IN THE YOUTH COURT
AT NAPIER

CRI-2015-241-000053
[2016] NZYC 361

THE QUEEN

v

JM

Hearing	14 April 2016
Appearances:	J E Rielly for the Crown D J Kennedy for the Young Person
Judgment:	14 April 2016

DECISION OF JUDGE P J CALLINICOS
[s 14 Impairment Issues]

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[1] JM faces a very serious charge of aggravated robbery of a dairy; it is a charge which carries a maximum penalty of 14 years' imprisonment.

[2] JM is now 13 years of age, and had appeared on the charge in the Youth Court on 15 October last year. As the charge progressed through the Youth Court system, a report was obtained under s 333 of the Act whereupon issues as to JM's capacity to understand aspects of his decision making arose.

[3] Where issues as to disability arise then the processes to be followed arise under the Criminal Procedure (Mentally Impaired Persons) Act 2003. This applies as well to the Youth Court. To paraphrase, the process first involves a hearing under s 9 of the Act as to whether the evidence is sufficient to establish that the young person caused the acts which form the basis of the offence?

[4] On 4 February I determined in an uncontested situation that s 9 requirements had been met and that JM had indeed been involved in the incidents that formed the basis of the charge. Following that determination, I ordered that there be a second specialist report under s 38 of the Act as to issues of JM's fitness to understand trial.

[5] A second report was received from a Dr John Nuth who is a clinical psychologist. For the many reasons detailed in that report, Dr Nuth expressed the opinion that there is substantial data to suggest that JM is unfit to stand trial and that he did not possess the ability or maturity to adequately conduct a defence for himself. While not meeting the criteria for a mental disorder under the Mental Health (Compulsory Assessment and Treatment) Act 1992, JM has a low intellectual ability.

[6] The first report undertaken on 24 December last year was by Dr van Leuwes who expressed an opinion that JM was unfit to stand trial. That report also confirmed a range of disabilities suffered by JM.

[7] In terms of the current aspect of the process, I received a joint memorandum from Ms Rielly from the Crown and Mr Kennedy for JM, and I am grateful to them

for their co-operative and responsible approach to these sensitive and important issues.

[8] Pursuant to s 14(2)(c) I formally record that JM is, on all the available evidence, unfit to stand trial as defined in s 4 of that Act.

[9] The next step is in the statutory process advises from s 23 which requires that where a person is found unfit to stand trial the Court must order that inquiries be made to determine the most suitable method of dealing with that person under either ss 24 or 25.

[10] Counsel have agreed that although the recommendations in each health assessment report are helpful, some particular issues arise for JM. One is that he is currently subject to a s 101 custody order in favour of the Chief Executive, and as I understand the situation, is currently involved in a programme through Youth Link which, at this point in time, will cease in July. There are real issues as to what care arrangements would best meet his situation.

[11] Section 25 of the Act presents options as to how the Court must deal with a defendant or young person who has been found unfit to stand trial. Both counsel submit, and I agree, that at this point in time it is unclear as to the precise categorisation of JM's disability and, in turn, which option is most appropriate for him. By that I mean that there have been issues as to precisely the nature of his impairment. The reports suggest that he has low intellectual ability and also other components are limiting his thinking, although both reports have indicated that it seems that the main disability arises from an intellectual functioning.

[12] What I will do therefore is conduct an inquiry as to whether the provisions in part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 best suit JM's needs.

[13] Counsel have indicated that the options available to the Court are really two; one, whether there be a formal assessment under the Intellectual Disability Act or that I direct a hearing with the two health assessors given evidence relevant to the

appropriate disposition. The second option would, in my view, unlikely assist me in being able to reach a determination given that the only available disposition options under s 25 would be either ordering JM to be cared for as a care recipient under the Intellectual Disability Act, or ordering his immediate release.

[14] Even if two assessors were examined on the current opinions, I would not be able to answer as to whether the first option is appropriate; namely, whether JM should be a care recipient because no specific report under the Intellectual Disability Act has yet been obtained.

[15] Likewise, I am far from convinced that JM should simply be released from the process given the serious concerns as to the actions in the aggravated robbery and also his ability to make good decisions. There would be probably a high likelihood of a repeat of similar actions which would almost certainly return to Court and be declared that he was unfit to stand trial. That serves no one's interests.

[16] Some inquiry is therefore required and I will therefore proceed to direct a formal assessment under part 3 Intellectual Disability (Compulsory Care and Rehabilitation) Act and specifically pursuant to s 23(5) Criminal Procedure (Mentally Impaired Persons Act), I direct an assessment of JM under s 15 Intellectual Disability Act.

[17] The Court process will now be adjourned for a formal hearing under s 23 Criminal Procedure Act. That it will be allocated upon availability of the report which will enable the Court to make a proper final decision as to what is to happen for JM.

[18] As I have indicated, JM is under the custody of the Chief Executive of Child, Youth and Family Services and it is important that an appropriate member of CYFS is present and entitled to be heard on matters at that eventual hearing.

[19] The report will take approximately six weeks to obtain and therefore I will allocate 9 June for consideration of this matter.

[20] The registrar will need to ensure that there is at least one and a half hours allocated for this particular matter and preparation time available to a Judge.

[21] The bail will continue in the meantime noting that there are discussions in place as to holiday bail for JM. There are some major concerns as to the wisdom, and that is putting things mildly, of whether he should be able to go to [location deleted]. The Ministry will need to liaise with the Crown, with Mr Kennedy and with the youth justice team to see whether there is any safe form of bail available in the Napier area and very strict conditions and parameters around any contact he might have with wider members of the whānau.

[22] The last thing the Court wishes is for any opportunity for things to become worse for JM than they are at the moment.

P J Callinicos
Youth Court Judge