

[1] This is a review of an order for compulsory secure care in respect of HW.

[2] In 2013 Mr HW was sentenced to imprisonment for four years two months one week on charges of unlawful sexual connection, indecent assault and injuring with intent to injure and was detained as a special care recipient.

[3] Mr HW was released on parole on 20 January this year. He remains subject to parole conditions until August next year. His conditions include that he is to refrain from using drugs and alcohol and is to follow any directions of his care manager. Mr HW is liable to be detained as a care recipient until 20 July this year.

[4] In order to provide continuity of care and a transition towards community secure or supervised placement Mr Wyatt, a care co-ordinator, has applied for the immediate extension of the compulsory secure care order for 12 months. Pursuant to a plan prepared by Mr Wyatt, Mr HW moved to a RIDSAS community secure care unit in South Auckland in April. He has continued his intensive rehabilitation programmes. Mr Wyatt proposes that Mr HW will transfer to the [location deleted] area in August where he will live in a community facility as either a secure or supervised care recipient, and in particular receive further support and contact from his foster mother BT who now lives in [location deleted].

[5] Mr Gruar submitted that there has been a proper review of the secure compulsory care order for Mr HW half way through the present six month term of the order. Mr Gruar drew attention to s 85(3) of the Act, which provides that the Court may order that a care recipient no longer subject to the criminal system, should receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or others.

[6] Mr Gruar submitted that the Court must consider whether Mr HW should:

(a) Receive compulsory care on the expiry of the present term.

(b) If so the status of the care, ie supervised or secure.

- (c) The duration of the compulsory care if ordered.

[7] Mr Guar raised two issues namely:

- (a) Whether the application for a s 85 extension can be justified in terms of the Court of Appeal decision in *RIDCA v VM*.
- (b) If the Court holds that an extension is justified should the term of the compulsory care be six months or 12 months.

[8] Mr Wyatt submitted that Mr HW is doing very well. With respect to assessment of the current risk imposed by Mr HW, Mr Wyatt referred to the report of Dr Nuth the specialist assessor. Dr Nuth said:

In short Mr HW presents with a high level of general re-offending. He has a history of arson, theft and drug offences as well as very serious in depth sexual offending. He has made good progress in the past year culminating in better engagement, emerging insight, reduced anti-sociality and increased empathy. Despite his positive progress it remains unclear at this time as to whether he has internalised these gains. In my view, he remains very vulnerable to antisocial influences and will continue to have difficulty navigating complex social situations. His future drug and alcohol use is also in the balance. This will require further assessment and likely further therapeutic input. With regard to sexual offending risk it is difficult at this time to ascertain the true risk he poses.

[9] Mr Wyatt submitted that the order if extended should be a secure care order because Mr HW has only been in the community for a very short time, and he is untested in that context. Further the order if extended should be for 12 months. A six month extension would be too short because that would require review in two months, which would be too soon to indicate any real change in the risk level. Mr Wyatt said if the order is extended for 12 months a review in six months will be required, and there is a possibility that the order could then be cancelled.

[10] In *RIDCA v VM* the Court of Appeal said:

Unless the community protection interest outweighs the liberty interest of the care recipient an extension of a compulsory care order should be refused given the objective of the IDCCR of protecting the rights of intellectually disabled people and the high value New Zealand society gives to individual liberty. The Judge determining an extension application must be satisfied that the community protection interest cannot be met other than by a compulsory care order. To put it another way a compulsory care order must be the least coercive and restrictive option available. It is not sufficient reason to extend a supervision order that the care recipient would benefit from supervised care and treatment and the opportunities for rehabilitation that will be provided under a compulsory care order. If the care recipient no longer constitutes a risk of sufficient seriousness to justify the continuation of the order the extension should be refused.

[11] I am satisfied from the evidence of Dr Nuth to which I have referred that Mr HW continues to pose a moderate to high risk of general re-offending, and the risk with relation to his sexual offending is difficult to ascertain. I find that the risk is sufficiently serious to justify continuation of the compulsory care order, in other words the risk is sufficiently serious to outweigh the liberty interest of Mr HW.

[12] I am further satisfied that the order should be a secure care order because Mr HW has only relatively recently been released into the community, and his ability to function in a less structured environment is not known at present. Further I am satisfied that for practical reasons the extension should be for 12 months rather than six months, because a review in two months is unlikely to reveal any major alteration in the risk posed by Mr HW. On the other hand a 12 month order would require a review in six months and there is at least the possibility of the order being cancelled at that point if the risk Mr HW presents has diminished.

[13] On review of the compulsory secure care order I direct that the secure care order is extended for 12 months.

A J Twaddle
Family Court Judge