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**IN THE YOUTH COURT
AT WHANGAREI**

**I TE KŌTI TAIOHI
KI WHANGĀREI-TERENGA-PARĀOA**

**CRI-2020-288-000036
[2020] NZYC 218**

**NEW ZEALAND POLICE
Prosecutor**

v

**[HT]
Young Person**

Hearing: 4 May 2020

Appearances: Sergeant B Iggo for the Prosecutor
D Whitehead for the Young person (via VMR)
N Stevens and A Lusk for Oranga Tamariki (via VMR)

Judgment: 4 May 2020

ORAL JUDGMENT OF JUDGE G L DAVIS

[1] I have before me [HT]. [HT] has a number of matters that are before the Court that I am going to describe as being historic matters. They include three injures with intent to cause grievous bodily harm charges and one unlawfully takes a motor vehicle charge. [HT] was granted bail in respect of those matters. He did not deny each of the charges and a family group conference was convened. The plan that was set out in the family group conference was approved. [HT] was bailed to an address in [suburb A]. At the time he had work.

[2] During the course of COVID-19 outbreak [HT] has left the address in [suburb A] and gone to an address in [suburb B]. I understand that to be the address of his [under 16] year old girlfriend. There is some suggestion she might be pregnant although that is not entirely clear to the Court for the moment. I also understand the general background to be that his girlfriend's mother may have been in custody but I signal today that she, [TN], is present in Court in support of [HT].

[3] It has been alleged that sometime between [dates deleted – a 4-5 day period] [HT] has committed a burglary at an address in [suburb B] and further to that he has gone to the hospital with utensils and with the intent to pinch a car. Those matters are allegations for the moment, although in fairness to his lawyer Mr Whitehead has suggested that [HT] acknowledges going to the house in [suburb B] and taking a computer. The context there is that the house is his whāngai father's house and the computer, it is not clear who that is owned by for the moment. None of those charges have pleas.

[4] The police oppose [HT]'s bail. Originally when [HT] left the [suburb A] address the police caught up with [HT], so to speak. They figured out where he was living and they consented to a bail variation to an address at [street name deleted] in [suburb B]. That was on the basis however, that [HT] had not re-offended.

[5] Today, with the alleged new offending the police position is to oppose bail. This turns entirely, in my view, on s 239 of the Oranga Tamariki Act 1989. Will [HT]

offend if he is granted bail? Certainly, that is the position that the police adopt. That is the inferences that can be drawn from the charges that are presently before the Court.

[6] I need to ask myself can bail conditions be put in place that would ensure [HT] can be kept in the community? Oranga Tamariki say that they will keep an eye on [HT]; supported bail will be put in place and they have been giving [HT] food parcels. As I delved deeper into Oranga Tamariki's submission that supported bail will be available to [HT] it turns out that the supported bail programme will not be running during the COVID-19 Level 3 Alert period. At best Oranga Tamariki will telephone [HT] from time to time to check on him.

[7] With the greatest of respect to Oranga Tamariki that is not enough. In my view s 4, s 5, s 7AA of the Oranga Tamariki Act place obligations on Oranga Tamariki to ensure that not only [HT] but his own whānau are supported in a way that, in particular, ensures that there is adequate supports in place, particularly in the form of food but other financial supports so that the risk of [HT] re-offending is considerably lessened. I have not reproduced s 4, s 5, and s 7AA of the Oranga Tamariki Act here because I am certain that these sections, and the responsibilities they carry will be familiar to Oranga Tamariki by now.

[8] When one looks through a Treaty of Waitangi lens it is clear the principles the Treaty of Waitangi are activated by s 7AA The Oranga Tamariki Act. The obligations rest upon the Chief Executive of the department and the Chief Executive's delegates, mainly the social workers on the ground. But those obligations do not rest solely with the Oranga Tamariki, they also rest with police, they also rest with any person who is making a decision under the provisions of the Oranga Tamariki Act. That includes, of course, the Judge. None of these persons or organisations can abdicate their responsibilities that we have now set out very clearly in the Act.

[9] There is no merit, in my view, in [HT] being kept in custody. What will happen in the long run is that if I were to remand him in custody, if custody FGC will be held, invariably will be back considering the same bail address. I am concerned here that there are some associates that appear to be at the address that may not be particularly flash and may be either encouraging [HT] to go down an offending pathway or

following [HT] if he is the ringleader in all of this. What is required here, in my view, is a detailed and thorough assessment being immediately undertaken by Oranga Tamariki, the police and Mr Whitehead, as [HT]'s counsel, to figure out what is it that is required for this bail placement to work. It is not simply enough to say food grants will be given from time to time and supported bail will be put in place.

[10] Supported bail in practical terms under the COVID-19 Level 3 lockdown requirements means somebody is going to ring [HT]. [HT] will quickly learn as soon as that phone call has been made he can go out and do whatever he likes. That is not enough.

[11] I want to have an urgent review of [HT]'s needs put in place. Does he have food? Does he have clothes? Does he have bedding? Does he have everything that can make this bail placement work? I want that done urgently and brought back in front of me by the end of the week.

[12] I am going to remand [HT] on bail to 4 June for plea on these matters but I want to have a further teleconference with all parties or whatever these things are called, convened on Friday in front of me to review these matters more thoroughly.

[13] In the meantime [HT], you are going to be granted bail. You are to live at [address deleted], [suburb B]; you are on a 24 hour curfew unless you are on supported bail. If you are not supported bail you - if you move from that address, if you go for a walk you will be going into jail. You might as well walk straight to Korowai Manaaki. Those are the conditions that are going to be in place between now and Friday, when this can be reviewed again we will have some details about what is supported bail and what [HT]'s needs are and how those needs will be met.

Judge GL Davis
Youth Court Judge

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