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**IN THE YOUTH COURT
AT CHRISTCHURCH**

**CRI-2016-209-000030
[2016] NZYC 252**

NEW ZEALAND POLICE
Prosecutor

v

NK
Young Person

Hearing: 13 April 2016

Appearances: Sergeant C Rendel for the Prosecutor
S Mcully for the Young Person

Judgment: 13 April 2016

MINUTE OF JUDGE B P CALLAGHAN

[1] NK is before the Youth Court on 10 charges of a serious nature, some more serious than others. They are causing damage by fire recklessly, four intentional damage charges, one assault with intent to injure, one assault with a weapon and three common assaults.

[2] NK was sentenced by me on 1 December to a s 311 supervision with residence. All the offences have occurred while NK has been on that sentence. Not surprisingly, his behaviour has been such and the early release was not granted and he will have to serve the full length of his sentence through until 31 May 2016.

[3] Yesterday in the Youth Court these charges I am dealing with, mentioned above, came before me for sentence.

[4] Noting that NK is already subject to a s 311 order, another 311 order cannot be imposed cumulatively or concurrently as s 295 provides that that can only happen if there were 14 days or less to expire before his sentence comes to an end.

[5] NK's personal circumstances are complicated to say the least. After the submissions were made yesterday, I took time overnight to re-read the relevant reports and assessments on the file because of the concern that had been expressed in the social worker's report prepared for the sentencing and in submissions that I heard yesterday. Ms Williamson who was NK's social worker for a number of years and is fully appraised of the background situation, is standing in for Mr Fox who is now NK's social worker. I should add that when the previous sentence was imposed Ms Williamson initially wanted a further assessment under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 because of concerns held both by her and generally as shown in a number of the reports on the file about NK's cognitive functioning. He suffers from a borderline intellectual disability but assessments so far have only shown his IQ level to be 70 or 71 not coming below the figure required to make out one of the limbs of a disability finding.

[6] In particular, I had read a report prepared by Ms Webb, a clinical psychologist of June 2015 whereby whilst acknowledging that at that point NK would not qualify under the IDCCR Act, that there were substantial cognitive issues

which needed to be attended to and made recommendations as to how NK should be dealt with when placed in an environment such as Te Puna Wai and indeed referred to the staff training that would be required to deal with his exceptional needs.

[7] The report from Mr Fox suggests an order that NK be convicted and transferred to the District Court for sentence as well as a reparation order for the damage caused, although just how that can be paid, when NK has absolutely no income and no assets, is a question that will need to be resolved.

[8] NK turns 17 on [date deleted]. Any further offending post that date will be of course in the District Court. At the end of the six month supervision with residence, as the position now stands, a supervision order will need to be put in place with the plan being approved.

[9] There were a number of matters raised by Ms McNulty for NK as to why he should remain in this Court and Ms McNulty submitted that:

- (i) A discharge under s 283(a) would be appropriate given generally NK's cognitive functioning;
- (ii) The fact that he has been penalised in part by not being granted early release; and
- (iii) That NK has been for a good part of the time, kept in secure care because of his antisocial behaviour.

[10] This morning Ms McNulty raised with me the issue of NK being currently assessed by YSS by a psychologist, Mr Johnson who had suspended his assessment because of NK's behaviour and reluctance to be involved. During the course of submissions this morning, I took an adjournment and Ms McNulty was able to discuss the matter with Mr Johnson and he suggested that there may be other matters relating to NK's cognitive functioning which require further investigation.

[11] When I raised the issue of a further assessment, Ms McNulty rightly makes the point that NK has been seen by numerous individuals including social workers

and psychologists over the time that he has been subject to Youth Court jurisdiction and that the Court should not have him assessed any more.

[12] Ms Williamson who I have mentioned above, indicated that the Youth Justice administration has done probably as much as it can to date for NK although she has always, as she mentioned, held the view that the best approach would be to keep NK out of the criminal jurisdiction because of his needs.

[13] I have not found the consideration of this matter at all easy. It would be, I suppose, easy and convenient to merely move this matter on by saying that the Youth Court has little more to offer NK and that from now on in, he should be dealt with by the District Court. He is not able to be sentenced to imprisonment or home detention because of the nature of the offences and his age at the time and although any electronically monitored sentence is probably not going to be sustainable because he does not appear to have any permanent residence to live. So the same could be said for a sentence of community detention.

[14] The prosecutor has brought to my attention that if he is transferred to the District Court, he could well be catered for by a lengthier term of supervision through the services of the Community Probation and again that is an attractive proposition.

[15] In considering what I should do of course I have to take into account provisions of s 284 to 290 of the Act, s 208 Principles for Administration and Youth Justice, s 4 General Objects Principles and Duties and s 5 Principles Being Applied and exercise the powers conferred by the Act.

[16] I know there have been a number of reports before the Court and there is a risk of over assessment, there is also the risk that NK is sufficiently able to possibly manipulate any assessment because of what he has been through already.

[17] Whilst all the reports before the Court, and I am talking about psychological reports and social workers' reports, all agree on the issue of cognitive deficits or borderline intellectual disability, there is not a lot of concrete help other than

Ms Webb's report as to what are the appropriate steps to take to treat NK. I remind myself he is still 16 and having given the matter earnest consideration, I am going to err on the side of caution and I have come to the view given all the information on the file that before this sentencing exercise is completed, that some further specialist and independent guidance be the most appropriate outcome.

[18] In the course of submissions this morning when I asked about possible report writers, Ms McNulty raised with me the name of Dr Louisa Medicott, clinical psychologist who has experience in intellectual disability issues and I am aware of that from recently sitting in Dunedin myself and should she be available, it would be appropriate that she carry out the assessment. So what I propose to do is order a psychological report under s 332 (a) and (d) and I will come to the specifics in a minute and request that the registrar ask Dr Louisa Medicott if she can provide that report. If she is unable to, then the matter can be referred back to the Court.

Discussion with Counsel/Prosecutor/Social Worker

[19] Ms McNulty, Ms Williamson and the prosecutor do not have any issues with the following as the basis for the s 333 report with the report writer doing the following:

- (i) Re-evaluate NK's cognitive functioning level including whether or not he has an intellectual disability.
- (ii) To consider what may be the appropriate sentencing options in light of the finding (noting that the transfer to the District Court is an option but imprisonment or home detention is not an option).
- (iii) To reconsider NK's fitness to plead and understand the proceedings.

[20] In assessing the above, to take into account all the assessments on the file including social workers and psychologist's report.

[21] So, on that basis NK will need to be further remanded on these matters to 24 May, 10.00 am on the basis that is a nominal date with the direction that it will come to me when the next available Youth Court date can be arranged. To be in front of me or Judge McMeeken.

[22] There are going to be other issues of course with the pending supervision order and Dr Medlicott, if she does the report can consider that as well.

B P Callaghan
Youth Court Judge