CJ in [1962] 1 All ER 448, approved in *ACC v Jenkins* [1981] 2 NZLR 363, 365 and *Kimura* (1981) 1 CRNZ 268, there was evidence a crime was committed and the evidence was not so weak or vague as to stop a jury, properly directed, convicting on that evidence; whether evidence satisfies Judge beyond a reasonable doubt. Evidence proved one charge of indecent assault and sexual violation.

Decision:

Guilty on one charge of indecent assault and one charge of sexual violation.

R v Karoa, Afoa and Charlie HC Auckland T17-18/95, T76/95, 28 August 1995

Filed under:

R v Karoa, Afoa and Charlie

File Number: T17-18/95; T76/95
Date: 28 August 1995
Court: High Court, Auckland
Judge: Anderson J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Person, Admissibility of statements to police (ss 215-222): Explanation of rights; Admissibility of statements to police (ss 215-222): Reasonable compliance, Rights

Summary:

Accused (16) and others arrested; rights explained to accused; accused indicated he understood but did not make a request for a support person or to contact family members; officer explained that he could have support person or family member present during interview; officer's evidence is that accused said "no"; duty solicitor discussed matters with accused relating to his rights and gave another officer instructions that the accused did not wish to give samples or answer questions without lawyer present; after solicitor left the station the young person was interviewed; the next morning the accused indicated that he wishes to confess. Judge says that ordinarily the evidence would be admissible but he has to consider CYPFA; following the requirements of the Act the accused was entitled to know that he could nominate a family member for the purpose of the interview; or to have a solicitor present; Judge finds that he was not made aware of this; not compliance to have a stranger in the room and to be informed that this is the young person's nominated person; no "reasonable compliance" and evidence is inadmissible.

Decision:

Evidence inadmissible.

Police v W [1995] DCR 756

Filed under:

Case summary provided by LINX

Police v W [1995] DCR 756

File number: CRN 5043007168, CRN 5043007298-7301
Date: 22 August 1995
Court: District Court, New Plymouth
Judge: Abbott DCJ
Key Title: Jurisdiction of the Youth Court - Age.

LINX Summary:

CRIMINAL PROCEDURE - application for transfer to Youth Court - five representative charges alleging sexual misconduct against ten year old sister - defendant aged sixteen at time of offending, now aged 21 - admits offending - guilty plea to s 276(1) Children, Young Persons, and Their Families Act 1989 - confronted behaviour, counselling underway - whether Court has jurisdiction to transfer proceedings from District Court to Youth Court.

HELD: no power to order transfer to Youth Court - considered ambiguous s 2(2) Children, Young Persons, and Their Families Act 1989 - fundamental principle that age of alleged offender at date of offence should determine criminal responsibility overruled by s 2(6) Children, Young Persons, and Their Families Amendment Act 1994 - charge can be laid in District Court for offence committed as young person if offender is 18 at time of charge - cannot then be shifted to Youth Court - application denied, interim name suppression.

R v C CA 332/95, 28 September 1995

Filed under:

R v C

Court of Appeal
File number: CA 332/95
Date: 28 September 1995
Judge: Richardson, Thorp, Williamson JJ
Key Title: Sentencing in the adult courts: Sexual violation by rape; Sentencing in the adult Courts - application of Youth Court principles

Summary:

Appeal against sentence of 18 months supervision with special conditions. C (14 years and 3 months at time of offending) charged with sexual violation by rape of 4 year old cousin; C motivated by a desire to "get back at his aunt", his previous caregiver, who, he felt, had not been giving him enough attention; victim and her family badly affected. YC Judge refused YC jurisdiction as serious charge and supervision, if appropriate, should be for 2 years, not the 6 months available to the Youth Court. C had emotionally deprived childhood, recent attempt at suicide.

Reports recommended C stay in the SAFE programme he was attending; High Court Judge imposed 18 months supervision given that it was appropriate in the special circumstances of the offending, the victim and the offender. 12 months had elapsed since offending, the youth had performed well at the SAFE programme and prison would be inappropriate. Crown agreed to supervision for 18 months on specified conditions but argued this should be

underpinned by a sentence of imprisonment suspended under s 21A of the Criminal Justice Act 1985 for deterrence, public interest.

Section 5 of the Criminal Justice Act 1985 and s 128B of the Crimes Act 1961 both create a statutory presumption in favour of full time custodial sentences displaced where having regard to the particular circumstances of the offence or the offender including the nature of the conduct constituting the offence, the Court is of the opinion that the offender should not be sentenced to imprisonment. Youth alone does not justify leniency: *R v Accused* [1989] 1 NZLR 645, 655, but it may be a highly relevant consideration and the younger the defendant, the more significant its relevance: *R v Cuckow* CA 312/91, 17 December 1991.

Held:

Lower Court Judge did not err in principle in declining to impose a suspended sentence of imprisonment, because: (1) age of offender; (2) special circumstances of offending and offender, C's motivation for offending and his unfortunate family circumstances; (3) C had performed well to date on programmes devised for him; (4) deterrent effect unlikely 1 year after event.

Decision:

Application for leave to appeal dismissed.

U v R [1995] NZFLR 966 (HC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: U v R
Reported: [1995] NZFLR 966
File number: T 27/94
Date: 7 September 1995
Court: High Court
Location: Auckland
Judge: Tompkins J
Charge: Rape
CYPF no: s5
Key Title: Delay; Objects; Reports - Psychological
LEXISNEXIS NZ Summary:

Children and young persons - Criminal proceedings - Delay in trial - Reason for delay systemic - Application for order that no indictment be presented and that proceedings be stayed - Whether accused's right to a trial without undue delay had been breached - Relevant legal principles - New Zealand Bill of Rights Act 1990, s 25; Children, Young Persons, and Their Families Act 1989, ss 5, 275.

The applicant, who had been aged 16 years 9 months at the time of the alleged offence, had been awaiting trial on a charge of rape for just over 13 months. The main cause of delay was

the lack of judicial resources in the High Court at New Plymouth. However the Government was aware of the problem and was taking steps to deal with it, including making more judicial time available.

The applicant applied for an order that no indictment be presented on the ground of undue delay in the trial. Evidence was given by a psychologist as to the disadvantages suffered by the applicant if giving evidence in Court after this length of time.

Held (dismissing the application)

(1) Weighing up the relevant factors, that was the length of the delay, waiver, the reasons for the delay and prejudice to the accused, and having particular regard to the applicant's age and the consequences of a 13 month delay in trial on him, it could not be said that his right to be tried without undue delay had been breached. Although the applicant had found the period stressful and the time that had elapsed was going to make the difficult experience of giving evidence more difficult than it would have been had the trial taken place earlier, there was doubt that these characteristics were due solely to delay beyond what might otherwise have been regarded as reasonable.

(2) The means being taken by Government to address the lack of adequate resources was a factor to be weighed in deciding whether delay can fairly be described as undue.

Cases referred to in judgment

Martin v Tauranga District Court [1995] 2 NZLR 419
Mills v Queen (1986) 26 CCC (3d) 481
Page 967; [1995] NZFLR 966
Queen v Morin (1992) CCC (3d) 1
R v Queen (1992) 71 CCC (3d) 1

Application

This was an application for an order under s 25(6) of the New Zealand Bill of Rights Act 1990 that no indictment be presented and that the proceedings be stayed.

Police v Dabrowski [1996] NZFLR 234 (DC)

Filed under:

Case summary provided by LEXISNEXIS NZ

Name: Police v Dabrowski
Reported: [1996] NZFLR 234
File number: CRN 5011003302, 5011003153
Date: 15 December 1995
Court: District Court
Location: Whangarei
Judge: Thorburn DCJ
Charge: Carelessly Using a Motor Vehicle and Causing Bodily Injury

CYPF no: s2; s208; s272
Key Title: Jurisdiction of the Youth Court - Charge type; Principles
LEXISNEXIS NZ Summary:

Criminal law - Infants and children - Practice and Procedure - Application to vacate convictions entered against a young person in the District Court on the ground that she would have been dealt with in the Youth Court - Effect of s 205 of the Summary Proceedings Act 1957 on informations laid in the District Court instead of the Youth Court - Observation on integrating s 205 of the Summary Proceedings Act 1957 against the philosophy of Youth Court - Children, Young Persons, and Their Families Act 1989, ss 2, 208, 272: Summary Proceedings Act 1957 s 205(1), (2).

The defendant was charged with two offences of carelessly using a motor vehicle and causing bodily injury under the Transport Act 1962. At the time of the offences and at the time the informations were laid the defendant was aged 16 years. The informations were laid under the District Court jurisdiction and not the Youth Court jurisdiction. The defendant initially pleaded not guilty, her counsel raising with the Court the question of whether the District Court had jurisdiction to hear the matter. When the defendant changed her plea to guilty, probation reports and emotional harm reports were commissioned and the question of jurisdiction was argued at sentencing.

Held (declaring the proceedings invalid and nullities and vacating the convictions)

The interpretation of s 205 of the Summary Proceedings Act 1957 involved a gathering up of factors beyond the age of the defendant as the

Page 235; [1996] NZFLR 234

Court could not invalidate the proceedings on that ground alone. It was the effect of the error by the police and the Court did not see how a mistake or error in the respect to age could ever stand alone from that effect in this area. The effect was of prejudice to the defendant and that was a matter that the Court regarded as beyond and in addition to the error of age. It did not seem right to interpret s 205 to the advantage of the police when in fact without any excuse the police had by their own error given rise to the problem. That was a matter also beyond the fact alone of the defendant's age. Therefore it was appropriate to declare the proceedings invalid or nullities and the convictions were vacated.

Observations

In an interpretation of s 205 of the Summary Proceedings Act it was imperative to pay heed to the strong and powerful philosophy contained in the Youth Justice legislation and to interpret the section in light of that legislation.

Cases referred to in judgment

Police v Edge (1992) 9 FRNZ 659
W v Ministry of Transport (1990) 7 FRNZ 75

Application

This was an application by counsel for a defendant to declare that the proceedings were null and void.

1994

Police v A [young person] (1994) 12 FRNZ 82

Filed under:

Case Summary provided by BROOKERS

Police v A [young person] (1994) 12 FRNZ 82

File number: CRN 3290016320
Date: 9 February 1994
Court: District Court, Henderson
Judge: McElrea DCJ
Key Title: Election of jury trial

BROOKERS Summary:

Children, young persons, and their families - Youth justice - Young person charged with aggravated robbery - Whether possible to give opportunity to forgo the right to trial by jury - Children, Young Persons, and Their Families Act 1989, ss 274, 275, 276.

Pretrial ruling

This was a ruling as to whether a young person had the right to forgo trial by jury.

A, a young person, was charged with aggravated robbery. The charge was for robbing another young person of a pair of shoes. The offence was a purely indictable matter which could only be laid indictably. The issue was whether it was possible to give A the opportunity of 'forgoing the right to trial by jury' when that was not his right in the sense that he had an election.

Held, giving A the right to forgo his right to trial by jury:

The Court has to address the question of whether a young person will be given the opportunity of remaining in the Youth Court, before the trial, even where the matter is denied. Section 275 Children, Young Persons, and Their Families Act 1989 should be interpreted to apply even where there is no election of trial by jury by the young person because:

a. Section 275 begins with the phrase 'where s 274 of this Act applies', and s 274 covers purely indictable offences and those where the young person elects jury trial;
b. It would be meaningless to include the phrase 'if the offence is not murder or manslaughter' in s 275 if there was no possibility of giving the young person the choice for other indictable offences;
c. Although in one sense there is no 'right' to trial by jury, because it is necessary to proceed in that manner, there is a 'right' in the sense that everyone has the right to trial by jury for serious offences whether the election is theirs or not; and
d. There is an established practice of interpreting s 276 in that way, which is worded in a similar manner to s 275.

Police v T and K YC Tauranga CRN 3270010963-64, 3 February 1994

Filed under:

Police v T and K

File number: CRN3270010963-64; 3270010961/3287006682-83
Date: 3 February 1994
Court: Youth Court, Tauranga
Judge: Judge Callander
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Persons Rights, Arrest without warrant (s 214)

Summary:

Challenge to admissibility of videotaped admissions as CYPFA requirements not complied with in that:

T and K were not properly warned when required to accompany the Police officer/warning not given in language they could understand: s 215 of the CYPFA;

T and K not given the opportunity to nominate their own nominated person and that even if they failed or refused to do so, the person nominated for the role did not carry it out in the proper manner;

No legal authority for way in which T and K detained short of arrest and that at the point of detention, the warning should have been given. Obligations under s 215 discussed; obligations under s 222 discussed: *R v Accused* (1991) 8 FRNZ 119 (CA).

Held:

Police officer did properly advise the two youths as to their rights but statement inadmissible as, once de facto detention of T and K occurred, the rights should have been put again. Further, nominated persons should not sit passively by and the evidence is mute as to what assistance the nominated person (who was a social worker called by the Police officer) gave as to what was likely to occur in terms of the video interview.

Decision:

Statement inadmissible.

Kohere v Police (1994) 11 CRNZ 442 (HC)

Filed under:

Case summary provided by BROOKERS

Kohere v Police (1994) 11 CRNZ 442

File number: AP8/94
Date: 16 March 1994
Court: High Court, Rotorua
Judge: Anderson J
Key Title: Sentencing in the adult courts: application of Youth Justice Principles, Sentencing in the adult courts: Other

Brooker's Summary:

Sentence - Sentencing Judge considered previous Youth Court proceedings - Youth Court not a Court of criminal record - However, Youth Court proceedings form part of offenders' behavioural history - May be relevant when determining sentence - Judge had not erred in principle - Children, Young Persons, and Their Families Act 1989,s 321(1) Summary Proceedings Act 1957, ss 71, 209.

Sentence - Suspended sentence - Two-tiered approach required - Sentencing Judge must first determine imprisonment term - Secondly, must determine whether suspension appropriate - Criminal Justice Act 1985, s 21A.

Appeal

Appeal against sentence.

The appellant pleaded guilty to burglary, theft, and receiving charges. He did not have any previous convictions for burglary. The District Court Judge imposed a sentence of 6 months' imprisonment, suspended for 9 months. The appellant appealed against sentence, submitting that the sentencing Judge had erred in principle by taking previous Youth Court proceedings into consideration, and that the sentence was manifestly excessive or otherwise inappropriate.

Held

1. The Youth Court is not a Court of criminal record to the extent that matters dealt within it do not constitute criminal convictions. However, Youth Court proceedings form part of the behavioural history of a person to be sentenced in the District Court and the High Court and may be relevant to determining the appropriate sentence. The District Court Judge had not erred in principle by taking previous Youth Court proceedings against the appellant into account when determining sentence.
2. Under s 21A of the Criminal Justice Act 1985 a two-tiered approach is required. First, the Court must identify the indications for a sentence of imprisonment and for the term being considered. Secondly, before making an order for the suspension of that sentence, the Court must identify the indications for such a suspension.
3. The District Court Judge had looked at the appropriate sentence for the appellant in the round rather than in the two-tiered approach required under s 21A of the Criminal Justice Act 1985. In the circumstances of the case it is highly unlikely that the Court would have sentenced the appellant to 6 months' imprisonment in the absence of a power to suspend.

Police v WP YC Papakura CRN 3257005620, 11 March 1994

Filed under:

Police v WP

File Number: CRN 3257005620, CRN 3257006281, CRN 3248024337-8
Date: 11 March 1994
Court: Youth Court, Papakura
Judge: Harvey DCJ
Key Title: Orders - enforcement of, breach and review of (ss 296A-296F): Community Work; Orders - enforcement of, breach and review of (ss 296A-296F): Supervision

Application for cancellation of supervision with activity order; young person has made no reparation payments, undertaken no community work, not attended any courses, not adhered to plan; basically young person had flouted the order.

Decision:

Application granted.

H v Police (1994) 11 CRNZ 632 (HC)

Filed under:

Case summary provided by BROOKERS

Name: H v Police
Reported: (1994) 11 CRNZ 632
File number: AP16/94
Date: 26 May 1994
Court: High Court
Location: Invercargill
Judge: Tipping J
Charge: Possessing a knife in a public place without reasonable excuse; Threatening to injure a female complainant with intent to frighten her
CYPF no: s322
Key Title: Delay
Brooker's Summary:

Summary proceedings - Informations - Appeal against Youth Court findings - Uncertainty about date offence committed - No unnecessary delay in prosecution - No uncertainty concerning time for laying information - No material prejudice to appellant - Appeal dismissed - Children, Young Persons, and Their Families Act 1989,s 322 Summary Proceedings Act 1957, s 14; Summary Offences Act 1981, ss 13A, 21.

The Youth Court made findings against the appellant on charges of possessing a knife in a public place without reasonable excuse and threatening to injure a female complainant with intent to frighten her. The information alleged the offences to have been committed on 16 October 1993. There was uncertainty, resulting from the evidence of the complainant and two witnesses, as to whether the offence was committed on 15 or 16 October.

As a result of the uncertainty of the date, the appellant submitted that first, it was unknown whether s 322 Children, Young Persons, and Their Families Act 1989 applied because it was unknown whether there had been any unnecessary delay in prosecution. Secondly, that it was unclear whether the informations had been laid within the 6 month time limit pursuant to s 14 Summary Proceedings Act 1957. Finally, the appellant submitted that he was prejudiced in his defence when the Judge declined to amend the informations, and as he had no knowledge of the specific date of the offences.

Held,

(1) Ordinarily the precise date of an offence is not a material ingredient of the offence. When an issue arises about the precise date, two questions usually arise: Is the precise date material for any reason? Is the defendant materially prejudiced by any uncertainty or inaccuracy in the alleged date?

(2) The argument concerning the Children, Young Persons, and Their Families Act 1989 cannot succeed. Whether the offence took place on 15 or 16 October, there was no unnecessary or undue protraction of the hearing.

(3) The argument concerning Summary Proceedings Act 1957 cannot succeed. Whether the offence took place on 15 or 16 October, the informations were laid within the time limit.

(4) There was no miscarriage of justice in the circumstances. The appellant was not materially prejudiced by the uncertainty when no amendment was made to the date on the information.

Cases referred to

R v Dean [1932] NZLR 753 (CA)
R v Dossi (1918) 13 Cr App R 158
[(1994) 11 CRNZ 632,633] R v Hartley [1972] 1 All ER 599 (CA)
R v Wae Wae Uatuku [1948] NZLR 648 (CA)

Appeal

Appeal against Youth Court findings.

R v Kepa CA 35/94, 17 May 1994

Filed under:

R v Kepa

Court of Appeal
File Number: CA 35/94
Date: 17 May 1994
Judge: McKay, Holland, Thorp JJ (Holland J delivered the judgment for the Court)
Key Title: Sentencing in adult Courts - Serious assault (including GBH); Jointly charged with adult (s 277)

Appeal against 9 months imprisonment cumulative upon an existing sentence of 12 months; sentence followed conviction after trial on charge of assault with intent to injure; appellant just short of 18th birthday at time of offending; one co-offender dealt with in Youth Court but CA held disparity argument not relevant due to co-offender's age and the different considerations of sentencing in the Youth Court. *R v Lawson* [1982] 2 NZLR 219 considered: justice must be administered even-handedly but the test is objective 'whether a reasonably minded independent observer aware of all the circumstances of the offence and the offenders would think that something had gone wrong with the administration of justice'. Record of K's other offending meant that 21 months for the totality of the offending was correct.

Decision:

Appeal dismissed.

Police v LNT YC Auckland CRN 3255013487-89, 1 June 1994

Filed under:

Police v LNT

File number: CRN 3255013487-89
Date: 1 June 1994
Court: Youth Court, Auckland
Judge: Brown DCJ
Key Title: Jurisdiction of the Youth Court - s275 offer/election

LNT charged with rape and sexual violation by unlawful sexual connection at teenage party; Youth Court jurisdiction offered pursuant to s275 CYPFA; lengthy judgment discussing elements of offence and facts of case.

Decision:

Information dismissed.

Police v R-T YC Henderson CRN 4290014383, 20 June 2004

Filed under:

Police v R-T

File Number: CRN 4290014383
Date: 20 June 2004
Court: Youth Court, Henderson
Judge: Harvey DCJ
Key Title: Secure care (ss 367-383A)

Application for detention in secure care; discussion about location of hearing; Judge comments that it is preferable for such applications to be heard at a residence unless it is not practicable; not practicable to be heard in residence on day so Judge reluctantly hears application at Court.

Decision:

Secure care granted.

R v Maka and Tuipulotu HC Auckland S 98 & 96/94, 3 August 1994

Filed under:

R v Maka and Tuipulotu

File number: S 98 & 96/94
Date: 3 August 1994
Court: High Court, Auckland
Judge: Fisher J
Key Title: Sentencing in the adult courts - Aggravated Robbery

Summary

Maka and Tuipulotu (both 15 at time of offence) planned and carried out an aggravated robbery on a service station; carried a knife and an iron bar; wore disguises; victims traumatised. Victims left Family Group Conference with impression that M and T not remorseful. If adults, a sentence of 5 to 7 years would be appropriate but defendants very young; guilty pleas. "It cannot be assumed that the mere youth of those who carry out aggravated robberies of this sort will be a ticket to freedom." Counsel argued for suspended prison sentence combined with a community-based sentence. Sentencing not solely about rehabilitation of offender but also about the need for public denunciation and deterrence. Cannot send message that you get one free aggravated robbery and on the next one you go inside.

Decision

Twelve months imprisonment followed by supervision for 18 months (18 months then reduced to 12 months following submissions concerning the maximum supervision available under s 47(1)(a) of the Criminal Justice Act 1985).

Department of Social Welfare v S (1994) 12 FRNZ 641 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Department of Social Welfare v S
Reported: (1994) 12 FRNZ 641
File number: MFP112/94
Date: 30 September 1994
Court: District Court
Location: Otahuhu
Judge: Boshier DCJ
Charge:
CYPF no: s371
Key Title: Secure Care
Brooker's Summary:

Youth justice - Continuation of secure care - Jurisdiction - Procedure in bringing such applications - Children, Young Persons, and Their Families Act 1989, ss 371, 372.

This was an application under s 372(1) Children, Young Persons, and Their Families Act 1989 for an order authorising the continued detention of a young person, S. After a brief hearing the applicant sought to withdraw the application.

The application was filed in the first instance in the District Court at Otahuhu, and was then faxed to Papakura and placed before a Youth Court Judge. The proceedings were then referred back to the District Court to be dealt with by a Family Court Judge.

Held, declining jurisdiction to hear the application:

The only application before the Court is one under s 372(1) Children, Young Persons, and Their Families Act 1989 which relates to an ex parte application before a Registrar. A Judge does not have jurisdiction under s 372, but only under s 371. Even if the Registrar had considered this application in the first instance, as he should have, there probably would not have been jurisdiction because there is no substantive application before the Court under s 371.

Obiter, (1) it is desirable that if matters that involve considerable thought and care are asked to be dealt with in a busy Court schedule they are presented carefully.

(2) An application for continued secure care detention must be sought before a Judge, and preferably a Family Court Judge where it relates to care and protection.

(3) The correct procedure appears to require the Registrar to deal with the documents in the first instance ex parte, for service to then occur, and for a Judge to be requested to exercise jurisdiction only after hearing from the persons who are entitled to be heard.

Application

This was an application under s 372(1) Children, Young Persons, and Their Families Act 1989 for an order authorising the continued detention of a young person.

R v CW YC Napier CRN 4241008001, 9 September 1994

Filed under:

R v CW

File number: CRN 4241008001
Date: 9 September 1994
Court: Youth Court, Napier
Judge: Hole DCJ
Key Title: Jointly charged with adult (s 277)

CW (16) jointly charged with adults with wounding with intent to cause GBH; exceptionally serious allegations. Whether proceedings should be held in Youth Court or elsewhere: s 277(2) CYPFA. If CW found guilty in YC, s 283(o) CYPFA transfer likely due to seriousness of charge and CW's age. Question of whether, as CW jointly charged with adults and s 277(2) determination required, s 275 and s 276 could apply. Counsel argued that proceedings would be in YC pursuant to order under s 277(2) not s 274 and as s 275 and s 276 begin with the words 'Where section 274 of this Act applies', s 275 and s 276 would not apply. Judge thought that s 275 and s 276 would be available as s 274 determines the procedure for the preliminary hearing in the YC, not where the preliminary hearing should be held; issue not pivotal in this case.

Decision:

Proceedings to take place in District Court.

T v District Court at Whangarei (1994) 12 FRNZ 619 (HC)

Filed under:

Case summary provided by BROOKERS

Name: T v District Court at Whangarei
Reported: (1994) 12 FRNZ 619
File number: CP10/94
Date: 12 October 1994
Court: High Court
Location: Whangarei
Judge: Barker J
Charge: Aggravated Robbery
CYPF no: s275

Key Title: Jurisdiction of the Youth Court - s275 offer/election; Justices of the Peace - Powers
Brooker's Summary:

Youth justice - Jurisdiction - Aggravated robbery - Preliminary hearing by Justices - Plaintiff committed for trial under s 275 - Youth Court Judge ordered a family group conference to decide appropriate forum - Judicial review proceedings - Whether discretion to give young person an election under s 275 was exercised - Children, Young Persons, and Their Families Act 1989, ss 274, 275, 283.

The plaintiff was arrested in July 1993 and brought before the Youth Court on a charge of aggravated robbery. The information was laid indictably. Under s 246 Children, Young Persons, and Their Families Act 1989, the plaintiff consulted his counsel and indicated that he wished to deny the charge. As a result of a family group conference, an order was made that the plaintiff be released into the custody of his parents. It was noted that he continued to deny the aggravated robbery charge. In October 1993, a preliminary hearing of the indictable charge of aggravated robbery was held in the Youth Court at Whangarei presided over by two Justices of the Peace. At the conclusion of the hearing the Justices noted that the case was prima facie established, the defendant pleaded not guilty, and he was committed to the Youth Court at Whangarei under s 275 Children, Young Persons, and Their Families Act for trial.

The matter came before the Youth Court, where the Judge was concerned that the deposition hearing had been conducted before Justices of the Peace. The Judge ordered a family group conference to determine whether the plaintiff should be dealt with by the Youth Court or committed to the High Court for trial. At the conference no agreement was reached as to which Court should exercise jurisdiction to hear the trial.

The plaintiff commenced judicial review proceedings on the basis that once the Justices of the Peace had exercised their discretion under s 275 and had given the plaintiff an opportunity to be tried in the Youth Court, there was no jurisdiction on the Principal Youth Court Judge to order a family group conference to decide where the plaintiff was to be tried.

Held, adjourning the matter until a statement was obtained from Justices stating whether they realised they had a discretion:

(1) A careful reading of the Children, Young Persons, and Their Families Act 1989 indicates that once the discretion under the Act has been exercised by the Court, whether the Court comprises a Youth Court Judge, a District Court Judge, or two Justices of the Peace, then the trial has to take place in the Youth Court without a preliminary family group conference to decide whether the Youth Court is the appropriate forum. The Youth Court Judge must hear the case as a defended matter and decide in accordance with ordinary principles whether the accused is guilty or not guilty. If the accused is found guilty, then there can be a family group conference to consider the penalty.[(1994) 12 FRNZ 619, 620]

(2) The spirit of the legislation (s 274) would be met if it could be arranged legislatively that, where a young person denies a charge laid indictably, then some machinery be put in place for scheduling the depositions to be heard before a Youth Court Judge. The clear message of the legislation is that such preliminary hearings are normally to be presided over by a Youth Court Judge. The discretions that could be exercised under ss 275 and 276 provide reason for

this view. The Justices of the Peace did not lack jurisdiction, but the subsequent decision of the Youth Court Judge to require a family group conference was not ordained by the statute.

(3) In this case the Justices did not give reasons for their decision. It is important to obtain from the Justices a statement about whether they realised they had a discretion. If there was no exercise of the discretion, the matter may have to be referred back to the Justices for the exercise by them of their discretion under s 275.

Cases referred to

C v District Court at Dunedin (1993) 10 FRNZ 416
Police v James (a young person) (1991) 8 FRNZ 628
Police v W 7/9/94, Judge Brown, YC Whangarei
R v M and C (1985) 1 CRNZ 694 (CA)
S v District Court at New Plymouth (1992) 8 CRNZ 241

Application

This was an application for judicial review of a Youth Court decision ordering a family group conference to decide the appropriate forum for the plaintiff to be tried on a charge of aggravated robbery.

Police v F (17 November 1994) YC, Auckland, CR4204004025, Harvey DCJ

Filed under:

Name: Police v F
Unreported:
File number: CR4204004025
Date: 17 November 1994
Court: Youth Court
Location: Auckland
Judge: Harvey DCJ
CYPFA: s276
Charge: With Intent to Cause GBH, did Cause GBH
Key Title: Jurisdiction of the Youth Court - s276 offer/election; Bail

Summary: Whether to exercise discretion to allow young person to remain in Youth Court pursuant to s276 CYPFA; F charged with causing grievous bodily harm with intent to cause grievous bodily harm; charge not denied; horrendous attack on victim in a park; huge media interest. Key cases as to discretion noted; key factors to be considered listed including: chances of rehabilitation, public interest in punishment of violent offenders as opposed to public interest in rehabilitation. Public interest discussed at length; in determining how the public interest will best be served the long term consequences for the offender must be considered where appropriate as well as the more immediate consequences and the victim's interests. F almost 17 at time of attack and now 17 so Youth Court orders could only be of limited duration; comprehensive plan provided; Court asked not to make a decision as that would compel it to make orders. Instead the Court agreed in principle to place B on bail (for

up to 4 years) to carry out the plan. Plan included counselling, family and cultural input, army military programme; plan constructive as opposed to imprisonment which would be counterproductive.

Decision: F on bail for 4 years to allow plan to be implemented.

DSW v OF YC Auckland, 3 November 1994

Filed under:

DSW v OF

File number: not available
Date: 3 November 1994
Court: Youth Court, Auckland
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for secure care. Whether young person should be kept in secure care; application based upon agreement with Weymouth authorities and local authority; whether that agreement overrides provisions of s 368;

Held:

Agreement does not override provisions of s 368; Department must establish grounds within statutory framework.

1993

Department of Social Welfare v Publisher (1993) 10 FRNZ 148 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Department of Social Welfare v Publisher
Reported: (1993) 10 FRNZ 148
File number: CRN1004053324-7
Date: 29 January 1993
Court: District Court
Location: Auckland
Judge: Satyanand DCJ
Charge:
CYPFA: s38
Key Title: Media Reporting; Family Group Conference - Report from
Brooker's summary:

Children and young persons - Confidentiality - Disclosure of information - Family group conference - Report of proceedings - All elements of offence proved - Jurisdiction of District Court to hear case - Role of media in juvenile proceedings - Children, Young Persons, and Their Families Act 1989, ss 2, 37, 38, 150, 247, 271; Summary Proceedings Act 1957, s 43; Criminal Justice Act 1985, s 138; Crimes Act 1961, s 25.

A leading magazine was alleged to have published an article containing identifiable details of a family group conference. The author of the article participated in that particular conference in the capacity of the victim's (her son) support person. In the article, reference was made to the people present and to what had happened. Although the victim, the offender, and the Government officials were not named, the venue and at least one volunteer social worker were referred to by name. In order to secure convictions, the informant must prove beyond reasonable doubt that the author and publisher breached the confidentiality provision under s 38 Children, Young Persons, and Their Families Act 1989. The elements of the offence requiring proof were those of (a) publication, (b) intention, (c) a report of proceedings not validated by s 38(2), and (d) identifiable proceedings of a particular conference.

A preliminary issue was whether the District Court had jurisdiction to hear the case when s 150 of the Act referred to proceedings being undertaken in the Family Court only. It was, however, agreed between counsel and conceded by the defendants that the only way in which an alleged offence could be brought to book was by way of prosecution under the Summary Proceedings Act 1957 and by way of prosecution in the District Court proper.

Note: At the end of the case, the Judge addressed the role of the media in light of the new jurisprudence affecting children and young persons brought in by the 1989 Act.

Held, finding all four elements proved:

1) On the first element, the magazine's masthead confirms publication by the publisher, and the actions of the author in devising and presenting the story to the editor establish the element of publication.

(2) On the second element, s 38(1) and (4) must be read as requiring proof of intentional breach. The question of confidentiality was actively canvassed by the author and publisher through the editor. In deciding to publish notwithstanding the strictures against publication, the necessary mental intention is established against both defendants.[(1993) 10 FRNZ 148, 149]

(3) On the third element, the term "report" within s 38 is not restricted to an official record which did not include a personal account of what may have transpired at a family group conference. The Act must be given a purposive interpretation. In so doing, the question of confidentiality is of prime significance and publication must relate to private and unsolicited reports and accounts of what may have transpired as well.

(4) The fourth element is also proved by the youth justice coordinator's evidence that on reading the article she was able to recognise the case and its subject as being a particular conference held at the request of a police enforcement officer under s 247 of the Act.

Cases referred to

Police v Starkey [1989] 2 NZLR 373; (1989) 4 CRNZ 400

Hearing

This was a hearing on charges against the defendants for allegedly committing an offence against s 38 Children, Young Persons, and Their Families Act 1989 in publishing a report of the proceedings of a family group conference.

The facts appear from the judgment.

Williams v Police (1993) 10 FRNZ 317 (HC)

Filed under:

Case summary provided by BROOKERS

Williams v Police (1993) 10 FRNZ 317

File number: AP104/92
Date: 26 February 1993
Court: High Court, Auckland
Judge: Williams J
Key Title: Admissibility of Statements to police/police questioning (ss 215-222), Rights

Brooker's summary:

Children and young persons - Evidence - Admissibility - Appeal - Appellant, 17, admitted to burglaries committed while a young person - Special provisions under s 215 relating to

interviewing young persons not followed by police - Whether special provisions applied to appellant - Whether Bill of Rights Act breached - Children, Young Persons, and Their Families Act 1989, ss 2(2), 215; New Zealand Bill of Rights Act 1990, s 23(1)(b).

Appeal

This was an appeal against the decision of the District Court to admit as evidence statements made by the appellant to the police in relation to numerous burglaries.

The facts appear from the judgment. While certain burglary charges were pending the appellant, who had just turned 17, told the police that he wanted to 'clear up' other burglaries. He accompanied two officers in their car to identify the places he had burgled. After that the appellant was taken back to the police station and photographed. He declined to make a statement and was then taken to his home.

In the District Court, the appellant appeared to face a large number of burglary charges. Objection was made to the admissibility of the evidence of the police. It was argued that the admissions were inadmissible because the requirements of s 215 of the Children, Young Persons, and Their Families Act 1989 were not followed. The question before the District Court Judge was whether those special provisions relating to the interviewing of young persons applied to a person who was at the time of the interview over 17 years of age. The District Court Judge overruled the objections, finding that the statements were admissible because the Act and the special requirements of s 215 did not apply.

In this appeal it was also argued that there had been a breach of s 23(1)(b) of the New Zealand Bill of Rights Act 1990 in that the appellant was not advised of his right to consult and instruct a lawyer without delay.

Held

dismissing the appeal:

1. So far as the application of the Act is concerned, the holding of the majority in *Police v Edge* (1992) 9 FRNZ 659 (CA) (which is not obiter as argued by the appellant) is decisive in this appeal. In that case it was held that a police interview with a person over the age of 17 at a time when no proceedings had been convened or were in contemplation does not require the procedures of s 215 to be followed.
2. The success of the Bill of Rights Act argument depends upon whether the appellant was at the time under arrest or detained. The findings of fact made by the District Court Judge are wholly inconsistent with the proposition that the appellant was arrested or detained, or in de facto custody when the admissions were made.

Police v BG (1993) 10 FRNZ 157 (DC)

Filed under:

Police v BG (1993) 10 FRNZ 157

File number: CRN 221901637-8
Date: 2 February 1993
Court: District Court, Hamilton
Judge: Judge Twaddle
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance

Summary:

BG (15) was one of four offenders charged with assault with intent to injure and threatening to kill; BG told police he was 17; a Police officer cautioned BG, told him of his right to contact a lawyer and took a written statement. Police officer told BG he was going to be charged with being a party to assault. BG then correctly advised that he was 15; Police officer did not explain s 215 or take a new statement. Court considered whether written statement was inadmissible by reason of non-compliance with s 215 and, if so, whether the evidence established a prima facie case against BG.

Section 208(h) of the CYPFA entitles young people to special protection during the investigation of offences; the intention of the Legislature is to give young people an effective right to silence. Section 221(2) of the CYPFA provides that, with some express exceptions, no statement may be admissible unless the explanations required by ss 215 to 218 have been given; the Court has no discretion to determine the admissibility of a young person's statement. If specific explanation not given and the exceptions or reasonable compliance are not established then the statement must be ruled inadmissible: *Police v Edge* CA277/92, 17 December 1991 per Cooke P, *R v Irwin* [1992] 3 NZLR 119 (HC) at 122-123 per Fisher J.

Held:

The subjective belief of the Police officer as to BG's age is irrelevant. This is in accordance with the spirit of the CYPFA; a young person cannot waive their rights by lying; assumption of CYPFA is that a young person requires a careful explanation before exercising their right to silence.

Section 223 is inapplicable to BG's written statement and to his oral statement concerning his age prior to being cautioned. A "statement" for the purposes of the section is a statement which can be used to inculpate its maker in the commission of an offence. The section might apply where proof of age is an ingredient of an offence. However, this is not the case here. No reasonable compliance in terms of section 224, thus the Court has no discretion and must reject the statement: *R v Irwin* [1992] 3 NZLR 119.

Once the Police officer became aware of BG's real age he should have started again and given a full statutory explanation to BG. Sections 215 and 221 do not impose "mere formalities": *P v Crime Appeal* (1991) 7 CRNZ 539 (CA). If explanations had been given, the Court may have been able to conclude that the spirit and object of s 215 of providing adequate protection to BG had been complied with and the statement may have been admissible.

Decision:

Evidence inadmissible but prima facie case against BG exists because the evidence establishes that he was there and involved.

Director-General of Social Welfare v District Court at Otahuhu (1993)10 FRNZ 232 (HC)

Filed under:

Case summary provided by BROOKERS

Name: Director-General of Social Welfare v District Court at Otahuhu
Reported: (1993) 10 FRNZ 232
File number: M1280/92
Date: 22 March 1993
Court: High Court
Location: Auckland
Judge: Fisher J
Charge:
CYPFA: s2; s4; s5; s6; s371
Key Title: Custody - CYFS; Secure Care
Brooker's summary:

Children, young persons, and their families - Judicial review - Young persons serving term of imprisonment in children and young persons residence - Whether young person may be locked up without obtaining fortnightly authorising orders from District Court - Children, Young Persons, and Their Families Act 1989, ss 2, 4-6, 238, 361, 364, 365, 371; Children, Young Persons (Residential Care) Regulations 1986; Judicature Amendment Act 1972; Crimes Act 1961, s 172; Criminal Justice Act 1985, ss 8, 136, 142A, 143; Penal Institutions Act 1954, ss 4, 6, 7, 12, 16, 19, 20, 21A-21C.

The sole issue in this application for judicial review concerned young persons who are serving terms of imprisonment in a children and young persons residence: can these young persons be locked in a room or enclosure without obtaining fortnightly orders from the District Court specially authorising it under s 371 Children, Young Persons, and Their Families Act 1989? The Justice Department answered "yes" but the Department of Social Welfare and both counsel answered "no". The District Court held that it was unnecessary for the Director-General to apply in that way (see DGSW v V (1992) 8 FRNZ 598). This application was made in relation to a 13-year-old found guilty of murder who is kept in a locked area known as a "secure facility" at the Kingsley Residential Centre in Christchurch.

Held, dismissing the application:

A young person serving a sentence of imprisonment may be detained in a conventional prison under the Penal Institution Act 1954 or in any children and young persons residence under s 142A Criminal Justice Act 1985. Where a young person is detained in a conventional prison, the prison superintendent has a discretionary power whether or not to physically confine the person without formal procedure or precondition. That power (subject to the overriding control of the Director-General of Social Welfare) devolves around the principal of the children and young persons residence where a young person is detained under s 142A

Criminal Justice Act. That results from the wording of s 142A in combination with the Penal Institutions Act 1954. It is reinforced by the underlying objectives of the sentencing statute, the Penal Institution Act 1954, and the Criminal Justice Act 1985. The latter two Acts continue to apply to a young person detained in a children and young persons residence subject only to "such modifications as are necessary" (s 142A(2)).

This principle may have been overlooked or underestimated in this case.[(1993) 10 FRNZ 232, 233]

Application

This was an application under the Judicature Amendment Act 1972 for a review of the decision of a District Court Judge.

The facts appear from the judgment.

Department of Social Welfare v RF YC Otahuhu CYPF No 33/93, 11 March 1993

Filed under:

Department of Social Welfare v RF

File number: CYPF No. 33/93
Date: 11 March 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for Order for Secure Care. RF (15) had absconded from Police custody on one occasion but had never absconded from a residential institution; had been compliant and co-operative but had threatened he would "run". No evidence to support "real likelihood that the child or young person will abscond" (s 368 CYPFA); no evidence of likely harm to RF's mental, physical or emotional wellbeing if he does abscond (s 368 CYPFA). Charges against RF not admitted and absconding "hypothetical" only. Judge expressed concern that RF had been placed in secure care after merely saying that he would abscond. [Note: s 368 as considered here was repealed and substituted on 8 January 1995 by 1994 No 121, s 41].

Decision:

Application dismissed.

Department of Social Welfare v T YC Otahuhu CYPF No 30/93, 8 March 1993

Filed under:

Department of Social Welfare v T

File number: CYPF No. 30/93
Date: 8 March 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for Order for Secure Care (not a youth justice matter); T (15) under the custody and guardianship of the Director-General of Social Welfare; T had worked as an exotic dancer; drug issues; independent; had absconded before. Evidence shows a real likelihood that T will abscond; risk to T's physical, mental or emotional wellbeing likely due to drug abuse; s 368(1)(b) satisfied.

Decision:

Application granted.

DSW v LD YC Otahuhu CYPF No. 41/93, 22 March 1993

Filed under:

DSW v LD

File number: CYPF No. 41/93
Date: 22 March 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for secure care grounded on s 368(b) [repealed and substituted on 8/1/95 by 1994 No 121, s 41] to prevent LD from behaving in a manner likely to cause physical harm to herself or to any other person. LD exhibiting problem behaviours including damaging property, threatening staff and threatening and assaulting other residents. Had threatened to abscond; did so for 15 minutes; put in secure care; effectively in secure care for one week before matter brought before a Judge. Allegations of physical harm to self. Judge concerned that secure care sought to impose discipline on C and to stop her absconding when these were not relevant matters for a s 368(b) application.

Decision:

Application declined due to time delay; concerns about disciplinary aspects of application highlighted.

R v M [1993] NZAR 327 (HC)

Filed under:

Case summary provided by BROOKERS

Name: R v M
Reported: [1993] NZAR 327
File number:
Date: 11 May 1993
Court: High Court
Location: Nelson
Judge: Greig J
Charge: Sexual Violation - Rape
CYPFA:
Key Title: Youth Advocates Costs
Brooker's summary:

Review of refusal of legal aid - Young person aged over 16 living with parents - Statement of means disclosing modest disposable income - Whether inequitable to take into account parents' means - Inclusion of farm property owned by company - Application of underlying policy of Legal Services Act 1991 - Legal Services Act 1991, ss 7(1), 10, 29, 31, 31(2), 31(3), 31(4), 32.

The applicant, aged 17 years, was charged with rape and elected trial by jury in the High Court. An application was made under the Legal Services Act 1991 for a grant of criminal legal aid. The applicant was then aged over 16 years and working but living at home with his parents. Notwithstanding that the total disposable assets and income of the applicant and his parents was returned as some $12,000 per annum the grant of aid was refused by the Registrar, the Registrar including as an asset the parents' farm property, owned by a family company of which the parents were the shareholders. It was submitted, inter alia, that it was inequitable that the parents' income and assets be considered, and that it was not in the interests of justice that legal aid be refused.

Held (dismissing the application)

While it was inaccurate to say that the means of the parents were deemed to be the means of an applicant aged over 16 years, in this case the Registrar had a discretion to exercise pursuant to s 31(4) of the Legal Services Act 1991 in respect of the means of the applicant, resources of his parents and their amalgamation. That discretion had been exercised by the Registrar in the correct expectation that the farm property and business were, in effect, owned by the applicant's parents. It was the plain policy of the Legal Services Act 1991 that where a young person was living at home with his parents and they were of sufficient means their means may be taken into account in deciding whether legal aid should be granted. The applicant's parents had considerable assets in value and in accordance with the underlying policy of the Act it would be wrong to grant criminal legal aid in the circumstances.

Application

For review of the Registrar's decision to refuse to direct that criminal legal aid be granted to the applicant.

DSW v K (11 June 1993) YC, Otahuhu, CYPF NO. 86/93, Harvey DCJ

Filed under:

Name: DSW v K
Unreported
File number: CYPF NO. 86/93
Date: 11 June 1993
Court: Youth Court
Location: Otahuhu
Judge: Harvey DCJ
CYPFA: s368
Charge: Theft, Burglary, Unlawfully Getting into a Motor Vehicle; Aggravated Robbery; Escaping from Custody
Key Title: Secure Care

Summary: Application for secure care grounded on s368(a) and s368(b) CYPFA [repealed and substituted on 8/1/95 by 1994 No 121, s41]. K had been in secure care for three weeks; had absconded and re-offended seven months previously; further secure care sought to prevent K from absconding and causing physical harm to self and others; delay in application for secure care; behavioural issues. *DSW v S* (1992) 9 FRNZ 670; [1993] DCR 273 as to need for contemporaneity between absconding and application applied. Secure care should not be used to manage the unmanageable; "It must be established that secure care is necessary, and in an extremist situation, to prevent him from behaving in a manner likely to cause physical harm to himself or another person"; not to be used to confine likely absconders. Held: no evidence to support application under s368(a) or (b); not appropriate for Judge to act as a social worker or a social analyst; basic parameters have to be met. CYPFA puts balance in favour of children and young people and recognises their vulnerability and susceptibility

Decision: Application for secure care declined.

DSW v C (11 June 1993) YC, Otahuhu, CYPF No. 88/93, Harvey DCJ

Filed under:

Name: DSW v C
Unreported
File number: CYPF NO. 88/93
Date: 11 June 1993
Court: Youth Court
Location: Otahuhu
Judge: Harvey DCJ
CYPFA: s368
Charge: Unlawfully Taking; Receiving; Theft; Burglary; Breach of Bail
Key Title: Secure Care

Summary: Application for secure care; s368(a) CYPFA [repealed and substituted on 8/1/95 by 1994 No 121, s41]; C had absconded in past (s368(a)(i)); some evidence that C had re-offended by unlawfully taking a vehicle, involved in a high speed car chase. Counsel argued necessary to keep C in secure care as likely she will abscond again and harm her "physical,

mental or emotional wellbeing" (s368(a)(iii)); Judge considered this "altruistic" approach was in fact an attempt to prevent C from re-offending and noted this was not a ground to keep C in secure care. To support an allegation that there is a real likelihood that a young person will abscond, Judge may look not only at incidents of absconding from a residence but other incidents of behaviour that involve a wilfulness of attitude demonstrated by action where young person absents herself from a place where she ought to be; C demonstrated such wilfulness. Judge found a real likelihood C would abscond again (s368(a)(ii)), but no real evidence that she had unlawfully taken a vehicle and become involved in a high speed car chase, thus no evidence her "physical, mental, or emotional" wellbeing may be harmed (s368(a)(iii)).

Decision: Application declined.

DSW v M (4 June 1993) YC, Otahuhu, CYPF NO. 83/93, McElrea DCJ

Filed under:

Name: DSW v M
Unreported
File number: CYPF NO. 83/93
Date: 4 June 1993
Court: Youth Court
Location: Otahuhu
Judge: McElrea DCJ
CYPFA: s368
Charge: Aggravated Robbery (2)
Key Title: Secure Care

Summary: Application for secure care. M (15) had a history of absconding from community and family placements but had never been placed in a CYFs "residence" as defined by CYPFA s2; ability to rely on the absconding provision in s368(a) [repealed and substituted on 8/1/95 by 1994 No 121, s41] is limited to cases where the young person has previously absconded from Police custody or a "residence". Whether M's history of absconding may be taken into account in deciding whether M may behave in manner likely to cause harm to self or others: s368(b) [repealed and substituted on 8/1/95 by 1994 No 121, s41]. Held: Court may take into account the history of absconding from other placements in assessing the likelihood of such further offending occurring. M could abscond and re-offend in violent manner again and cause physical harm to self or others (s368(b)).

Decision: Application granted.

DSW v W YC Otahuhu MPF N. 85/93, 11 June 1993

Filed under:

DSW v W

File number: MPF No. 85/93
Date: 11 June 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for secure care. W (15) had committed offences, had been assaulted and had absconded from a residential centre. Physical and emotional wellbeing likely to be harmed if W absconds; emotionally fragile, predisposition for matches and fire; behavioural issues. Section 368(a) [repealed and substituted on 8/1/95 by 1994 No 121, s 41] made out; application granted; pursuant to s 376(3)(b) direction made that W be released from secure unit to attend counselling or treatment and to attend the FGC without compromising the order.

Decision:

Application granted.

DSW v WGT YC Otahuhu CYPF No 87/93, 11 June 1993

Filed under:

DSW v WGT

File number: CYPF No. 87/93
Date: 11 June 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for continuation of secure care grounded on CYPFA s 368(b) [repealed and substituted on 8/1/95 by 1994 No 121, s 41]; WGT had been in secure care for some time; each secure care application must be considered *de novo*; WGT's attitude indicates he may physically harm others again; motor vehicle offences particularly cause concern that WGT is unable to appreciate and understand that his actions will cause harm; secure care necessary to prevent repeat of behaviour.

Decision:

Application granted - WGT to remain in secure care until his next Youth Court appearance in four days

Police-v-B R R (1993) 11 FRNZ 25 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Police v B R R
Reported: (1993) 11 FRNZ 25
File number: CRN3255005934
Date: 23 July 1993
Court: District Court
Location: Papakura
Judge: Harvey DCJ
Charge: Assault
CYPFA: s5(f); s322
Key Title: Delay
Brooker's summary:

Youth justice - Rights of accused - Time for instituting proceedings - Delay in investigation - Unduly protracted delay in bringing matter to hearing - No reasonable explanation - Information dismissed - Children, Young Persons, and Their Families Act 1989, ss 5(f), 322; Children and Young Persons Act 1974, s 100.

The defendant young person was alleged to have committed an assault on 6 June 1992. The matter was not investigated until 6 months later, and then only intermittently. The defendant was interviewed in January 1993 and a family group conference was held on 8 March 1993. The information was only laid on 1 April 1993. The matter first came to Court on 4 June 1993 where the information was denied. The hearing was subsequently set for 23 July 1993.

The defendant sought a dismissal of the information under s 322 Children, Young Persons, and Their Families Act 1989 submitting that the time that had elapsed between the date of the commission of the alleged offence and the hearing had been unnecessarily or unduly protracted.

Held, dismissing the information:

1) It is clear under s 5(f) that timing is significant in terms of activities under the Act. Decisions affecting a child or young person should wherever practicable be made and implemented within the time-frame appropriate to the child or young person's sense of time.

(2) The events that took place before and after the laying of the information must be taken into account. The delay between the alleged offence and the first appearance in Court (amounting to one year) would have been in itself an unduly protracted period of time. By the time the matter first came to Court on 4 June 1993, the time was so far out and the delay so inexplicable in terms of reasonableness of explanation that the matter would have failed anyway. Accordingly, the Court's discretion under s 322 will be exercised by dismissing the information.

Cases referred to

Police v C, Judge Carruthers, YC Wellington CRN0285015569

Application

This was an application under s 322 Children, Young Persons, and Their Families Act 1989 for the exercise of the Court's discretion to dismiss an information against a young person.

The facts appear from the judgment.[(1993) 11 FRNZ 25, 26].

Re Warrant of Commitment DC Papakura CRN 3058003032, CRN 355005832, 8 July 1993

Filed under:

Re Warrant of Commitment

File Number: CRN 3058003032; CRN 355005832
Date: 8 July 1993
Court: District Court, Papakura
Judge: Moore DCJ
Key Title: Fine - enforcement, Principles of Youth Justice (s 208), Imprisonment

Defendant defaulted on payment of fines and was arrested in accordance with warrant of commitment; when warrant issued defendant was 15 years old; defendant did not want to go to prison; query whether an absent, unrepresented, young person should be imprisoned in the light of statutory policy and sentencing principles; held that situation should be remedied by withdrawal of warrant; suggested that Family Group Conference may provide alternatives to imprisonment; statement about ordinary practice of the Court which is to require defendant to get learner's licence.

Decision:

Fines remitted; warrant withdrawn.

DSW v K (26 July 1993) YC, Otahuhu, CYPF No. 110/93, Harvey DCJ

Filed under:

Name: DSW v K
Unreported
File number: CYPF No. 110/93
Date: 26 July 1993
Court: Youth Court
Location: Otahuhu
Judge: Harvey DCJ
CYPFA: s368
Charge: Demanding with Menaces
Key Title: Secure Care

Summary: Further application for secure care for K (dealt with in *DSW v K*, CYPF NO. 86/93, 11 June 1993, YC, Otahuhu); K faced allegation of demanding with menaces after being released from residential care. *T v Department of Social Welfare* (1989) 6 FRNZ 100 noted where it was commented that factors akin to matters of bail can be taken into account in considering an application for secure care; Judge noted situation different for adults as

adjournment may be on bail *or* in custody but for young people detention in a residence is a half-way stage between close confinement and freedom in the community; examination of the forms of care pursuant to s238(1)(c)-(e) CYPFA; examination of basis for secure care; where s368(b) relied upon the physical danger to self or others must be in the residential context. Held: application on basis of s368(b) [repealed and substituted on 8/1/95 by 1994 No 121, s41] which requires Court to consider whether or not K likely to cause physical harm to self or others if placed in the open wing of the residential unit; Judge not satisfied that such harm would result from keeping K in open unit.

Decision: Application declined.

Police v B M (1993) 11 FRNZ 29 (YC)

Filed under:

Case summary provided by BROOKERS

Name: Police v B M
Reported: (1993) 11 FRNZ 29
File number: CRN3278004391
Date: 11 August 1993
Court: Youth Court
Location: Upper Hutt
Judge: Carruthers DCJ
Charge: Breaking and Entering with Intent to Commit a Crime
CYPFA: s245; s247; s250; s251
Key Title: Family Group Conference - Held/Convened
Brooker's summary:

Children and young persons - Family group conference - Whether convened in accordance with requirements of Act - Family group conference not convened because young person cannot be contacted and it was known he would deny the charge - Policy behind requirement that conference be convened prior to issue of summons - Keeping young people out of Court - Summons improperly issued - Children, Young Persons, and Their Families Act 1989, ss 245, 247, 250, 251; Crimes Act 1961, s 241(a).

The defendant young person faced a charge issued against him by way of summons alleging that he did break and enter a house with intent to commit a crime. Under s 245 Children, Young Persons, and Their Families Act 1989, a family group conference must be convened before the information can be laid. Although a conference was shown on record to have been held with the defendant present, the real position was that the youth justice coordinator had failed to contact the defendant and, on visiting his house, was told by the defendant's parents that he intended to deny the charges. The youth justice coordinator decided then that it was pointless to hold a family group conference in the usual way. The issue here was whether in those circumstances a family group conference could be said to have been properly convened in compliance with s 247 so that the summons was validly issued.

Held,

(1) The convening of the family group conference, in the circumstances here, did not comply with the provisions of the Act which, amongst other things, entitles the defendant and the victim the right to attend the conference.

(2) The principle that the Act requires the convening of a family group conference in accordance with the Act prior to a summons being issued is an important one as it may be as a result of the conference that the matter does not go to Court. The Act is a diversionary one aimed at keeping young people out of Court if that course has the agreement of informants, victims, and others who are affected. To deny this opportunity occurring in the proper way is to deny this young person, however much he might be deserving of a quick and efficient hearing in the Court, an opportunity of having this dealt with by facing those involved in a family group conference as contemplated by the Act.

(3) Accordingly, the summons was improperly issued and the matter cannot properly proceed. Leave is allowed to have the information withdrawn.[(1993) 11 FRNZ 29, 30]

Application

This was an application to dismiss a summons issued against a young person on the ground that a family group conference was not convened as required by s 245 Children, Young Persons, and Their Families Act 1989.

The facts appear from the judgment.

Police v BM (1993) 11 FRNZ 29

Filed under:

Name: Police v BM
Reported: (1993) 11 FRNZ 29
File number: CRN3278004391
Court: Youth Court
Location: Upper Hutt
Date: 11 August 1993
Judge: Carruthers DCJ
Charge: Breaking and entering
CYPFA: ss 245, 247, 250, 251
Key title: Family Group Conference - Convened/Held

Case summary provided by BROOKERS

BROOKERS Summary:

Children and young persons - Family group conference - Whether convened in accordance with requirements of Act - Family group conference not convened because young person cannot be contacted and it was known he would deny the charge - Policy behind requirement that conference be convened prior to issue of summons - Keeping young people out of Court - Summons improperly issued - Children, Young Persons, and Their Families Act 1989, ss 245, 247, 250, 251; Crimes Act 1961, s 241(a).

The defendant young person faced a charge issued against him by way of summons alleging that he did break and enter a house with intent to commit a crime. Under s 245 Children, Young Persons, and Their Families Act 1989, a family group conference must be convened before the information can be laid. Although a conference was shown on record to have been held with the defendant present, the real position was that the youth justice coordinator had failed to contact the defendant and, on visiting his house, was told by the defendant's parents that he intended to deny the charges. The youth justice coordinator decided then that it was pointless to hold a family group conference in the usual way. The issue here was whether in those circumstances a family group conference could be said to have been properly convened in compliance with s 247 so that the summons was validly issued.

Held,
(1) The convening of the family group conference, in the circumstances here, did not comply with the provisions of the Act which, amongst other things, entitles the defendant and the victim the right to attend the conference.

(2) The principle that the Act requires the convening of a family group conference in accordance with the Act prior to a summons being issued is an important one as it may be as a result of the conference that the matter does not go to Court. The Act is a diversionary one aimed at keeping young people out of Court if that course has the agreement of informants, victims, and others who are affected. To deny this opportunity occurring in the proper way is to deny this young person, however much he might be deserving of a quick and efficient hearing in the Court, an opportunity of having this dealt with by facing those involved in a family group conference as contemplated by the Act.

(3) Accordingly, the summons was improperly issued and the matter cannot properly proceed. Leave is allowed to have the information withdrawn.[(1993) 11 FRNZ 29, 30]

Application
This was an application to dismiss a summons issued against a young person on the ground that a family group conference was not convened as required by s 245 Children, Young Persons, and Their Families Act 1989.

DSW v S and M YC Otahuhu CYPF No 118/93, CYPF No 119/93, 19 August 1993

Filed under:

DSW v S and M

File number: CYPF No. 118/93, CYPF No. 119/93
Date: 19 August 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for secure care grounded on s 368(b) [repealed and substituted on 8/1/95 by 1994 No 121, s 41]; similar circumstances relating to both young people; serious offence; whether offending serious enough to raise concerns as to physical harm to others that would bring s

368(b) into play: *T v Department of Social Welfare* (1989) 6 FRNZ 100. Police requested remand to DSW residence; no evidence of likelihood of self-harm; application not based on likelihood of absconding; implicit that if young person in open wing there might be absconding; observations on duty of DSW to ensure that those in a residence who do not fulfil criteria for detention in secure care are nonetheless not a risk where absconding likely; obligation of DSW to provide proper supervision while young people are in the open wing. No evidence of violent propensity within institution to justify detention in secure care; apart from offending no evidence of violent propensity within the community. Held: Not absolutely necessary to keep young people in secure care to prevent them from causing physical harm to other people; if risk of absconding, appropriate supervision should be put in place.

Decision:

Application refused.

Police v M & S (13 August 1993) YC, Otahuhu, CRN 3248020789-795, Moore DCJ

Filed under:

Name: Police v M & S
Unreported
File number: CRN 3248020789-795
Date: 13 August 1993
Court: Youth Court
Location: Otahuhu
Judge: Moore DCJ
CYPFA: s396
Charge: Sexual Violation; Kidnapping/Abduction
Key Title: Bail; Custody - CYFS

Summary: Application for bail of M & S (15 and 16); serious allegations of sexual violation and detaining with intent to have sexual intercourse. Samoan Trust seeking to have M & S placed in its care but Trust not yet approved as a "cultural authority" pursuant to CYPFA, s2; thus, no jurisdiction under s238(1)(d) to place M & S there. To release M & S on bail under CYPFA, s238(1)(b) subject to requirement that they are in 24 hour custody of the Trust would defeat the policy of the statute that only organisations approved by the Director-General under s396(2) should be used in custodial situations.

Decision: M & S remanded in the custody of the Director-General under s238(1)(d).

Brown v Attorney-General HC Whangarei M21/93, 8 September 1993

Filed under:

Brown v Attorney-General

Reported: [1993] BCL 1782
File number: M21/93
Date: 8 September 1993
Court: High Court, Whangarei
Judge: Fisher J
Key Title: Evidence (not including admissibility of statements to police/police questioning); Youth Court Procedure, Appeal to High Court/Court of Appeal: Jurisdiction

Summary:

Application for judicial review regarding the circumstances in which sexual complainants should be required to give oral evidence at preliminary hearings under s 185C of the Summary Proceedings Act 1957. Defendant charged with sexual violation by rape; remanded for a preliminary hearing; applied for an order pursuant to s 185C(b)(ii) of the Summary Proceedings Act that the complainant's evidence be given orally and that she be made available for cross-examination; application declined. Applicant alleges that Judge's decision was vitiated by error of law in that he misapplied the discretion conferred upon him under s 185C of the Summary Proceedings Act. Summary of manner in which discretion under s 185C should be exercised outlined: *W v Attorney-General; P v District Court at Wellington* (1992) 8 CRNZ 427 (CA).

Decision:

No error of law. No special circumstances exist to require complainant to give evidence. Application declined.

DSW v T YC Otahuhu CYPF 139/93, 13 September 1993

Filed under:

DSW v T

File Number: CYPF 139/93
Date: 13 September 1993
Court: Youth Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (ss 367-383A)

Application for secure care; grounds on both s 368(a) and (b) CYPFA - evidence clearly justified application; clear indication from young person himself that he needed intensive counselling in a secure environment; protective environment required; conditions imposed; lengthy history of violence; necessity established as result of all other avenues being tried. [Note: s 368 CYPFA repealed and substituted on 8/1/95 by 1994 No 121, s 41].

Decision:

Secure care and counselling ordered.

K v Police (1993) 11 FRNZ 335 (HC)

Filed under:

Case summary provided by BROOKERS

Name: K v Police
Reported: (1993) 11 FRNZ 335
File number: AP243/93
Date: 14 October 1993
Court: High Court
Location: Auckland
Judge: Fisher J
Charge: Aggravated Wounding, Dangerous Driving, and Unlawful Taking
CYPFA: s214; s245
Key Title: Arrest without warrant
Brooker's summary:

Children and young persons - Jurisdiction - Youth Court - Statutory preconditions for arresting young persons - Original charges against the appellant dismissed - Second set of informations laid and found proved - Whether there was a jurisdictional bar to the prosecutions because of non-compliance with s 245 - Arrest not related to particularly identified information - Consequential upon incidents - Filters for non-arrest situation not applicable in arrest cases - Section 214 conditions adequate substitute - Children, Young Persons, and Their Families Act 1989, ss 214, 245.

The appellant took the first complainant's car without authority and drove at him in an allegedly dangerous manner when he tried to stop her. A few days later, a second complainant received serious injuries when trying to stop the appellant while she was driving the stolen car. The appellant was arrested by the police and charged with three offences relating to those incidents. When the appellant was brought before the Youth Court to appear on those charges, the two charges which involved summary offences laid indictably were dismissed on the ground that there was a jurisdictional defect as was the aggravated wounding charge. The police then laid new charges of aggravated wounding, dangerous driving, and unlawful taking. The Youth Court held the dangerous driving and unlawful charges to be proved, and rejected the appellant's submission that s 245 Children, Young Persons, and Their Families Act 1989 posed a jurisdictional barrier.

That decision was appealed on the basis that the Judge did not consider whether there had been a relevant arrest or compliance with the alternative procedures specified in s 245. The appellant submitted that there could be jurisdiction under s 245(1) only if she had been relevantly "arrested", or if the requirements for belief, consultation, and family group conference had been satisfied in terms of subs 245(1)(a), (b), and (c). The appellant submitted that when the second set of informations were laid the earlier arrest no longer related to those informations, and that she could no longer be regarded as a person "arrested" for the purpose of giving jurisdiction under s 245(1).

Held, dismissing the appeal:

(1) When s 245(1) Children, Young Persons, and Their Families Act 1989 refers to a case in which the "young person has been arrested", it does not relate the arrest to any particularly identified information. The arrest in question relates to the "offence" in the sense that the

arrest relates to the incident with which the information is later concerned. The arrest was directly consequential upon the very incidents for which the second informations were laid.[(1993) 11 FRNZ 335, 336]

(2) One of the principal objects of the Act is to divert young persons away from the Court process. Section 245 discourages an over-readiness to bring prosecutions in non-arrest cases by requiring that these cases first pass through the filters of belief, consultation, and conference. The reason that those filters do not apply in arrest cases may well be because different filters relating to arrests under s 214(1) are an adequate substitute. Where the police have considered it necessary to arrest, they should be held publicly accountable for it in a Court of law to ensure that the arrest was justified, a process facilitated by prosecution.

(3) There had been an arrest in this case for the purpose of all the informations which followed. At the outset, the police had to consider whether an arrest was justified in light of s 214. Having done so they discharged their responsibilities as to preconditions for a prosecution. The fact that the mechanisms of those prosecutions subsequently changed was a matter of form only.

Cases referred to

Police v Burgess 17/9/92, Judge Harvey, DC Papakura CRN2255011532

Appeal

This was an appeal against conviction on the ground that the Youth Court lacked jurisdiction under s 245 Children, Young Persons, and Their Families Act 1989.

Department of Social Welfare v M and K (1993) 11 FRNZ 341 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Department of Social Welfare v M and K
Reported: (1993) 11 FRNZ 341
File number:
Date: 8 November 1993
Court: District Court
Location: Hamilton
Judge: D R Brown DCJ
Charge: Murder
CYPF no: s368
Key Title: Secure Care
Brooker's Summary:

Youth justice - Continuation of secure care - Young persons charged with murder - Whether detention behind lock and key and under guard required - Whether secure care required

when no history of absconding - Positive finding of likely harm required - Children, Young Persons, and Their Families Act 1989, s 368.

These were applications by the informant for the continuation of the secure care of M and K. M and K were due to appear in the Youth Court for the continuation of a part heard depositions hearing in relation to charges of murder. K had been involved in significant offending in the past, including aggravated robbery, and had absconded from a social welfare residence. M had been the subject of a family group conference as a result of previous offending but had not had a formal Court appearance. M had no history of absconding and the police evidence was that she played a smaller part in the alleged murder than K.

Held, making an order for the continuation of secure care for K, but declining to make an order for continued secure care of M:

(1) Section 368(a)(ii) Children, Young Persons, and Their Families Act 1989 requires a positive finding that there is likely to be physical, mental, or emotional harm to the young person if there is absconding. It cannot be said that there will always be emotional harm to any young person who absconds and possibly comes into a situation of offending.

(2) The question posed by s 368(b) is whether secure care in the form of detention behind lock and key and under guard is required to prevent the possibility of behaviour likely to cause physical harm to the young person or any other person. The Youth Court Judge is entitled to weigh whether that level of detention is warranted against the potential public risk. Whether the general risk of absconding from forms of social welfare care which do not involve truly secure care is to be tolerated in the particular case is a question of weighing history, present circumstances, and the risk of absconding.

(3) Because of K's significant history, proclivity for flight, absconding history, and the offence she was charged with, placement in continued secure care was necessary to prevent the possibility of physical harm to any other person. As M had no history of absconding, and her part in the alleged murder may have been less, there was insufficient material to satisfy the Court that custody had to be behind lock and key and under guard.

Applications

These were applications for the continuation of secure care of two young persons charged with murder.[(1993) 11 FRNZ 341, 342].

Police v S and M (1993) 11 FRNZ 322 (YC)

Filed under:

Case summary provided by BROOKERS

Name: Police v S and M
Reported: (1993) 11 FRNZ 322; [1993] DCR 1080
File number: CR207/89
Date: 2 November 1993
Court: Youth Court

Location: Otahuhu
Judge: Harvey DCJ
Charge: Sexual Violation - Rape; Indecent Assault; Detaining Girl under Age of 14 with Intent to have Sexual Intercourse
CYPFA: s275
Key Title: Reports - Cultural; Jurisdiction of the Youth Court - s275 offer/election
Brooker's summary:

Children, young persons, and their families - Youth justice - Exercise of discretion under s 275 - Young persons charged with serious sexual violation - Victim and defendants wanted Youth Court proceedings - Weight to be accorded to resolution of dispute between families and Samoan custom - Law must be applied evenly - Youth Court not appropriate in circumstances - Defendants not permitted to forgo the right to jury trial - Children, Young Persons, and Their Families Act 1989, s 275.

The defendants, S and M, were two Samoan boys charged with sexual violation by rape, indecent assault, and detaining a girl under the age of 14 years with intent to have sexual intercourse. The complainant was a 14-year-old Samoan girl. The charges were all laid indictably and were purely indictable. The complainant and the defendants requested that the discretion under s 275 Children, Young Persons, and Their Families Act 1989 be exercised, and that the matter be dealt with in the Youth Court. The defendants submitted that many of the outstanding issues had been addressed within the context of the Samoan culture and that the Youth Court system was complementary to the Samoan method of dispute and conflict resolution. They argued that the equilibrium between the Samoan aiga (extended family) would have to be restored, which could only be successful if the damage from the hearing was minimised, and that the sentencing process of the Youth Court was in line with the objects and principles of the Children, Young Persons, and Their Families Act.

Held, committing the defendants to the High Court for trial:

1) The law is applied evenly to all defendants, regardless of race, religion, or cultural background. The process undertaken within the defendants' community is designed to resolve differences between the families of the victim and defendants. The criminal law is based upon the State taking action on behalf of its members for violations of minimum standards of conduct prescribed in the Crimes Act 1961. If the State failed to take such action it could be seen as failing to provide for the safety of the community.

(2) There were two issues to consider in deciding whether to exercise the discretion under s 275 Children, Young Persons, and Their Families Act 1989: (a) whether the young person should be allowed to forgo the right to trial by jury; and (b) what the sentencing options will be in the event that a guilty verdict is returned or the charge is found proven.

(3) The matter should not remain in the Youth Court because of the seriousness of the charges, the part allegedly played by the defendants, the circumstances giving rise to the charges, the likely consequences that could [(1993) 11 FRNZ 322, 323]be visited on the defendants should they be found guilty, and the public interest which demands that for allegations of such a severe nature a forum appropriate to the charges should be provided.

Cases referred to

Kent v US 383 US 541 (1966)
Police v Ioka 27/5/91, Judge Harvey, YC Otahuhu CRN1248012415
Police v James (a young person) (1991) 8 FRNZ 628
Police v M (1990) DCR 544
Police v Richard 12/6/90, Judge Lee, YC Upper Hutt CRN9278003995/6; CRN9278004028
Police v Tarawa 27/3/91, Judge McElrea, YC Henderson CRN1290005211-14
R v Accused(CA265/88) (1988) 4 CRNZ 36 (CA)
R v Pora 14/9/90, Gault J, HC Auckland S98/90
R v Talataina (1991) 7 CRNZ 33
R v Wilson; R v Amohanga (1988) 5 CRNZ 165 (CA)
Rihari v Police 11/5/90, Fisher J, HC Rotorua T14/90
Tugaga v Police 14/12/89, Holland J, HC Christchurch AP225/89

Hearing

This was a hearing to determine whether the defendants should be tried in the Youth Court and forgo their right to a jury trial.

Police v ST (15 December 1993) YC, Whangarei, Trial No. 70/93

Filed under:

3288008796-8; 3288005614-5, Brown DCJ

Name: Police v ST
Unreported
File number: Trial No. 70/93; 3288008796-8; 3288005614-5
Date: 15 December 1993
Court: Youth Court
Location: Whangarei
Judge: Brown DCJ
CYPFA: s275
Charge: Aggravated Robbery
Key Title: Justices of the Peace - powers; Youth Court procedure; Jurisdiction of the Youth Court - s275 offer/election

Summary: ST faced several charges including one of aggravated robbery; depositions were heard before Justices of the Peace; Justices exercised the discretion having established there was a prima facie case and ruled ST should be given the opportunity to be dealt with in the Youth Court. Such a decision only to be made by Youth or District Court Judges. Further difficulty in that no FGC had been called to determine the question of jurisdiction [*note that as at 2005, an FGC is not usually held before these decisions are made*]; this defect enabled matter to be returned for FGC to advise Court on jurisdiction and for Youth Court Judge to decide on the matter.

Decision: All matters remanded for FGC.

Police v H (16 December 1993) YC, Lower Hutt, CRN 3285018224, Ongley DCJ

Filed under:

Name: Police v H
Unreported
File number: CRN 3285018224
Date: 16 December 1993
Court: Youth Court
Location: Lower Hutt
Judge: Ongley DCJ
CYPFA: s208
Charge:
Key Title: Custody - CYFS; Principles; Family Group Conference - Plan

Summary: Funding issue. FGC recommendation not to be implemented by CYPFS, rejected on grounds of principle and finance. Judge disagreed considering: that cost of residential course must be considered against cost to community of H's continued offending; victim's views; no family support for H; H willing to undertake the course (CYPFA s5(d)); course would re-integrate H into the community (CYPFA s208(d), s208(f)(i)). Court has no power to recommend financial assistance be provided.

Decision: H remanded in hope that application will be discussed again between Youth Justice Co-ordinator and CYPFS.

1992

Police v B YC Auckland CRN 1244013591, 24 January 1992

Filed under:

Police v B

File number: CRN 1244013591
Date: 24 January 1992
Court: Youth Court, Auckland
Judge: Gilbert DCJ
Key Title: Jurisdiction of the Youth Court - s 276 offer/election

Serious attack; Police and victim support Youth Court jurisdiction; B has an unhappy background; within spirit of the CYPFA to offer Youth Court jurisdiction; High Court would sentence B to imprisonment.

Decision:

Youth Court jurisdiction offered.

Director-General of Social Welfare v V (A Young Person) (1992) 8 FRNZ 598

Filed under:

Case summary provided by BROOKERS

Name: Director-General of Social Welfare v V (A Young Person)
Reported: (1992) 8 FRNZ 598
File number:
Date: 26 February 1992
Court: Youth
Location: Otahuhu
Judge: Harvey J
Charge: Murder
CYPFA: s368
Key Title: Secure Care; Custody - CYFS
Brooker's Summary:

Children and young persons - Secure care - Young person sentenced to life imprisonment for murder - DGSW authorised to detain young person in secure care in a residence without the necessity for fortnightly applications to the Court for renewal - Children, Young Persons, and Their Families Act 1989, ss 2, 283(n), 361, 364, 367, 368, 370, 376, 454(2); Criminal Justice Act 1985, ss 8, 142A; Penal Institutions Act 1954, s 12.

V was sentenced to life imprisonment for murder. He is presently detained in a residence under s 142A Criminal Justice Act 1985. The Director-General sought to have V retained in secure care at the residence. It is his view that s 368 Children, Young Persons, and Their Families Act 1989 ("the Act") is the only authority to place a child or young person in secure care; that the maximum amount of time that V may remain in secure care is 14 days and that a fresh application under s 368 must be made every 14 days to continue his retention in secure care. The Department of Justice however disagrees with that view. It is submitted that placement of a sentenced person within secure care does not fall within the ambit of the secure care provisions of the Act and that the Penal Institutions Act 1954, by virtue of s 142A(2) Criminal Justice Act, gives the Director-General the power to confine sentenced offenders in what amounts to secure care without the necessity of undergoing the review procedures provided in s 367 and the following sections of the Act. It is further argued that the secure care provisions under s 367 apply only to children or young people who come into a residence under s 361 and sentenced offenders do not fall into any of those categories.

Held,

- (1) since it is on the basis of s 142A Criminal Justice Act 1985 that the young person is at the residence, the provisions of the Penal Institutions Act 1954 take precedence in this matter. Section 142A being an exception to s 12 Penal Institutions Act means that a young person like V may serve his sentence in a residence but at the same time be subject to the Penal Institutions Act.
- (2) If it had been the legislative intention under s 142A for the provisions of the Children, Young Persons, and Their Families Act 1989 to apply, including those provisions relating to secure care, then the Legislature would have said so.
- (3) The Director-General is required to keep a young person such as V in secure care and in confinement at a residence. V should not be kept in the secure care wing by way of an application for secure care under the Children, Young Persons, and Their Families Act. Although that procedure is legislatively stipulated and appropriate for young people in the institution [(1992) 8 FRNZ 598, 599]under s 361, it is totally inappropriate for a person who is effectively a sentenced prisoner serving a sentence and who has been transferred by virtue of age from a penal institution to the residence. In future, V should be kept and retained in the secure care wing without the necessity of being brought before a Judge every fortnight for the question of his secure care to be reviewed.

Application

This was an application for an order to place a young person convicted of murder in secure care at a residence established under the Children, Young Persons, and Their Families Act 1989.

The facts appear from the judgment.

DSW v S (20 February 1992) YC, Otahuhu, 00/92

Filed under:

Name: DSW v S
Unreported
File number: Otahuhu 00/92

Date: 20 February 1992
Court: Youth Court
Location: Otahuhu
Judge:
CYPFA: s361; s368
Charge:
Key Title: Secure Care

Summary: S sentenced on indictable offence; placed in residence pursuant to s142A Criminal Justice Act 1985. Whether needs to be kept in secure care pursuant to provisions of CYPFA. Application of provisions of s361 CYPFA; circumstances when secure care applications should be made. Application of provisions of Criminal Justice Act and Penal Institutions Act 1954 to children and young people in a residence.

Toloa v R (28 February 1992) HC, Auckland, R. 62/92, Williams J

Filed under:

Name: Toloa v R
Unreported
File number: R. 62/92
Date: 28 February 1992
Court: High Court
Location: Auckland
Judge: Williams J
Charge: Murder
CYPFA:
Key Title: Bail

Summary: T (16) charged with murder; no admission made; now appealing against DC refusal to grant bail. HC granted bail as (1) T had voluntarily surrendered to Police, (2) other offenders were involved besides the appellant (3) T young with no previous convictions. Stable relatives able to supervise T.

Age limit in Crimes Amd Act (No. 2) 1991 (now repealed) which required the Court to take into account the need to protect the public in relation to violent offenders was 17. Thus the CYPFA approach was not altered by the 1991 amendment.

Decision: Bail granted with strict conditions.

Police v T (28 February 1992) YC, Auckland, CRN 2004011728, Brown DCJ

Filed under:

Name: Police v T
Unreported

File number: CRN 2004011728
Date: 28 February 1992
Court: Youth Court
Location: Auckland
Judge: Brown DCJ
CYPFA: s238(b)
Charge: Murder
Key Title: Bail

Summary: Application for bail. T (16) charged with murder; allegedly repeatedly kicked victim in the head on three occasions; no admission made; no previous convictions. Possible for T to reside with brother; to report daily; curfew; surrender of passport; prosecution states Police have no reason to suspect T will not report on bail if granted. Judge concerned as to views of victim's family, community concern about violence.

Decision: Application for bail declined. T remanded to penal institution.

Police v Lo and Chow DC Otahuhu CRN 1248029243-4, 13 March 1992

Filed under:

Police v Lo and Chow

File number: CRN 1248029243-4; CRN 1248032768-9; CRN 1248028193; CRN 1248029245-6; CRN 12480238339
Date: 13 March 1992
Court: District Court, Otahuhu
Judge: Harvey DCJ
Key Title: Sentencing in the adult Courts: Arson

Notes on Sentencing: L (17) and C (16) charged with arson; $1.3m damage to a College; valuable community resource; devastating impact on students. *R v Cuckow* CA213/91, 17 December 1991 discussed. Custodial sentence would be appropriate for L. Reparation of $60,000 to be paid by L and $30,000 by C; parents have agreed to shoulder this burden; this is consistent with CYPFA. L vengeful and controlling; planned incident but given L's offer of compensation, remorse; that he is in therapy (therapists indicate imprisonment may damage progress made) and a first offender, sentenced to corrective training plus rehabilitative measures. C a good student; a follower only; attempted to disengage early on; offered compensation, remorseful, in counselling, first offender.

Decision

Sentenced on burglary charge to periodic detention for 12 months, supervision for 2 years and rehabilitative conditions. On wilful damage charge: supervision for 2 years, disqualified from driving for 2 years. On arson charge: periodic detention for 12 months.

Police v T YC Auckland CRN 2290005050, CRN 2290005061-95, 18 March 1992

Filed under:

Police v T

File number: CRN 2290005050; CRN 2290005061-95
Date: 18 March 1992
Court: Youth Court, Auckland
Judge: Principal Youth Court Judge Brown
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Other

T (16) appeared on 38 charges of burglary; alternatives including supervision with residence tried in relation to past offending; no remorse; family felt situation hopeless. Section 284 CYPFA factors considered; offences not purely indictable but magnitude of offending and lack of remorse plus need to protect community important in decision to convict and transfer to District Court for sentencing.

Decision:

Order - convict and transfer to District Court - s283(o).

S v District Court At New Plymouth (1992) 9 FRNZ 57

Filed under:

Case summary provided by BROOKERS

Name: S v District Court at New Plymouth
Reported: (1992) 9 FRNZ 57; [1992] 3 NZLR 508; 8 CRNZ 241
File number: M31/92
Date: 30 April 1992
Court: High Court
Location: New Plymouth
Judge: Barker J
Charge: Aggravated Robbery; Unlawful Discharge of a Firearm; Assault
CYPF no: s275
Key Title: Jurisdiction of the Youth Court - s275 offer/election
Brooker's Summary:

Youth justice - Aggravated robbery.

Administrative law - Judicial Review - Youth, 14, not given opportunity by Justices of Peace of forgoing jury trial and electing to be tried in Youth Court due to seriousness of charges - Justices gave insufficient weight to principles relating to welfare of young person - Benefits to young person of speedy trial - Case remitted - Young person to be given option under s

275(1) - Children, Young Persons, and Their Families Act 1989, ss 4, 5, 208, 274(2)(a), 275, 276, 277, 283, 284; Judicature Amendment Act 1972.

The prosecution alleged that two armed men robbed a picture theatre and that S, aged 14, was a secondary party to that crime. S was charged indictably with two counts each of aggravated robbery, unlawful discharge of a firearm, and assault. He wished to plead not guilty. Another offender, G, had been charged as a principal party in the robbery. Upon S's application, the two Justices of Peace who presided over the depositions hearing declined to give S the opportunity under s 275(1) Children, Young Persons, and Their Families Act 1989 of forgoing trial by jury and of electing to have the informations heard and determined in a Youth Court by a Youth Court Judge. The reason given was that the charges were too serious. The Crown had indicated that should S go on trial in the High Court, he would be tried jointly with G. This was an application for a judicial review of the Justices' decision.

Held, remitting the matter back to the Justices of Peace:

(1) The Justices did not give sufficient weight to the principles in the Act relating to the welfare of the child (found in ss 4, 5, and 208). Their decision based solely on the severity of the offence was too simplistic in light of the fact that the youth was only a secondary party to the offence.

(2) The committal of G is sufficiently far away and uncertain; the benefit to the young person of a speedy trial in the Youth Court outweighs any desirability of having him tried jointly with G in the High Court. In some cases the desirability of joint offenders being tried together could make it difficult to grant an application under s 275. This is not the case here.

(3) The plaintiff must therefore succeed. The matter is to be remitted to the Justices who are directed to give S the option under s 275(1).

(4) If the youth advocate here cannot be sufficiently remunerated for costs and disbursement under the Act, then this would be an eminently proper case for the grant of legal aid.

Cases referred to

Police v M [1990] DCR 544
R v M and C (1985) 1 CRNZ 694 (CA)[(1992) 9 FRNZ 57, 58]

Application

This was an application for judicial review of the decision of two Justices of Peace declining to give a young person the opportunity of forgoing trial by jury and of electing to have the information heard and determined in a Youth Court by a Youth Court Judge.

The facts appear from the judgment.

Police v C and O (Young Persons) (1992) 9 FRNZ 114 (YC)

Filed under:

Case summary provided by BROOKERS

Police v C and O (Young Persons) (1992) 9 FRNZ 114

File number: CRN2204003005-06
Date: 15 May 1992
Court: Youth Court, Auckland
Judge: M J A Brown DCJ
Key Title: Family Group Conferences: Non agreement; Orders - type: Supervision with residence - s283(n), Jurisdiction of the Youth Court: s 275 offer/election

Brooker's Summary:

Children young persons, and their families - Youth justice - Family group conference recommendations - Aggravated robbery - Youth offenders given opportunity to have matter dealt in Youth Court - Recommendation of family group conference of supervision with residence objected to by police - Recommendation adopted - Clear distinction between youthful and adult offenders in sentencing matters - Children, Young Persons, and Their Families Act 1989, ss 4, 5, 208, 275, 283(n), 290.

Application

This was an application to determine whether the Court should adopt the recommendations of the family group conference for the Court to order supervision with residence in respect of two young offenders.

The facts appear from the judgment.

The two young persons, C and O, allegedly with an adult, committed aggravated robbery of a dairy. They indicated a wish to plead guilty and were given the opportunity to have the matter dealt with in the Youth Court under s 275 Children, Young Persons, and Their Families Act 1989. Family group conferences were held. With the exception of the police officers who attended the conferences, the rest of the participants (including some of the victims) recommended that the young persons be given supervision with residence under s 283(n). The police objected on the basis of the seriousness of the crime committed, favouring instead a term of imprisonment.

Held

adopting the recommendations of the conferences:

There are severe restrictions on the imposition of supervision with residence as set out in s 290(1) of the Act. Section 290(1)(b) clearly delineates between the youthful offender and the adult, a full-time custodial sentence would be required to be imposed. Clearly, the legislators had in mind here the capacity for distinction. It is appropriate here to impose in respect of each of these young persons orders for supervision with residence in terms of the detailed plans filed.

Ratten v Edge (1992) 9 FRNZ 297 (HC)

Filed under:

Case summary provided by BROOKERS

Name: Ratten v Edge
Reported: (1992) 9 FRNZ 297
File number: AP20/92
Date: 10 June 1992
Court: High Court
Location: Timaru
Judge: Holland J
Charge:
CYPFA: s2; s215, s221
Key Title: Admissibility of statements; Jurisdiction of the Youth Court - Age
Brooker's summary:

Children and young persons - Statutory interpretation - 17-year-old defendant interviewed about crime allegedly committed while a young person - Whether to be treated as "young person" under the Act - Whether interviewing officer needs to inform defendant of young person's rights - Children, Young Persons, and Their Families Act 1989, ss 2(2), 215, 221.

This was an appeal by way of case stated by the Crown against a District Court's ruling that a statement made by a 17-year-old youth to a police officer in relation to a crime alleged to have been committed by him when he was aged 16, was inadmissible under s 221 Children, Young Persons, and Their Families Act 1989 because the interviewing officer did not comply with s 215 of the Act. The interviewing officer considered that the appellant was no longer a young person and that the provisions of the Act did not apply.

Held, dismissing the appeal:

1) The situation has been dealt with by the High Court in Police v W (cited below) where it was held that such a person was still a young person within s 2(2) of the Act. The Crown's submission that the definition of "young person" in Police v W only relates to the appropriate Court for the proceeding is unsupportable.

(2) It may be that if there were no existing decision of the High Court, this Court could have been persuaded that, notwithstanding the clear wording of s 2(2), Parliament could not have intended for adults at the time of interview or being charged to be treated as children. That, however, seems to be the clear meaning of the words used in the statute.

(3) The decision of Police v W is indistinguishable from this case. It would not be in accordance with the best interests of justice for a puisne Judge to embark on an exploration with a view to reaching a conclusion different from that case. If the Crown wishes the law to be applied differently then there should either be a statutory amendment or a decision of the Court of Appeal.

Police v B YC Papakura CRN 2255011532, 17 September 1992

Filed under:

Police v B

File number: CRN 2255011532
Date: 17 September 1992
Court: Youth Court, Papakura
Judge: Harvey DCJ
Key Title: Family Group Conferences: Timeframes/Limits: Intention to Charge, Youth Court Procedure

Basis upon which proceedings instituted: (1) s 245 of the CYPFA and (2) abuse of process.

1. Section 245; provisions mandatory; pre-existing evidence of proposed charge; FGC held regarding one charge; proposed charge a different charge; different ingredients; section relates to laying information; no consultation; information dismissed.
2. Abuse of process: prosecution conduct must amount to an abuse of process of the Court and be oppressive or vexatious; alleged that abuse occurs if person indicates they will deny the charge and the prosecution indicates that if a denial is entered another charge will be laid; such a statement that such a course will be undertaken is unwise.

Decision:

No compliance with s 245 of the CYPFA, no jurisdiction to issue the information, Information dismissed.

Department of Social Welfare - v- Bts (A Young Person) (1992) 9 FRNZ 670 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Department of Social Welfare v Bts (A Young Person)
Reported: (1992) 9 FRNZ 670
File number: MP166/92
Date: 21 October 1992
Court: District Court
Location: Otahuhu
Judge: Harvey DCJ
Charge:
CYPFA: s5; s6; s368, s371
Key Title: Secure Care
Brooker's summary:

Youth justice - Continuation of secure care - Order of secure care last resort - Nature of evidence - Each ground for placement must be proved by evidence - Whether there was real likelihood of further absconding - Whether absconding would harm young person's physical, mental, or emotional wellbeing not proven - Comments on necessity for appropriate allocation of resources to hear applications for secure care - Children, Young Persons, and Their Families Act 1989, ss 5, 6, 368, 370-372, 375-377.

This was an application for a renewal of an order for secure care in respect of 15-year-old BTS who faced charges of various offences. BTS was detained in secure care at the Weymouth Residential Centre. He had led a nomadic lifestyle and had a history of absconding from the various institutions that he had been placed in. Counsel for BTS submitted that there was no real likelihood that BTS would further abscond. He relied on the fact that BTS was going to be taken to a family group conference in Kaikohe in an unsecured vehicle by one, or possibly two, social workers.

Held, declining the application:

(1) Section 368 Children, Young Persons, and Their Families Act 1989, which provides for the grounds for placement in secure care, contains stringent requirements which focus on the interests of a child or young person. There is an overriding discretion conferred by the word "may" and this must be exercised having regard to the general principles set out in ss 5(c) and 6 of the Act. The welfare and interests of the child or young person remain a paramount factor.

(2) A young person may be placed in secure care only as a last resort. The use of the words "if, and only if" followed by the word "necessary" in s 368 provide a form of an extreme legislative emphasis that an order for secure care is considered as an "in extremis" measure.

(3) Where an application is opposed, all of the grounds must be made out under s 368(a) and in respect of each and every one of these grounds, there must be some form of supporting evidence brought whether or not that evidence would be admissible in a Court of law.

(4) There must be a degree of contemporaneity between any previous absconding and the establishment of absconding necessary to invoke the provisions of s 368(a).

(5) Although the documentary evidence showed that BTS had previously absconded and is likely to abscond again, there is, however, no evidence that[(1992) 9 FRNZ 670, 671] by absconding, his physical, mental, or emotional wellbeing are likely to be harmed. Such evidence may be given by a social worker or, where appropriate, by an expert. It is incumbent upon the department to arrange for this evidence to be made available. In the absence of any evidence admissible in a Court of law or otherwise, the application cannot be sustained.

(6) Moreover, if the department's fears of BTS further absconding were strongly held, some more secure means of transporting BTS to his family group conference would be arranged. If the department is to be consistent in seeking an application for secure care, then the nature of the security of the care must continue 24 hours a day.

Obiter, "hearings of this nature cannot be dealt with in an offhand or casual manner. Evidence must be called and appropriate evidence must be given. I leave it to the administration to devise the appropriate systems for ensuring that hearings involving applications for secure care, where the obvious welfare of children and young persons is at issue, are properly scheduled, and that sufficient resources in terms of time, personnel, and equipment are made available".

Department of Social Welfare v Y DC Otahuhu CYPF No 197/92, 22 November 1992

Filed under:

Department of Social Welfare v Y

File number: CYPF No 197/92
Date: 24 November 1992
Court: District Court, Otahuhu
Judge: Harvey DCJ
Key Title: Secure Care (s 367-383A), Reports - Psychological

Application for secure care; Y had previously absconded; at previous hearing Judge Harvey found no evidence to support provisions of s368 in that little likelihood that Y's physical, mental or emotional wellbeing were likely to be harmed if he absconded. Y had spent two months in secure care; likelihood of absconding has reduced; psychologist's report showed Y likely to abscond when placed under stress and less stressed in the open unit.

Decision:

Application for secure care declined.

[**Note**: s368 CYPFA repealed and substituted on 8/1/95 by 1994 No 121, s41].

Police v Edge (1992) 9 FRNZ 659 (CA)

Filed under:

Case summary provided by BROOKERS

Name: Police v Edge
Reported: (1992) 9 FRNZ 659
File number: CA277/92
Date: 17 December 1992
Court: Court of Appeal
Location: Wellington
Judge: Cooke P, Richardson, Casey, Hardie Boys, Gault JJ
Charge:
CYPFA: s2; s208; s215; s221; s245; s272
Key Title: Admissibility of Evidence; Jurisdiction of the Youth Court - Age
Brooker's summary:

Children and young persons - Statutory interpretation - Appeal from case stated - Seventeen-year-old interviewed about crime allegedly committed while a young person - Whether to be treated as "young person" under Act - Children, Young Persons, and Their Families Act 1989, ss 2(2), 208, 209, 211, 215, 221, 245, 272; New Zealand Bill of Rights Act 1990, ss 23(1)(b), 25(i); Summary Proceedings Act 1957, ss 107, 144.

In June 1992, the High Court (see (1992) 9 FRNZ 297), by way of a case stated and following the decision in Police v W (cited below), upheld a District Court's ruling that a statement made by a 17-year-old youth to a police officer in relation to a crime alleged to

have been committed by him when he was aged 16 was inadmissible under s 221 Children, Young Persons, and Their Families Act 1989 ("the Act") because the interviewing officer did not comply with s 215 of the Act. This application for leave to appeal from the High Court decision was granted by the Court of Appeal which went on to deal with the appeal.

Held, (Gault J dissenting) allowing the appeal:

(1) The meaning of s 2(2) of the Act must be considered against the background of the statute as a whole. The key words are "where proceedings ... are contemplated or taken". The word "contemplated" is to be seen in context. The context is that before proceedings are taken other measures are to be considered (ss 209, 211, and 245 where appropriate). The word "contemplated" must therefore refer to an event, ie to the initiation of procedures under the Act, and not to a state of mind. The starting point is an allegation by or to a person in authority that a particular child or young person has committed a particular offence. It is at this point that the obligation to consider alternative sanctions arises under s 209, as does the obligation to consult and to hold a family group conference under s 245. It is therefore at this stage that s 2(2) comes into play. If at this stage the suspect is a child or young person, all subsequent procedures must be conducted on the basis of the suspect's age at the time of the offence.

(2) In this case, no proceedings had been taken and none were contemplated before the respondent was interviewed. As he was not then a young person, s 2(2) had no application and neither did s 215. Thus there was no obligation to give him the warnings prescribed by that section. It follows that the view that the case should go to the Youth Court was erroneous.

(3) On this analysis Police v W was incorrectly decided as in that case proceedings had neither been taken nor contemplated while the offender was a child or young person.[(1992) 9 FRNZ 659, 660]

(4) There is no disharmony between this decision and s 25(i) New Zealand Bill of Rights Act 1990 which recognises "the right, in the case of a child, to be dealt with in a manner that takes account of the child's age". Here, certain procedures cut off at age 17. It is to be assumed that they are no longer appropriate past that age. This will be so whenever the offence was committed.

Obiter, while this appeal is not concerned with the jurisdiction of the Youth Court, it is inescapable that the construction which this decision has placed on the Act so far as it affects this appeal applies equally to the provisions as to the jurisdiction of the Youth Court. If amendment of the statute is in contemplation, it is desirable that it address the point in a way that puts the legislative intent beyond question.

1991

Cooper v The Registrar, Youth Court (5 February 1991) YC, Wellington, Carruthers, DCJ

Filed under:

Name: Cooper v The Registrar, Youth Court
Unreported
File number:
Date: 5 February 1991
Court: Youth Court
Location: Wellington
Judge: Carruthers DCJ
CYPFA: s325(3)
Charge:
Key Title: Youth Advocate's Costs

Summary: Review of decision of YC Registrar. (1) Whether time travelling to and from Court is an allowable expense; (2) whether GST is exclusive of a Youth Advocate's fee; (3) rate at which Youth Advocates are paid by the Court - this issue dismissed due to insufficient evidence and information. Held: (1) s325(3) CYPFA, consideration of "what is fair and reasonable"; *McHaffie v McHaffie* (1984) 3 NZFLR 361; claim allowed. (2) Accounts for civil and criminal legal aid do not deduct GST from the account and GST is exclusive to the amount allowed; claim allowed.

Decision: Youth Advocate's application upheld.

Police v M (22 February 1991) YC, Auckland, CRN 0204001035-36, Gilbert DCJ

Filed under:

Name: Police v M
Unreported
File number: CRN 0204001035-36
Date: 22 February 1991
Court: Youth Court
Location: Auckland
Judge: Gilbert DCJ
Charge:
CYPFA: s208(c), s208(d), s276
Key Title: Jurisdiction of the Youth Court - Age; Jurisdiction of Youth Court - s276 offer/election; Principles

Summary: M (14) committed serious offence against elderly woman; 16 year old on this charge could be sent to High Court and receive a term of imprisonment; medical evidence given on the marked differences between a 14 and 16 year old; transfer to High Court with

limited sentencing possibilities would be likely to encourage re-offending. Section 208 considered as to strengthening families and fostering their ability to deal with their YP's offending, also public safety; M had strong support from whanau and iwi; currently living in a community which will supervise M.

Decision: YC jurisdiction offered.

Police v Tai (1991) 8 FRNZ 613

Filed under:

Case summary provided by BROOKERS

Name: Police v Tai [A Young Person]
Reported: (1991) 8 FRNZ 613
File number: CRN1290005211-14
Date: 27 March 1991
Court: Youth Court
Location: Henderson
Judge: F W M McElrea DCJ
Charge: Rape, Aggravated Burglary
CYPF no: s276
Key Title: Jurisdiction of the Youth Court - s276 offer/election; Indication of desire to plead guilty; Victims
Brooker's Summary:

Children young persons, and their families - Youth justice - Rape - Aggravated burglary - Jurisdiction - Factors to be taken into account - Interpretation of s 276 - Young person need not plead guilty but only indicate a desire to do so - Offences too serious to allow young person to be dealt with in Youth Court - Imprisonment inevitable - Young person to be sent to High Court which has more sentencing options - Children, Young Persons, and Their Families Act 1989, ss 274(2), 276, 284, 326, 327; Children and Young Persons Act 1974, s 34(2)(c); Criminal Justice Act 1985, s 142A; Summary Proceedings Act 1957, s 153A; Victims of Offences Act 1987, s 8.

Tai was charged with four offences committed while he was 16: two of aggravated burglary and two of rape of the same victim. He has now just turned 17. Through his youth advocate, he indicated a desire to plead guilty to all four charges and asked to be dealt with in the Youth Court under s 276 Children, Young Persons, and Their Families Act 1989. The family group conference concluded that imprisonment was inevitable but has no agreement on the term and on whether Tai should be sent to the District Court or the High Court.

Held, sending the young offender to the High Court:

(1) Under s 276 of the Act, where a young person indicates a desire (as Tai did) to plead guilty to an offence, he should not be asked to enter a plea until he knows the way in which the Court is going to exercise its discretion under s 276. That is because the Court may or may not give him that opportunity of forgoing the right to trial by jury and being dealt with in the Youth Court. If the Court does not give him that opportunity, the provisions of s 153A

Summary Proceedings Act 1957 come into operation and the young person must then decide whether he wishes to enter a guilty plea or face a jury.

(2) In order to make the decision that is required under s 276, the Judge has to treat it almost as though it is a sentencing exercise.

(3) Having regard to the provisions of s 284 and the principles under ss 5 and 208 of the Act, the (non-imprisonable) measures available to the Youth Court are clearly inappropriate in view of the enormity of the offences and the effect on the victims. The likely penalty to be imposed upon Tai in respect of the offences charged is a term of imprisonment of 2 to 4 years. It is appropriate for the matter to be transferred to the High Court as that Court has a wider range and can give a term of imprisonment of either less or more than 3 years. The High Court Judge hearing the case is not to conclude that the Youth Court, by sending Tai to the High Court, is saying that if Tai is convicted, he must be given more than 3 years. It is rather a[(1991) 8 FRNZ 613, 614]case of keeping appropriate options open, given that this Court has concluded that imprisonment is necessary.

Cases referred to

Police v Homo 2/7/90, Judge Simpson, YC Otahuhu CRN004810867
Police v M [1990] DCR 544
Police v Matangi 21/6/90, Judge Brown, DC Tokoroa CRN9277003813
Police v Murphy 22/2/91, Judge Gilbert, YC Auckland CRN0204001035-36
R v Dale 7/9/89, Holland J, HC Christchurch S51/89
R v Hotene (1988) 3 CRNZ 414 (CA)
R v Puru [1984] 1 NZLR 248 (CA)
R v TAP 14/9/90, Gault J, HC Auckland S89/90
R v Walsh (1979) 1 Cr App R(S) 153
R v Wilson (1989) 5 CRNZ 165 (CA)

Hearing

This matter dealt with the question of whether the young person concerned should be given the opportunity under s 276 Children, Young Persons, and Their Families Act 1989 to plead guilty and to be dealt with in the Youth Court.

The facts appear from the judgment.

Police v Young Person (1991) 8 FRNZ 609 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Police v Young Person
Reported: (1991) 8 FRNZ 609
File number:
Date: 25 March 1991
Court: District Court

Location: Wellington
Judge: Unwin DCJ
Charge:
CYPFA: s438
Key Title: Media Reporting
Brooker's summary:

Children and young persons - Press reporting - Report of Youth Court proceedings - Young person transferred to District Court for sentencing - "Proceedings under this Act" in terms of s 438(1) only refer to proceedings in the Youth Court - Whether case may be published is a matter for judicial discretion and not the law - Reasons for decision - Children, Young Persons, and Their Families Act, ss 274(2)(b), 283(o), 285(6), 290, 435(3), 438; Criminal Justice Act 1985, ss 138, 140, 142.

The young person involved, 16, was given the opportunity under s 276 Children, Young Persons, and Their Families Act 1989 (the Act) to plead guilty to a number of charges, including two indictable charges of arson, and be dealt with in the Youth Court. He was subsequently transferred to the District Court for sentencing under s 283(o) of the Act. When the case came before the District Court, a newspaper reporter indicated an interest in reporting the details of the case. Counsel on behalf of the young person objected to the publication of any report on the ground that the sentencing of the young person was still a proceeding governed by the Act whichever Court was involved, and therefore the privacy provisions under s 438(1) of the Act applied.

Held, disagreeing with counsel's submission:

(1) Under s 438(1) of the Act, "proceedings under this Act" refers to proceedings in the Youth Court. Once the proceedings are removed to another Court, then the provisions of the Criminal Justice Act 1985 will apply.

(2) When a young person is sent to the District Court or the High Court for sentencing or trial, then subject to any rulings of the Judge, the Court shall be open to the public, and anything that is said or done in the Court may be published or reported upon. The opportunity to be anonymous will be a matter for judicial discretion and not law.

Cases referred to

The King v Sussex Justices, ex p McCarthy [1924] 1 KB 256

Hearing

This was a preliminary hearing concerning the right of the press to report proceedings which originate in a Youth Court.

The facts appear from the judgment.

Police v Nahi (13 March 1991) HC, Christchurch, M. 97/91, Williamson J

Filed under:

Name: Police v Nahi
Unreported
File number: M. 97/91
Date: 13 March 1991
Court: High Court
Location: Christchurch
Judge: Williamson J
Charge: Indecent Assault
CYPFA:
Key Title: Bail

Summary: Bail application; N (17) charged with indecently assaulting an elderly woman; threatened her with a knife; took clothing. Bail previously refused due to seriousness of offence, absconding and public interest. Criminal Justice Act 1985, s142(4) often overlooked. *Police v Simeon* [1990] 2 NZLR 116 cited. Court must release a 17-20 year old on bail "unless it is of the opinion that no other course is desirable having regard to all of the circumstances". Court found that as N could live with mother and would abide by curfew terms, it could not conclude that bail on strict terms was not desirable.

Decision: Bail granted on strict terms.

Weir v Police (1991) 7 CRNZ 128 (HC)

Filed under:

Case summary provided by BROOKERS

Weir v Police (1991) 7 CRNZ 128

File number: AP60/91
Date: 15 March 1991
Court: High Court, Christchurch
Judge: Williamson J
Key Title: Sentencing in the adult courts: Other

Brooker's Summary:

Sentence - Corrective training - Appellant 17 years of age - Sentence of corrective training - Where corrective training should be imposed - Corrective training available where had offender been over the age of 20, offender would have received imprisonment of over 3 months - No reference to what an adult offender would have received in the circumstances - Necessary for a Court to have considered likely sentence on an adult - Sentence of corrective training invalidated - General limitations on imprisonment especially for young persons - Criminal Justice Act 1985, ss 7(1), 9, 68.

The appellant and three others entered a tavern around midday and removed liquor to the value of $1,900. At the time of sentencing the appellant was 17 years old. The appellant was

charged with burglary, theft, and failing to answer bail. He was convicted and sentenced to corrective training.

Held:

Corrective training should only be imposed where the Court is satisfied that had the offender been over the age of 20 the offender would have been sentenced to imprisonment of 3 months or more. In imposing such a sentence a Court should consider the likely sentence upon an adult. Reaching the conclusion without the appropriate reference is a ground to invalidate the corrective training sentence. In view of the appellant's age, the nature of the offending, and that this was a first appearance in the District Court, the sentence was inappropriate.

Decision:

Sentence of corrective training invalidated.

R v Toko (1991) FRNZ 447 (HC)

Filed under:

Case summary provided by BROOKERS

R v Toko (1991) 7 FRNZ 447

File number: T1/91
Date: 9 April 1991
Court: High Court, Auckland
Judge: Sinclair J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance, Rights

Brooker's summary:

Children and young persons - Evidence - Admissibility - Young person not informed of rights before questioned by police - Evidence inadmissible - Children, Young Persons, and Their Families Act 1989, ss 215(1)(b), 218, 221, 224.

The accused, a young person, was charged with causing grievous bodily harm to H. The oral and written statements made by him to the police were challenged as inadmissible in that the interviewing officer did not advise the accused of his rights under s 215(1)(b) of the Children, Young Persons, and Their Families Act 1989.

Held

ruling the statements inadmissible:

As there was absolutely no attempt at all by the officer to warn the accused of his rights before he was taken from his home and questioned, it does not seem that the reasonable compliance clause can be resorted to. In all the circumstances, s 215(1)(b) has not been

complied with and, applying s 221 of the Act, both the oral and written statements become inadmissible.

Obiter

'on a perusal of this legislation, it is an absolute minefield. How any serving police officer could be expected to remember, in the heat of an inquiry and in the circumstances which existed here, all the matters required to be remembered under s 215, let alone how they should be dealt with at various times, places the officer in an impossible situation.'

Police v M YC Lower Hutt CRN 0032010783, 18 April 1991

Filed under:

Police v M

File number: CRN 0032010783
Date: 18 April 1991
Court: Youth Court, Lower Hutt
Judge: Robertson DCJ
Key Title: Jointly charged with adult (s 277); Principles of Youth Justice (s 208); Sentencing - General Principles (e.g. Parity/Jurisdiction)

M (16) robbed a dairy with 18 year-old co-offender; knife used; M known to dairy owners; co-offender sentenced in the High Court to 3 years imprisonment. Need for (1) parity in sentencing; and (2) balancing of public interest considerations against need to rehabilitate young person (*Rihari v The Police* HC Rotorua 14/90, 11 May 1990 per Fisher J).

As against co-offender's three year sentence, M is only just 16 - a major difference in terms of maturity; co-offender had a considerable previous history of offending; M effectively a first offender; co-offender the only one to use physical violence although M did have the knife. Thus, important distinguishing factors and rehabilitation important. Considering public interest and parity issues this is a case where sentencing should take place in the Youth Court. Huge whanau support for M; plan for supervision by Kohanga Reo presented.

Decision:

Order - supervision with activity (s283(m)) with a particular Kohanga Reo for 3 months on condition that M undertake the plan presented. Order- under supervision of same Kohanga Reo for a further 3 months after the end of the supervision with activity order (s283(k)).

I v Police (1991) 7 FRNZ 674 (HC)

Filed under:

Case summary provided by BROOKERS

Name: I v Police
Reported: (1991) 7 FRNZ 674
File number: M131/91
Date: 23 May 1991
Court: High Court
Location: Hamilton
Judge: Doogue J
Charge: Murder; Aggravated Robbery
CYPFA: s243; s438
Key Title: Bail; Media Reporting
Brooker's summary:

Youth Justice - Name suppression - Young person charged with murder and aggravated robbery - Applications for bail and for suppression of name - Principles of and criteria for granting bail - Emphasis of law in favour of bail - Justice demands name suppression while applicant on bail - Children, Young Persons, and Their Families Act 1989, ss 243, 438(3)(a); Criminal Justice Act 1985, ss 140, 142; New Zealand Bill of Rights Act 1990, s 24.

The 15-year-old applicant was charged with murder and aggravated robbery. He was committed to this Court for trial. He now applies for bail. Associated with that is an application for continued suppression of his name under s 438 Children, Young Persons, and Their Families Act 1989 (on the basis that the committal to this Court was part of the proceedings under the 1989 Act), or alternatively, under s 140 Criminal Justice Act 1955.

Held, granting the application:

(1) (Listing the criteria commonly considered on bail applications) there is no suggestion in the case of any basis for refusing bail. In those circumstances, when due regard is given to the emphasis of the law in favour of bail (ie s 24 New Zealand Bill of Rights Act 1990, s 142 Criminal Justice Act 1985, and relevant sections under the Children, Young Persons, and Their Families Act 1989), particularly of a young person, there is no basis for the refusal by this Court of bail.

(2) The provisions under the Children, Young Persons, and Their Families Act 1989 relating to rights of bail do not directly apply to the present case by virtue of s 243 of that Act.

(3) Once the young person has been committed to this Court for trial, the proceeding is no longer under the Children, Young Persons, and Their Families Act 1989. In any event, the bail application is not a proceeding under that Act. This Court has no power to grant bail directly under that Act, notwithstanding that it does have power to review any order which may have been made in respect of a young person in relation to custody or bail under that Act. That is not the case here. The application for suppression of name is thus to be dealt with under s 140 Criminal Justice Act 1985.

(4) In this case, where the co-accused's name is suppressed (notwithstanding that he has also been committed for trial), and the effect of the granted bail is that the applicant will be at school where there would be clear problems for the applicant, his mother, and for the school if the name of the applicant were published, justice demands, not only for the applicant vis-a-vis his co-accused, but in respect of the community at large, that his name should be suppressed so long as he is on bail.[(1991) 7 FRNZ 674, 675]

Application

This was an application by a young person charged with murder and aggravated robbery for bail and name suppression.

The facts appear from the judgment.

R v Tarawa HC Auckland S.60/91, 14 May 1991

Filed under:

R v Tarawa

File number: S.60/91
Date: 14 May 1991
Court: High Court, Auckland
Judge: Barker J
Key Title: Sentencing in the adult courts: Sexual violation by rape; Sentencing in the adult courts: Aggravated Burglary; Sentencing in the adult courts: Application of Youth Justice Principles

Summary:

T (16 at time of offending) pleaded guilty to aggravated burglary and sexual violation by rape charges. On both occasions, T broke into houses and used knife/screw driver to threaten occupants. T showed remorse; had whanau support. Family Group Conference held, need for imprisonment acknowledged. Although in some circumstances a young person may get a lesser sentence than an older person for the same offence, some cases are so appalling that any reduction in sentence made primarily in the offender's interest will be seen as an outrage on the public conscience. Thus, no great reduction can be made here because of offender's youth.

Decision:

Four years imprisonment.

Police v James (1991) 8 FRNZ 628

Filed under:

Case summary provided by BROOKERS

Name: Police v James (A Young Person)
Reported: (1991) 8 FRNZ 628
File number: CRN 1248012425/91
Date: 24 June 1991
Court: Youth Court
Location: Otahuhu
Judge: Harvey DCJ

Charge: Unlawful Taking of a Motor Vehicle; Wounding Owner of a Motor Vehicle
CYPF no: s276
Key Title: Jurisdiction of the Youth Court - s276 offer/election
Brooker's Summary:

Children, young persons, and their families - Youth justice - Jurisdiction - Exercise of discretion to allow case to remain in Youth Court - Factors to be considered - Public interest to be taken in account - Balancing of public interest factors - Children, Young Persons, and Their Families Act, ss 4(f), 5, 208, 276, 283, 284; Children and Young Persons Act 1974, s 35(2); Criminal Justice Act 1985, ss 5, 6.

James, 15, was charged indictably with the intent to commit a crime, namely, the unlawful taking of a motor vehicle, and in the course of it, wounding the owner of the motor vehicle. He has no previous offences. James has had the advantages of a good upbringing, a caring family, and a good education which is continuing. He indicated that he wished to plead guilty to the charge and asked to be dealt with in the Youth Court under s 276 Children, Young Persons, and Their Families Act 1989. The family group conference recommended that the matter remain in the Youth Court, and that recommendation is not opposed by the police.

Held, young person to be dealt with in the Youth Court:

(1) In exercising the discretion under s 276, the following factors must be taken into account:

(a) The nature of the offence;

(b) The seriousness of the offending and the part played by the young person in the offending;

(c) The effect of the discretion on sentencing options available in relation to the young person;

(d) The principle that a young offender should be held accountable and accept responsibility for his behaviour;

(e) The interests of the young person in being dealt with under the rehabilitative provisions of the Act;

(f) The forum which is likely to be able to hear the case soonest;

(g) The young person's age in relation to the period for which rehabilitative measures under the Act will remain available;

(h) The personal history, social circumstances, and personal characteristics of the young person (s 284(b));

(i) The attitude of the young person towards the offence (s 284(c));

(j) The response by the family, the measures that they have taken, and the recommendations of the family group conference (s 284(d), (e), and (h));

(k) The effect on the victim and the need for reparation (s 284(f));

(l) Any previous offences (s 284(g));

(m) The public interest.[(1991) 8 FRNZ 628, 629]

(2) In determining how the public interest is best to be served, the long-term consequences for the offender must be considered where appropriate, as well as the more immediate consequences, and the interests of the victim must be taken into account.

(3) Taking into account all the above factors, the machinery that exists in the Children, Young Persons, and Their Families Act 1989 can be more effectively used than the rather limited resources available in the Criminal Justice Act 1985 which could have a potentially more destructive effect upon this young person in the long term than is justified, either in the interests of punishment or of society.

Cases referred to

Koteka v Police 14/5/91, Barker J, HC Auckland AP95/91
Police v M [1990] DCR 544
Police v Richard and R and S 12/6/90, Judge Lee, YC Upper Hutt CRN9278003995; CRN278003996; CRN278004028
Police v Tai (a young person) (1991) 8 FRNZ 613
R v Dale 7/9/89, Holland J, HC Christchurch S51/89
R v M [1986] 2 NZLR 172
R v Police (1990) 6 FRNZ 538
R v Pora 14/9/90, Gault J, HC Auckland S98/90

Hearing

This matter deals with the question of whether the young person concerned should be given the opportunity under s 276 Children, Young Persons, and Their Families Act 1989 to plead guilty and to be dealt with in the Youth Court.

The facts appear from the judgment

Police v L (1991) 8 FRNZ 123

Filed under:

Case summary provided by BROOKERS

Name: Police v L
Reported: (1991) 8 FRNZ 123
File number: YJ1283005063
Date: 21 June 1991
Court: Youth
Location: Wanganui
Judge: B D Inglis QC

Charge:
CYPF no: s245, s246, s247, s248
Key Title: Family Group Conferences - Timeframes/Limits
Brooker's Summary:

Children and young persons - Family group conference - Convened in respect of two offences, but did not deal with young offender's third offence - Third offence characteristic of young person's pattern of offending - No need to reconvene family group conference - Youth justice coordinator not obliged to wait for Court's directions but may convene conference if offence not serious - Decisions on future of young persons not to be unduly delayed - Children, Young Persons, and Their Families Act 1989, ss 5(f), 6, 13, 208(h), 245, 246, 247, 248.

Informations were laid against the young person in respect of two offences which he committed on 13 May 1991. On 15 June 1991, a family group conference was convened and a suitable course of action was agreed upon. Unknown to that family group conference, the young person had committed a further offence on 5 June 1991 as a party in a minor respect. The third offence was characteristic of the young person's pattern of offending. The question arose as to whether a youth justice coordinator was obliged to convene a further family group conference to consider that later offence. The second question was whether a youth justice coordinator should convene a family group conference immediately on becoming aware that police action will be or has been taken against a young person, or whether the youth justice coordinator is obliged to wait until positively directed by the Court to convene a family group conference.

Held,

(1) in cases where the later offending is consistent with the general pattern of the young person's offending, there is nothing in ss 245, 246, 247, or 248 Children, Young Persons, and Their Families Act 1989 to require the youth justice coordinator to convene a further family group conference in such circumstances or to wait for the Court's directions in regard to that later offending. The position may be different in a case where the nature of the further offending suggests that the young person may have turned to new avenues of criminal activity, or where the new offence is of an altogether more serious character, or where the circumstances of the offence suggest contempt for the family's efforts. In such circumstances, the youth justice coordinator, or the Court, might well feel that the family group conference ought to be reconvened.

(2) On the second question, for the youth justice coordinator to have to wait until directed by the Court to convene a family group conference would promote unacceptable delay (see s 5(f) of the Act). It is unacceptable that any young person should have to wait for any undue length of time for a decision on his or her future. A youth justice coordinator is in a very good position to assess when a family group conference ought to be convened and should not in any way feel impeded in doing so by any over-technical or [(1991) 8 FRNZ 123, 124]narrow reading of the relevant provisions of the Act. In serious cases, however, the youth justice coordinator should approach the Court for directions.

(3) The true intent of ss 245 and 246 of the Act when read together is to empower the youth justice coordinator to get on with the job as quickly as possible so that by the time the young

offender comes before the Youth Court either the family group conference has been held or arrangements for it are well under way.

Obiter, the Act is an over-refined procedural and legal nightmare, but its principles and intent are perfectly clear. The Court should be slow to look for technical obstacles, but instead should encourage those concerned with its administration to ensure that young offenders : who may be at a turning-point in their lives : are dealt with quickly, fairly, with the support and assistance of their families, and within the protection of the law.

Reasons for decision

These reasons were given in relation to the Youth Court's refusal to order a second family group conference in respect of a later offence by the youth offender.

Police v I (24 June 1991) YC, Otahuhu, Harvey DCJ

Filed under:

Name: Police v I
Unreported
File number:
Date: 24 June 1991
Court: Youth Court
Location: Otahuhu
Judge: Harvey DCJ
CYPFA: s275
Charge: Armed with Offensive Weapon; Robbery
Key Title: Jurisdiction of the Youth Court - s275 offer/election

Summary: I (16) charged with being armed with an offensive weapon and robbery. Whether YC jurisdiction should be offered pursuant to s275 CYPFA. I took cigarettes from the victim's car after I's associate held a knife to the victim's face. Relevant factors from *Police v R and R & S* (Unreported, 12/6/90, YC, Upper Hutt, Judge M Lee, CRN 9278003995/6,4028) listed and applied; also public interest must be considered where the s275 or s276 CYPFA discretion is exercised: *Rihari v Police and anor* (Unreported, 11/5/90, HC Rotorua Registry, T14/90); balancing of public interest factors. Judge needs to "look ahead" to sentencing in making the decision: *Police v Tai* (1991) 8 FRNZ 613. Held: as case not most serious of its kind; I not a key player; I did not instigate the incident or carry a weapon; if charge proven, CYPFA machinery more effective than Criminal Justice Act.

Decision: YC jurisdiction offered and accepted.

R v Feetau HC Auckland S 79/91, 26 June 1991

Filed under:

R v Feetau

File number: S 79/91
Date: 26 June 1991
Court: High Court, Auckland
Judge: Doogue J
Key Title: Sentencing in the adult Courts: Aggravated burglary

F (15) one of 20 youths who intimidated five tourists and threatened them with a replica pistol; F a ring-leader. F eligible for prison but not corrective training which would be more appropriate; victims thought prison would be useless for F. Probation Service recommended Napier Cadet Academy; F and family accepted these recommendations. Remanded for sentence to Napier High Court in one month's time. If succeed at Academy no further sentence, otherwise prison a possibility.

Decision:

Remanded to Napier High Court in one month. Bail on conditions.

Police v M YC Auckland CRN 1206003230-31, 22 July 1991

Filed under:

Police v M

File number: CRN1206003230-31; CRN 0290012246
Date: 22 July 1991
Court: Youth Court, Auckland
Judge: Brown DCJ
Key Title: Jurisdiction of the Youth Court: s275 offer/election; Victim; Family Group Conferences: Non agreement

M charged with sexual violation; M allegedly committed offence while babysitting; matter denied; prima facie case found. FGC held, family recommended YC jurisdiction, complainant and police argued matter should go to HC. Section 208(g) concerning the principle that due regard should be given to victims of offending considered. High Court more stressful for complainant but the "catharsis of a trial" may assist in the healing process. M had a long list of previous convictions, further offending since alleged offence.

Result:

Jurisdiction of Youth Court not offered; matter committed to the High Court for trial.

Police v Charlie (A Young Person) (1991) 9 FRNZ 652 (DC)

Filed under:

Case summary provided by BROOKERS

Name: Police v Charlie (A Young Person)
Reported: (1991) 8 FRNZ 652
File number: CRN1204003505-07 & ors
Date: 16 August 1991
Court: District Court
Location: Auckland
Judge: McElrea DCJ
Charge:
CYPFA: s283(l)
Key Title: Family Group Conference - Plan; Orders - Community Work
Brooker's summary:

Youth justice - Family group conference recommendations - Recommendation that young person do community work supervised by social worker who charges $10 an hour unacceptable - Not for individuals or organisations to make a profit out of the misfortunes of young people - Children, Young Persons, and Their Families Act 1989, s 283.

Charlie, nearly 16, appears on a large number of (unspecified) charges. The family group conference recommended that Charlie be given 200 hours of community work and that his community work order be supervised by a named person who charges $10 an hour for his services. The Department of Social Welfare objected to the $2,000 bill and proposed that the Court reduce it to 75 hours community work as their payment ceiling for such services is $750.

Held,

(1) It could be a matter of great potential embarrassment for the Department of Social Welfare and to the Court if it were to approve the department's proposal. The department's proposal that the community work hours recommended by the family group conference be reduced because the department has proposed somebody who charges $10 an hour for their supervisory services is unacceptable. The department needs to look very carefully at the principle of appointing people who might be making a profit out of supervision when there are community organisations who supply the same service for no charge whatsoever. The Children, Young Persons, and Their Families Act 1989 is not to be used by private individuals or organisations to make a profit out of young people's misfortune.

(2) It is not encumbent upon the family to find appropriate supervisors. That is the job of the Department of Social Welfare which must have a list of appropriate and suitable placements for community work.

(3) A family group conference is to be reconvened to reconsider the matter.

Hearing

Reasons given for further adjourning a matter under the Children, Young Persons, and Their Families Act 1989.

The facts appear from the judgment.

Police v B YC Otahuhu, 5 August 1991

Filed under:

Police v B

File number: unknown
Date: 5 August 1991
Court: Youth Court, Otahuhu
Judge: Judge Harvey
Key Title: Jurisdiction of the Youth Court - Age; Admissibility of statements to police/police questioning (ss 215-222): Reasonable compliance

Summary:

Ruling as to admissibility of evidence on grounds of failure to comply with s 215 of the CYPFA. Whether provisions of s 215 et seq apply to a 17 year old who is in the Youth Court by virtue of s 2(2) of the CYPFA; whether provisions of s2(2) apply to s215; whether s215 should apply to persons over 17 on the basis of fairness.

B (16 at time of offending but now 17) admitted committing multiple burglaries to two Police officers; Police say admissions given voluntarily but B argued they were not and that he had been threatened with arrest and refusal of bail if he did not co-operate; Police evidence preferred. Breach of Rule 4 and Rule 7 of Judges' Rules; voluntariness and unfairness also argued.

Held:

Section 2(2) does not extend all the youth justice procedures to a suspect over the age of 17 who was under 17 at the time of the offences; s 2(2) enables the Youth Court to have jurisdiction in these circumstances but it does not go so far as to apply the provisions of s 215 et seq to this group of offenders; cf. s 215(1)(a)-(f). B was only a few days over 17 but CYPFA allows no 'grey area' as to the age where Youth Court jurisdiction applies and similarly there is no grey area as to the application of s 215. That a person was a few days over 17 could be taken into account in the overall appraisal of the issue of fairness if admissibility challenged.

Decision:

Evidence admissible.

R v Moss and Cuckow HC Gisborne S.4/91, S.5/91, 30 August 1991

Filed under:

R v Moss and Cuckow

File number: S.4/91; S.5/91
Date: 30 August 1991
Court: High Court, Gisborne
Judge: Temm J
Key Title: Sentencing in the adult Courts - Arson

(For appeal against sentence see *R v Cuckow* CA 312/91, 17 December 1991).

Summary

M (15) and C (15) deliberately burned down a school; guilty pleas; principles in sections 5, 6 and 208; effect on victims and the desirability of keeping young people out of adult prisons considered.

Decision

Two years imprisonment.

Police v I (5 August 1991) YC, Auckland, CRN 0204001270, Brown DCJ

Filed under:

Name: Police v I
Unreported
File number: CRN 0204001270
Date: 5 August 1991
Court: Youth Court
Location: Auckland
Judge: Brown DCJ
Charge: Assault on a female
CYPFA: s260
Key Title: Family Group Conference - plan

Summary: FGC held; victim present; plan implemented with approval from all parties including the victim. Placed under supervision of a youth worker; reparation; apology; 200 hours community work. All completed to a high standard.

Decision: Order - Come up if called upon: s283(c).

Police v KC YC Auckland CRN 1004015593-94, 30 August 1991

Filed under:

Police v KC

File number: CRN 1004015593-94; CRN 1204003392-97; CRN 1224005193-97; CRN 1248023241-44
Date: 30 August 1991
Court: Youth Court, Auckland
Judge: Brown DCJ
Key Title: Orders - enforcement of, breach and review of (ss 296A-296F): Supervision, Orders - type: Conviction and transfer to the District Court for sentencing - s 283(o): Arson

Application for cancellation of Supervision with residence order. KC had absconded and re-offended since the order was made and had failed to comply with the FGC plan. Section 316(2)(b) CYPFA provides a power to substitute any other order that the Court could have made at the time the original order was made; the Court had already exercised its s 276 discretion so, although some matters were laid purely indictably, that option was not now available to the Court. Non-custodial order would be inadequate as serious offending and absconding thus remanded for one week in Police custody for sentence and probation report.

Decision:

Order made cancelling the Supervision with residence order, s 283(o) order made in substitution - all matters to be transferred to the District Court.

Police v V YC Auckland, 30 August 1991

Filed under:

Police v V

File number:
Date: 30 August 1991
Court: Youth Court, Auckland
Judge: Judge Brown
Key Title: Orders - type: Conviction and transfer to District Court for sentencing - s 283(o): Other offences, Victims, Custody (s 238): Police (s 238(1)(e))

Summary: V (15) had long history of offending, many Family Group Conferences, reports and placements. Unusual to transfer 15 year old to District Court but transfer effected after s 284 factors considered. Relevant here was

- persistent offending,
- unrepentant and manipulative attitude,
- ineffectual family response;

also principles in s 208(g) regarding victim's interests considered - particularly relevant where lengthy period of offending involved. Non-custodial alternatives inadequate.

Decision:

Transfer to District Court. Remanded pursuant to s 238(1)(e).

Police v JME (29 September 1991) YC, Oamaru, CRN 1245003903, Young DCJ

Filed under:

Name: Police v JME
Unreported
File number: CRN 1245003903
Date: 29 September 1991
Court: Youth Court
Location: Oamaru
Judge: Young DCJ
Charge: Breaking and Entering
CYPF Act: s221
Key Title: Admissibility of statements; Jurisdiction of Youth Court - Age

Summary: JME (16 at time of alleged offence) interviewed regarding offence of breaking and entering; police officer cautioned JME but CYPFA not complied with as JME was 17 at time of interview and officer believed compliance not necessary. JME argued the statement should not be admissible. Section 2(2) CYPFA provides that "where proceedings under this Act are contemplated" the relevant age is that reached at the date of the offence. For JME it was argued that proceedings were "contemplated" at the time of the interview and thus the protections contained in sections 221 to 229 inclusive and section 232 were applicable. The Police argued that the purpose of the legislation was not to protect those who had already turned 17 at the time of their interview.

Where an accused is a YP at the time of the offence but the information is laid after his or her 17th birthday, then the proceedings are to be conducted in accordance with the CYPFA (*Police v W,* High Court, Auckland Registry, AP185/89, Gault J). In *Police v W,* Gault J approached the "awkward relationship" between s2(1) and s2(2) CYPFA by approaching the provisions of the Act sequentially. Using this approach, Young J analysed the relevant sections and determined that the age of a child or young person for the purpose of anything occurring within the CYPFA should be calculated using the section 2(2) formula. That formula only becomes relevant when proceedings are contemplated or taken and following the decision in *Police v W,* Young J found that proceedings had been taken in this case and thus the relevant age should be that at the date of the offence. Thus, in considering the challenge to the admissibility of the statement, JME's age for the purpose of these proceedings, should be calculated in accordance with the formula in section 2(2). Accordingly, JME was a young person on the day the statement was taken because his age at the date of the commission of the offence for the purpose of these proceedings was 16 years.

Decision: Statement inadmissible.

Police v T YC Auckland CRN 1204003778-80, 2 September 1991

Filed under:

Police v T

File number: CRN 1204003778-80
Date: 2 September 1991
Court: Youth Court, Auckland
Judge: McElrea DCJ
Key Title: Orders - type: Discharge - s 282; Orders - type: Discharge - s 283(a); Orders - type: Community Work - s 283(l); Orders - type: Reparation - s 283(f)

T (now 16) and co-offender "M" ["M" dealt with in *Police v M* YC Auckland CRN 1204003795-97, 2 September 1991 also under s 282 and s 283(a) on this database] stole jackets; knife and firearm used. No offending history; matters proved by admission. FGC held but no recommendation given as to preference for formal orders or diversion. Argument made that s 282 appropriate as s 283 would give T a record that would bar him from travelling to his native Vietnam.

No evidence that s 283 order would be a bar to travel and even if it was, s 282 should not be used to withhold relevant information from emigration or immigration authorities. Court processes not to be used to deceive or hide relevant matters. (Line of authority from *Police v Roberts* [1991] 1 NZLR 205; (1990) 7 CRNZ 197 followed, concerning the withholding of relevant information regarding relevant offences from potential employers).

Section 282 not appropriate as serious matter where knife and gun involved.

Decision:

Formal orders made pursuant to s 283 for 200 hours community work and $292.50 reparation. Apology letter recommended.

R v Accused (Fryer) (1991) 8 FRNZ 119 (CA)

Filed under:

Case summary provided by BROOKERS

R v Accused (Fryer) (1991) 8 FRNZ 119

Court of Appeal
File number: CA311/91
Date: 19 September 1991
Judge: Cooke P, Gault, Holland JJ
Charge: Rape
CYPFA: s215; s224
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Person, Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance; Rights

BROOKERS Summary:

Youth justice - Rights of accused - Young person accused of rape interviewed by police - No express reference made to entitlement to presence of barrister or solicitor or person nominated by young person under Act - But young person given clear indication that legal advice could be obtained - Mother present throughout interview - Finding of reasonable compliance upheld - Children, Young Persons, and Their Families Act 1989, ss 215, 224.

Application

This was an application for leave to appeal from a pretrial ruling determining that certain police evidence was admissible at the trial despite non-compliance with s 215 Children, Young Persons, and Their Families Act 1989.

The facts appear from the judgment. The defendant, a 14-year-old boy charged with raping a 7-year-old girl, was interviewed in the presence of his mother. When first questioned he denied responsibility, claiming an alibi. At the beginning of the interview, he was cautioned that he need not say anything unless he wanted to, but anything that he did say might be used in evidence and that he was entitled to legal advice. He was also told that his mother would remain throughout the questioning and that if he consented to give a statement he could withdraw his consent at any time. The interview lasted an hour, after which the detective went away to check on the alibi which was found to be false. The interview resumed. Another warning in the standard form was given to the defendant but nothing more was said which could have amounted to compliance with the requirements of s 215(1)(f) Children, Young Persons, and Their Families Act 1989 (ie that the young person was entitled to consult with, and make or give any statement in the presence of, a barrister or solicitor and any person nominated by the child or young person in accordance with s 222 of the Act). The defendant then made plain and frank admissions of guilt in answer to questions. The High Court, in a pretrial ruling, admitted police evidence of the admissions made by the defendant young person on the basis that there had been reasonable compliance in terms of s 224 with the requirements imposed by s 215. This was an application for leave to appeal from that ruling.

Held

declining the application:

Although there was considerable deviation from the requirements of s 215 (arising from the fact that there was no express reference to entitlement to the presence of a barrister or solicitor or to any person nominated by the young persons), on the evidence before him, the High Court Judge was entitled to find reasonable compliance in terms of s 224. The spirit and object of hte relevant part of the Act being that adequate protection be provided for children or young persons in police interviews regarding a possible offence, enough was done here to ensure no significant contravening of the purposes and the provisions of the Act (although the case is not far from borderline).

There was a clear indication that legal advice could be obtained and, although the boy was not invited to nominate any person for consultation or attendance, the mother was manifestly the very sort of person contemplated by the Legislature.

Obiter

This is far from suggesting that these sections impose mere formalities and may be disregarded with impunity by investigating police officers. A factor of importance here is that, the Crown having tendered evidence to discharge the burden of showing reasonable compliance and having adduced enough evidence to establish that prima facie, no evidence in response was called for the accused. The impression which is left is that the points arising under the Act are more of a technical nature in this case and that nothing substantially unfair or seriously contrary to the purposes of the Act took place.

R v Accused (Fryer) (1991) 8 FRNZ 119 (CA)

Filed under:

Case summary provided by BROOKERS

R v Accused (Fryer) (1991) 8 FRNZ 119

Court of Appeal
File number: CA311/91
Date: 19 September 1991
Judge: Cooke P, Gault, Holland JJ
Charge: Rape
CYPFA: s215; s224
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Nominated Person, Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance; Rights

BROOKERS Summary:

Youth justice - Rights of accused - Young person accused of rape interviewed by police - No express reference made to entitlement to presence of barrister or solicitor or person nominated by young person under Act - But young person given clear indication that legal advice could be obtained - Mother present throughout interview - Finding of reasonable compliance upheld - Children, Young Persons, and Their Families Act 1989, ss 215, 224.

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The facts appear from the judgment. The defendant, a 14-year-old boy charged with raping a 7-year-old girl, was interviewed in the presence of his mother. When first questioned he denied responsibility, claiming an alibi. At the beginning of the interview, he was cautioned that he need not say anything unless he wanted to, but anything that he did say might be used in evidence and that he was entitled to legal advice. He was also told that his mother would remain throughout the questioning and that if he consented to give a statement he could withdraw his consent at any time. The interview lasted an hour, after which the detective went away to check on the alibi which was found to be false. The interview resumed. Another warning in the standard form was given to the defendant but nothing more was said which could have amounted to compliance with the requirements of s 215(1)(f) Children, Young

Persons, and Their Families Act 1989 (ie that the young person was entitled to consult with, and make or give any statement in the presence of, a barrister or solicitor and any person nominated by the child or young person in accordance with s 222 of the Act). The defendant then made plain and frank admissions of guilt in answer to questions. The High Court, in a pretrial ruling, admitted police evidence of the admissions made by the defendant young person on the basis that there had been reasonable compliance in terms of s 224 with the requirements imposed by s 215. This was an application for leave to appeal from that ruling.

Held

declining the application:

Although there was considerable deviation from the requirements of s 215 (arising from the fact that there was no express reference to entitlement to the presence of a barrister or solicitor or to any person nominated by the young persons), on the evidence before him, the High Court Judge was entitled to find reasonable compliance in terms of s 224. The spirit and object of hte relevant part of the Act being that adequate protection be provided for children or young persons in police interviews regarding a possible offence, enough was done here to ensure no significant contravening of the purposes and the provisions of the Act (although the case is not far from borderline).

There was a clear indication that legal advice could be obtained and, although the boy was not invited to nominate any person for consultation or attendance, the mother was manifestly the very sort of person contemplated by the Legislature.

Obiter

This is far from suggesting that these sections impose mere formalities and may be disregarded with impunity by investigating police officers. A factor of importance here is that, the Crown having tendered evidence to discharge the burden of showing reasonable compliance and having adduced enough evidence to establish that prima facie, no evidence in response was called for the accused. The impression which is left is that the points arising under the Act are more of a technical nature in this case and that nothing substantially unfair or seriously contrary to the purposes of the Act took place.

Police v M YC Auckland CRN 1204003795-97, 2 September 1991

Filed under:

Police v M

File number: CRN 1204003795-97
Date: 2 September 1991
Court: Youth Court, Auckland
Judge: Judge McElrea
Key Title: Orders - type: Discharge - s 282; Orders - type: Discharge - s 283(a), Orders - type: Reparation - s 283(f), Orders - type: Community Work - s 283(l).

Summary:

M (almost 17); no previous offending and co-offender 'T' ['T' dealt with in *Police v T* YC Auckland CRN 1204003778-80, 2 September 1991 also under s 282 and s 283(a) on this database] stole jackets; knife and firearm used. Pair agreed to use firearm if barred in their attempt to steal the jackets. Against transfer to District Court was the fact that M had no previous record and was contrite; a worthwhile FGC had been held. Argument made that formal orders would prevent M from emigrating to South Africa with his mother.

Having considered *Roberts v Police* [1991] 1 NZLR 205; (1990) 7 CRNZ 197 where Wiley J upheld the principle that the Courts must not be in a situation where they are hiding relevant offences from potential employers, the Judge considered that the Courts must ask themselves whether it is right to adopt a particular course, such as making an order under s 282, for such a purpose as 'hiding' M's wrongdoing in order to assist in his emigration. Formal orders made despite M's contrition and previous good record as Judge not prepared to use Court's powers to hide an offence.

Whether a discharge without conviction is appropriate under Criminal Justice Act 1985, s 19 depends on whether a conviction would be out of all proportion to the seriousness of the offence. The Judge approached s 282 in a similar way and decided that a formal order under s 283 would not be 'out of all proportion' to the serious offending in this case.

Decision:

Formal order made under s 283. Reparation of $292.50, community work of 200 hours.

Police v Carter DC Auckland CRN 1248023241-4, 6 September 1991

Filed under:

Police v Carter

File number: CRN1248023241-4; CRN 1224005193-7
Date: 6 September 1991
Court: District Court, Auckland
Judge: Judge McElrea
Key Title: Sentencing in the adult courts - Arson.

Summary

C (16) faced serious charges including three of arson (one arson caused $113,000 of damage to a school); charges proved by admission in Youth Court; s 283(o) order made in Youth Court; C had spent time in custody pursuant to s 311 but absconded and re-offended on a number of occasions.

Counsel for defendant argued for corrective training but in view of absconding and re-offending, term of imprisonment imposed. Prison rare for 16 year old but alternatives tried without success; necessary for C to be accountable.

On one set of charges including the three arson charges, C sentenced to 12 months prison less four months for time already served under s 311. On further set of charges including taking motor vehicles, receiving and stealing, C sentenced to 2 months. On third group of charges including escaping from custody and unlawful taking of motor vehicle, C sentenced to 6 weeks. Thus, a total of 10 months and 6 weeks imprisonment. Sentence of less than one year given to bring case within provisions of the Criminal Justice Act, s 77A allowing special conditions on release; conditions imposed included counselling - recommendation for counselling for arson problem.

Decision

10 months and 6 weeks imprisonment with special conditions on release.

Police v T YC Auckland CRN 1204003984, 30 September 1991

Filed under:

Police v T

File number: CRN 1204003984
Date: 30 September 1991
Court: Youth Court, Auckland
Judge: Brown DCJ
Key Title: Jurisdiction of the Youth Court - s 276 offer/election

T charged with two others, one an adult, with aggravated robbery; T indicated desire to plead guilty; whether YC jurisdiction should be offered pursuant to s276 CYPFA or whether matter should be transferred to adult Court. *Kent v SS* 383, US (1966) criteria to be considered (not exhaustive); protection of public a difficult factor; consider amenability to rehabilitation; FGC process allows these criteria to be considered particularly if victim involved. Counsel and prosecution to address Judge on these matters

Decision:

Matter adjourned.

Police v P and T (Young Persons) (1991) 8 FRNZ 642

Filed under:

Case summary provided by BROOKERS

Name: Police v P and T (Young Persons)
Reported: (1991) 8 FRNZ 642
File number: CRN1204003983
Date: 4 October 1991
Court: Youth

Location: Auckland
Judge: F W M McElrea
Charge: Aggravated Robbery
CYPF no: s276
Key Title: Jurisdiction of the Youth Court - s276 offer/election; Family Group Conference - Non agreement; Prosecution; Victims
Brooker's Summary:

Children, young persons, and their families - Youth justice - Aggravated robbery - Jurisdiction - Prosecutor need not agree with youth aid officer involved in an agreement made in family group conference - Victim's view to be taken into account even if did not attend conference - Role of conference when considering appropriate jurisdiction - Recommendation of outcome can be useful to Court when deciding orders - Children, Young Persons, and Their Families Act 1989, ss 273, 276, 283, 284; Crimes Act 1961, s 321; District Courts Act 1947, ss 28F, 28G, Schedule 1A; Summary Proceedings Act 1957, ss 7, 153A, 168; Victims of Offences Act 1987.

P, 16, and T, 15, together with a 20-year-old man, were charged with purely indictable offences involving the aggravated robbery of a liquor store. P and T asked to be given the opportunity under s 276 Children, Young Persons, and Their Families Act 1989 to plead guilty and to be dealt with in the Youth Court. A family group conference in the case of T recommended that he be dealt with in this Court by way of orders for supervision with residence. In respect of P, there was no agreement in the conference on a course of action. The youth aid officer in that conference wished the matter to be transferred to the District Court for sentence under s 283(o) of the Act. The victim refused to attend either of the conferences but he expressed the view, in the victim impact report, that P and T should be dealt with to the full extent of the law. Three issues had arisen:

(a) Whether it was appropriate for the police through its prosecutor in Court to oppose a recommendation of the family group conference when that recommendation had been formed with the agreement of the youth aid officer at the conference.

(b) Whether the Court could take into account the views of a victim who does not attend a conference.

(c) The prosecutor argued that it was not open to the family group conference in the matter of T to put before the Court a recommendation for supervision with residence when the only thing they were invited to consider was the appropriate jurisdiction.

NB. The case gives a useful clarification of the impact of the new criminal (jury trial) jurisdiction of the District Court (effective 1 October 1991) on purely indictable offences in relation to Youth Court jurisdiction.

Held,

(1) there is a danger that if the Court were to say that the prosecutor cannot disagree with the youth aid officer, then youth aid officers might be given riding instructions by prosecutors as to what they can accept and what they cannot accept at a family group conference: that would be a retrograde step and would be contrary to the spirit of the Act. Youth aid officers have [(1991) 8 FRNZ 642, 643]to be free to deal with the matter as they see fit based on what

happened at the conference. Provided it does not happen regularly, there is nothing wrong with a prosecutor, for good reason, expressing a different view to the youth aid officer. The prosecutor's view is to be taken into account but the Court must give heavy weight to the recommendations of the conference although it is free to depart from them where appropriate.

(2) The Victims of Offences Act 1987, which applies to all Courts, requires the Court to take into account the views of victims. The victim's views are taken into account here but could have been more helpfully expressed at the family group conferences.

(3) A tentative recommendation from the family as to what they think a suitable outcome would be is something that can assist the Court. It can then be weighed up in a serious manner and the Court can then decide whether it is a feasible outcome or not in the light of all other matters.

(4) Both P and T will be given the opportunity under s 276 to forgo their rights to trial by jury and plead guilty and be dealt with in the Youth Court.

Cases referred to

Kent v US 383 US (1966)
Police v M [1990] DCR 544
Police v Tai (a young person) (1991) 8 FRNZ 613

Hearing

This matter deals with the question of whether the young persons concerned should be given the opportunity under s 276 Children, Young Persons, and Their Families Act 1989 to plead guilty and to be dealt with in the Youth Court.

The facts appear from the judgment.

Police v G YC Hamilton, CRN 1219013324, 15 October 1991

Filed under:

Police v G

File number: CRN 1219013324
Date: 15 October 1991
Court: Youth Court, Hamilton
Judge: Thorburn DCJ
Key Title: Jurisdiction of the Youth Court: s275 offer/election; Family Group Conferences: Non agreement

G was indictably charged with injuring with intent to injure with 3 other persons, all adults. G was nearly 17 at the time of the offence; one adult offender already sentenced to imprisonment; no FGC agreement on whether YC jurisdiction should be offered pursuant to s 275 CYPFA. Although s 275(2) implies that, if the YP accepts the opportunity given to elect

to have the matter dealt with in the YC, that should take place, the discretion remains with the Judge.

Held: G an active participant; age; s 5 Criminal Justice Act applies; and if tried and convicted in the adult jurisdiction some prejudice could arise to G; serious offending; expediency and desirability for witness including the victim of one hearing; sentencing options community would expect.

Decision:

G committed to DC for trial.

Police v McR YC North Shore CRN 1044007273-75, 10 October 1991

Filed under:

Police v McR

File number: CRN 1044007273-75; CRN 1044007277 & 78; CRN 1244008578-91; CRN 1244008632
Date: 10 October 1991
Court: Youth Court, North Shore
Judge: Gilbert DCJ
Key Title: Orders - type: Discharge - s 282; Orders - type: Discharge - s 283(a)

McR involved in serious crimes with co-offender; FGC devised plan; McR completed plan. Police seek s 283(a) CYPFA discharge arguing that "Court record" necessary; amendments to Act being considered on this matter. FGC plan carried out, Judge confident McR will not re-offend; McR going to work in Japan; s 282 may mean no Court record for McR but Judge doubtful of this.

Decision:

Orders - Discharge - s 282.

R v Corston DC Wanganui T9/91, 11 November 1991

Filed under:

R v Corston

File number: T9/91
Date: 11 November 1991
Court: District Court, Wanganui
Judge: Judge Laing
Key Title: Rights; Evidence (not including admissibility of statements to police/police questioning)

Summary:

Theft of money from incorporated society; 3 young persons (YPs) admitted taking money; all 3 dealt with by diversion; YPs to give evidence in relation to trial of adult relative accused of involvement. Whether YPs need a warning in respect of self-incrimination; Crown argues that a warning is discretionary and there must be a reasonable ground on the part of the witnesses for the witnesses to apprehend danger before they can refuse to answer questions. YPs had received a CYPFA, s210 warning; question raised as to whether a YP who has been so warned could plead autrefois convict; view of the Court that such a plea would not be available. A number of complicating factors including that as the YPs are not adults their status must be examined with greater caution and leaning towards their interests; uncertainties as to procedures previously followed. Court notes that while the prosecution may indicate it would not initiate criminal proceedings, a private prosecution is possible.

Decision:

Formal warning against self-incrimination to be given to each YP unless further factors are put before the court.

Police v S YC Auckland CRN 1204004108, 8 November 1991

Filed under:

Police v S

File number: CRN 1204004108
Date: 8 November 1991
Court: Youth Court, Auckland
Judge: Brown DCJ
Key Title: Jurisdiction of the Youth Court: s 276 offer/election

S (16) charged with aggravated robbery laid indictably; premeditated attack; female associate posed as a prostitute to direct victims to a pre-arranged rendez-vous; guilty plea; family support; family and Police support matter being retained in the Youth Court; philosophies of CYPFA, s 5 and s 208.

Decision:

Youth Court jurisdiction offered.

R v Cuckow CA 312/91, 17 December 1991

Filed under:

R v Cuckow

Court of Appeal
Reported: [1992] BCL 308; 15 TCL 1/10
File Number: CA 312/91
Date: 17 December 1991
Judge: Cooke P, Richardson, Gault JJ
Key Title: Sentencing in the adult courts - Arson; Sentencing in the adult Courts - application of Youth Court principles; General principles of Sentencing eg parity/jurisdiction; Reports - Psychiatric; Reports - Psychological

[See also High Court decision: *R and Moss and Cuckow* HC Gisborne S.4/91, S.5/91, 30 August 1991 per Temm J].

Summary:

Appeal against sentence of imprisonment. Appellant and co-offender (both 14) charged with a number of offences including arson; Family Group Conference held; Youth Court (YC) Judge did not offer s 276 jurisdiction to co-offender and thought that YC jurisdiction should be offered to the appellant; however, for reasons of parity, both defendants refused YC jurisdiction. High Court had benefit of psychiatric and psychological reports showing appellant not normally criminally inclined, easily influenced; HC had only brief pre-sentence report; considered YC measures better suited to appellant's situation yet both defendants given 2 year prison terms; protection of community an overriding factor.

CA Held:

Principles in the CYPFA should underlie consideration of any sentence in respect of a young offender; there had been insufficient information before the High Court about the appellant and that if certain offender information had been available to the Court, the sentence would not have been so strong; as offender had already completed 3 months and had "learnt his lesson" his sentence was quashed and substituted with a sentence of supervision for two years with conditions.

Decision:

Sentence quashed. Supervision for two years with conditions.

R v Irwin (1991) 9 FRNZ 487 (HC)

Filed under:

Case summary provided by BROOKERS

R v Irwin (1991) 8 FRNZ 487

File number: T32/91
Date: 2 December 1991
Court: High Court, Hamilton
Judge: Fisher J
Key Title: Admissibility of statements to police/police questioning (ss 215-222): Reasonable Compliance, Rights

Brooker's summary:

Children and young persons - Evidence - Admissibility - Offence of being a party to murder - Voir dire - Accused young person not informed of rights before police interview - Statement inadmissible - Children, Young Persons, and Their Families Act 1989, ss 2, 208(h), 215, 221(2), 222, 224.

The accused, aged 15, was charged with being a party to a murder. The Crown's case was that the accused and another youth, Rogers, formed a common purpose to carry out an aggravated robbery involving firearms, and that the accused knew that the murder of the deceased was a probable consequence of carrying out that plan. The evidence was that as soon as the shots were fired, the accused left Rogers who drove off in the deceased's car. The accused was apprehended shortly afterwards near the murder scene.

The following sequence of events occurred:

7.30 pm An officer was called to the scene to supervise the accused. It was not disclosed whether the officer was told the accused's name and address. The officer discussed the situation with the accused.

8.00 pm The officer heard the accused say to a bystander that when caught, he, the accused, had been on his way to a police station to turn himself in.

8.10 pm The officer advised the accused that he was taking the accused back to the police station. The accused was not given any option in the matter or advised of his rights.

8.20 pm At the police station, the officer interviewed the accused. He began with the conventional caution given to an adult. He did not refer to the possibility of consultation with a lawyer or with another adult nor that such persons might be present during the interview. The accused made two critical concessions in the interview.

8.40 pm The first phase of the interview ended. The officer discussed (from memory) with the accused his rights under the Children, Young Persons, and Their Families Act 1989. With the consent of the accused, it was arranged for a social worker to be present for the next phase of the interview.

9.30 pm The interview resumed in the presence of the social worker. The officer had the accused confirm that he had previously been "advised on his rights". During the interview, the accused repeated his statements and provided more incriminating details. The interview was recorded in writing and signed by the accused.

1.30 am The accused was formally arrested.

In a voir dire during the accused's murder trial, the defence objected to the admission of the statement made by the accused to the officer in the interview.

Held

ruling the statement inadmissible:

1. As the accused was not arrested until the interview had been completed, all six paragraphs (the required explanations) under s 215(1) applied. Only two (ie the conventional adult caution provisions contained in s 215(1)(c) and (e)) had been given by the end of the initial interview in the police station. Hence there was an irrevocable non-compliance with the explanation provisions before requiring the accused to accompany and before questioning the accused. There was no proper compliance with the explanation provisions even after the initial interview. Furthermore, there was no compliance with the consultation and presence provisions even after the arrival of the social worker.
2. In deciding whether there has been reasonable compliance, a starting point is the principle in s 208(h) that during a criminal investigation the vulnerability of young persons calls for their special protection. That objective is to be attained in substance rather than in form and this is reflected in s 224. It is not the letter of the rules which matters but whether, in substance, the youth understood that he did not have to accompany the officer, that he could consult with a lawyer and an independent adult before giving a statement, that he could have them present, and that he could stop the interview and leave at any time until arrested. It must be the cumulative effect of those requirements that matters, without preoccupation with any particular provision.
3. The officer cannot rely on the accused's ostensible intention to go to a police station in any event as an answer to the failure to advise him of his right to decline to accompany. The officer should have some reservations about the truth of the accused's remark but in any case, it cannot be equated with an understanding of legal rights by the accused.
4. The Crown's submission that the portion of the statement made after the social worker's arrival should be admitted is unacceptable. Once there has been substantial non-compliance, it will usually be difficult or impossible to prevent it from prejudicing any subsequent interview. In some cases, preliminary deficiencies might be curable if the full statutory explanation is then given, followed by a full discussion between the accused and his or her lawyer, and the interview is voluntarily continued with the lawyer and/or properly nominated adult present. This is not such a case. At no stage were the proper explanations ever given, nor was there ever any meaningful opportunity for consultation. These were all matters of substance, not of form.
5. The breaches in this case are individually significant and cumulatively overwhelming. It is not a case of reasonable compliance. Unless the Act is to be ignored altogether, the statement must be excluded.

Obiter,

'it [is] surprising and regrettable that over a year after the Act came into force, and after the publicity given to decisions such as *R v Fitzgerald*, the officer concerned should have fallen so far short of the requirements of the Act, in so many respects, in a matter which was so patently serious.'

Police v P (18 December 1991) YC, Henderson, CRN 1290017161 & ors, Brown DCJ

Filed under:

Name: Police v P
Unreported

File number: CRN1290017161; 1290017454; 1290017511; 1290017514; 1290017530; 1290017540; 1290017543-44; 1290017548; 1290017551; 1290017554-55; 1290017557-58; 1290017561-62; 1290017564; 1290017567; 1290017571; 1290017573; 1290017576-77; 1290017580-81; 1290017584-85; 1290017587; 1290017589
Date: 18 December 1991
Court: Youth Court
Location: Henderson
Judge: Brown DCJ
CYPFA: s251
Charge: Burglary
Key Title: Family Group Conference - Attendance

Summary: P (15) faced multiple burglary charges; ten charges admitted at FGC; other charges denied; Police not present at FGC; victim's views not obtained. Held: FGC not properly co-ordinated; need for views of Police and victims to be obtained before decision can be made on FGC recommendations.

Decision: Matter remanded for Dept of Social Welfare to ascertain the views of those not at the FGC; P to remain in custody of Director-General of Social Welfare in secure care.

Police v Williams DC Otahuhu CRN 2900011207-1255, 2 December 1991

Filed under:

Police v Williams

File number: CRN 2900011207-1255
Date: 2 December 1991
Court: District Court, Otahuhu
Judge: Harvey DCJ
Key Title: Sentencing in the adult Courts - other

Defendant faced 42 charges of burglary. Criminal Justice Act 1985, s 6: no custodial sentence unless special circumstances found; special circumstances found here - large scale offending, repetitive, burglaries often at night, many previous convictions. Whether to impose a custodial sentence; reparation not possible as no report provided to Judge; authorities suggest custodial sentence. Judge took into account that defendant has obtained employment; defendant's age, other sentences imposed, and fact that the defendant is already serving a sentence of periodic detention; considers community protection. *R v Minto* [1982] 1 NZLR 606: periodic detention is a very real alternative to a sentence of imprisonment.

Decision:

Periodic detention in respect of each charge for 9 months, final warning.

Police v BLC

File number: CRI-2009-206-000010
Court: Youth Court, Blenheim
Date: 30 January 2009
Judge: Judge Zohrab
Key title: Bail (s 238(1)(b)): Breach of bail (non-attendance at Court), Custody (s 238): Chief Executive (s 238(1)(d).

Summary
Application for bail. BLC admitted a charge of assault with intent to injure, and was remanded on bail awaiting a family group conference. A bail condition required BLC not to associate with two named females. Police saw BLC associating with one of those females, a co-offender, in the centre of town.
Previous history involves violent offending, offences of dishonesty and escaping, and a significant number of breaches of bail conditions. BLC appears to be determined to do what she wants, when she wants, notwithstanding bail conditions. BLC was, perhaps, not the lead offender in the serious assault.
Repetitive bail breaches do not justify a detention, unless they can be linked to the three conditions in s 239(1). BLC's history of violent offending, dishonesty and breaches of bail conditions, together with the fact that she associated with a prohibited person also involved in the assault, satisfied the Court that she will continue to breach her bail conditions and that is likely to lead to further offending.
Decision
Remand in custody.