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IN THE YOUTH COURT
AT HAMILTON

I TE KŌTI TAIOHI
KI KIRIKIRIROA

CRI-2021-219-000072
[2023] NZYC 545

NEW ZEALAND POLICE
Prosecutor

v

[MA]
Young Person

Hearing: 19 July 2023

Appearances: Constable M Hay for the Prosecutor
S Nepe for the Young Person
L Pepperell for the Chief Executive
D La Hood for Forensic Services

Judgment: 19 July 2023

ORAL JUDGMENT OF JUDGE R H PAUL

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[1] Today I must decide how to address [MA]'s offending within the Youth Court. The question that I pose to myself is how do we strengthen this Rangatahi so he can meet his full potential and lead an offending-free life?

[2] [MA] has been at [name of youth justice facility deleted] for the last six months. He has spent the majority of that period in the secure unit. This is of his own accord because he feels fearful for his safety in the units. As such, he has not received therapeutic, educational, or occupational assistance while in residence of any significance.

[3] [MA] faces 27 charges, and all parties accept that they are serious. He has admitted to all but two of those charges, and they have been proved at a family group conference. There have been 12 family group conferences with outcomes and plans approved to address [MA]'s offending, none of which have been successful. These matters need to be concluded for [MA]. I therefore have three options before me:

(a) to make an order that [MA] be a care recipient under s 34 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;

(b) to make a supervision order placing him in the care of his parents; or

(c) grant a supervision order placing him in the care of his grandfather, [IP], in response to my request for a bespoke plan.

[4] By way of background, [MA] is the child of [JL] and [KA]. There were several notifications received to Oranga Tamariki for [MA] as a newborn baby in the care of his parents around issues of alcohol and drug abuse, and exposure to ongoing and severe family violence. [MA] came into the care of his grandparents, [IP] and [PA].

[5] [MA]'s education history suggests that behavioural concerns started from the age of about three years at preschool. This continued on through his education with concerns about serious violence to students and to others. In 2013 [MA] was

diagnosed with foetal alcohol syndrome and oppositional defiant disorder, and in 2014 diagnosed with an intellectual disability.

[6] For most of [MA]'s life, he has been in the care of [IP] who I say has been the most consistent person in his life. He has done all that he possibly can for the benefit of [MA]. He has tried his best but feels, at times, that he has not had the kind of support that he needs for [MA]'s high and complex needs.

[7] Counsel for Oranga Tamariki has filed a memorandum confirming their involvement with [MA]. Counsel sets out at paragraph 6 of her memorandum the supports put in place for him, which have been extensive. Counsel submits that throughout care and protection involvement between 2017 and 2023 there was a high level of support for both [MA] and his whānau, with a range of agencies involved. Prior to Oranga Tamariki involvement, there was intensive support in place through Education Services and Specialist disability support and local agencies, all without success.

[8] [MA]'s challenging and dysregulated behaviour has been a barrier to providing community-based supports. Threats and acts of violence have prevented him attending school and accessing community supports such as health and mentoring social work engagement, which has been frequently impeded by his high level of dysregulation and aggression.

[9] [MA] came into the Youth Court in 2021. None of the attempts by this Court to work with [MA] within the community have been successful. Matters came to the point where there was no placements within the community that would prevent his ongoing offending.

[10] I directed that a s 35 inquiry be made pursuant to the Criminal Procedure (Mentally Impaired Persons) Act 2003, requiring an assessment and care plan. The plan was provided to the Court, however there were outstanding issues which I asked the provider to address. Ms Waugh, who has consistently appeared out of respect for the Court for Forensic Coordination Services for Midlands Region, has provided her updated care plan addressing the issues I raised dated 21 April 2023. There have been

delays in disposition as a result of a lack of bed being available and also having young people being brought to the court.

[11] As a result of the advice of Ms Waugh of limited staffing, I directed that Oranga Tamariki create a bespoke community placement for [MA] with 24-hour supervision and assistance for him.

[12] As a result of the youth advocates, concerns around placement for [MA] so far from his family, I asked Oranga Tamariki to provide a contact support package.

[13] Ms Nepe raised concerns around the need for [MA] to be near his family and a report for a supervision order and plan was also directed.

Supervision order in terms of the plan dated 5 April 2023, which provides that [MA] be in the care of his parents.

[14] [JL] has a background in the youth justice system and in the criminal justice system and I understand has spent some time in prison. He has been addicted to methamphetamine and has a tendency to become more violent when abusing drugs. [KA] has also been a subject to the youth justice system and has had her own serious struggles with methamphetamine.

[15] Given the above concerns, I directed the social worker obtain from the parents their consent to access information relating to them so that I could make an assessment as to whether that placement would be appropriate. To her credit, [MA]'s mother provided that consent and some of the information has been provided, however [JL] did not provide his consent, therefore I do not have the relevant information to make an assessment.

[16] I note that Ms Nepe on behalf of [MA] does not seek to pursue that option on behalf of [MA].

[17] I refer to the report of Mr Lascelles, 18 November 2022, where he states:

> [MA] ideally requires a specialist placement in a home staffed by caregivers

> who have experience with an intellectual disability and severe behavioural issues. Additionally, the extremity of his behaviour while in residence indicates that very high level of staffing and resources would be required if he were to be managed and also the likelihood of absconding and non-compliance.

[18] On the basis of the information, I have before me, I am not satisfied that a supervision order placing [MA] in the care of his parents would be in his best interests or welfare or meet his needs.

Bespoke Plan

[19] Counsel for Oranga Tamariki has filed her memorandum and it is clear, they say, they are not in a position to provide the bespoke plan that I had envisaged. They support an order being made under the IDCCR Act as more appropriate and meeting the needs for [MA].

[20] Counsel for Oranga Tamariki states in her memorandum:

> We accept that such bespoke placements as requested by the Court have been implemented and have succeeded previously. However, in this case, it is the Ministry's submission that [MA]'s behavioural challenges are so severe that the likelihood of, for example, a Mana Services placement existing is slim and [MA] will continue to place himself and others at risk. Neither care and protection nor youth justice will be able to replicate the service [MA] needs and is entitled to under the disability pathway as recommended by Mr Lascelles.

[21] A further supervision order plan has been filed which provides that [MA] reside again with his grandfather.

[22] Ms Nepe had advocated that, on behalf of [MA] and his family, he be able to return his grandfather's care on a supervision order. She said [MA] believed he had done his time and he wanted to go home.

[23] The supports suggested in that plan are reflective of the informal plans that have been attempted many times before. A forestry course, disability services and limited assistance from mentoring will not meet the needs of this young man.

[24] The past is the best predictor of the future. The continuing offending while on

plans that is similar to that provided to me confirms that the plan is likely to fail.

[25] Against that background, I do not consider that the supervision order could be granted by the Court.

Jurisdiction to Make a Care and Rehabilitation Plan

[26] Section 34 of the CPMIP Act gives the Court the jurisdiction to direct that the defendant is cared for as a care recipient under the IDCCR Act. To make an order under s 34, the Court must be satisfied on the evidence of one or more health advisors that the offender's mental impairment requires the compulsory treatment or compulsory care of the offender, either in the offender's interests or for the safety of the public.

[27] If the Court is satisfied of the above, the Court may deal with the offender who is convicted of an imprisonable offence instead of passing sentence by ordering that the offender be cared for as a care recipient. Before making an order under s 34, the Court must be satisfied on the evidence of one or more health assessors that the defendant:

(a) has an intellectual disability;

(b) has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act; and

(c) is to receive care under a care programme completed under s 26 of that Act.

[28] The Court has the benefit of two reports dated 18 November 2022 and 15 June 2021, both of which confirm the diagnosis of intellectual disability. There are further reports from testing undertaken in 2014 and 2015. Mr Lascelles did not identify any information to dispute the diagnosis and suggested that to undertake any further assessments would be challenging as it requires [MA] to engage in a high level of effort over an extended period of time.

[29] [MA] has been assessed by Mr Carline pursuant to s 35 of the Act. He recommended that [MA] be made a compulsory care recipient pursuant to s 34 of the CPMIP Act and supported the diagnosis of an intellectual disability. I have also received the care plan from Forensic Services, as referred above.

[30] Counsel, Mr La Hood, on behalf of Forensic Services filed a memorandum of 6 July 2023 which I took to be a challenge to the jurisdiction of the Youth Court to make orders under the CPMIP Act within the Youth Court jurisdiction. Today Mr La Hood clarifies that position stating it was not his intention to challenge the jurisdiction of the Court, but to raise concerns under the two areas he has referred in his memorandum. He raises with me two issues:

(a) That the Youth Court may not have jurisdiction to make an order as [MA] has not been convicted.

(b) That there is insufficient information to make a finding that [MA] has an intellectual disability given the testing was undertaken in 2014 and 2015.

[31] The meaning of conviction must be ascertained from its text in light of its purpose and its context. *Black's Law Dictionary* defines conviction as:

> The act of process of judicially finding someone guilty of a crime. The state of having been proved guilty, and the judgment that a person is guilty of a crime.

[32] The *New Zealand Oxford Dictionary* defines conviction as:

> The act of process of proving or finding guilty, an instance of this, and the action of resulting state of being convicted. A firm belief or opinion, an act of convincing.

[33] The *New Zealand Law Dictionary* defines conviction as:

> The determination of guilt.

[34] Evidentially, conviction may be defined as the finding of someone guilty.

[35] *Black's Law Dictionary* defines guilty as:

Having committed a crime or been responsible for a crime.

[36] Thus, the definition of conviction can be extended to state that the finding that someone has committed or is responsible for a crime.

[37] One of the purposes of the CPMIP is to provide the Courts with appropriate options for the detention, assessment, and care of defendants and offenders with intellectual disabilities. In interpreting the term "conviction" in light of the CPMIP's purpose it is clear that CPMIP intends to capture all offenders and defendants with intellectual disabilities.

[38] It is also clear that the legislation intends to capture children and young persons with intellectual disabilities as s 39 refers to the subject of the assessment as being a young person or child.

[39] Thus a conviction within the CPMIP should encompass any finding that a young person has committed or is responsible for a crime. This would encompass Youth Court charges which have been admitted or proved, as well as the normal convictions in a District Court.

[40] This is supported by the decision of Judge Callinicos in *Police v [the Young Person]*[1]. The Court noted the Judge had requested a report or assessment under s 35 of the Act. Forensic Services informed the Court that they would assess his needs, but that in order for an enquiry to proceed s 34 requires a conviction to be entered. The Judge held that whilst a conviction can only occur in the Youth Court by transferring the person to the District Court for sentencing having the charge proven is the foundation for a conviction within the District Court, and thus the interpretation of the statute for children needs to be read accordingly. I take that case clearly to support the position that the Youth Court has jurisdiction to make an order under that piece of legislation.

[41] The definition of a conviction in the CPMIP should read as the finding that someone has committed or is responsible for a crime. Youth Court charges are proved

[1] *Police v [the Young Person]* YC Napier CRI-2018-241-000023, 13 June 2019.

or admitted would come within that jurisdiction.

[42] The second concern raised was that the grounds for the diagnosis of intellectual disability were based on tests from 2014 and 2015. I have three reports from qualified specialists who confirm the diagnosis made in 2015. There is no evidence of any change before the Court. There is no benefit in getting another report, it would simply repeat the others. There is no evidence that any specialist therapy has been engaged to suggest a change would be possible. The submission in my view has no evidential basis. Nothing in [MA]'s behaviour would indicate his capacity has improved as evidenced by the ongoing offending and unsafe high-risk behaviours noted in the social worker's reports.

[43] Against that background then, I am satisfied that the Youth Court has jurisdiction to make orders under the relevant legislation.

[44] I am also satisfied that all options least restrictive have been considered.

[45] I accept that there have been concerns raised about [MA]'s limited contact with his whānau as a result of making this order. To address that, I have undertaken the following:

(a) Ensured that there is greater inclusion of whānau in consultation within the plan.

(b) Ensured that Oranga Tamariki are going to support frequent contact between [MA] and his family, including travel and accommodation for at least five further visits per year.

(c) I have reduced the time suggested for the length of the order to 12 months only.

[46] I am satisfied that this meets the balance needed for [MA] to maintain his relationship with his whānau which is imperative, and to ensure that he receives the therapeutic assistance that he needs to meet his full potential in his life.

[47] Against that background then:

(a) I grant an order pursuant to s 34(1)(b)(ii) of the CPMIP Act for a period of 12 months.

(b) I approve the care and rehabilitation plan dated 21 April 2023.

(c) The order will commence on 20 July 2023.

[48] Following the issuing of my oral decision and with the agreement of Ms Nepe, I brought [MA] into the court by VMR and explained to him in very simple terms what order I had made and its consequences.

_____
Judge R Paul
Youth Court Judge | Kaiwhakawā o te Kōti Taiohi
Date of authentication | Rā motuhēhēnga: 27/07/2023