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YOUTH COURT LAW REVIEW

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Editorial

Youth Court decisions now published online

E mihi ana ki a koutou. We are very pleased to announce that **all notable Youth Court judgments from March 2016 onwards are now being published in fulltext on the new District Courts website**: www.districtcourts.govt.nz.

This will vastly improve the youth justice community's ability to access Youth Court jurisprudence. Full Youth Court content will be available in the coming weeks and months. This includes the database of case summaries formerly hosted on the Ministry of Justice website.

To avoid unnecessary duplication of content, we will therefore be suspending the Youth Court Law Review until further notice.

Please see the Press Release on page two for more information about these exciting new developments for jurisprudence at the District Court level.

In this edition

This publication contains a selection of Youth Court judgments from December 2015 to March 2016. Featured first is the case of ***Police v Z H* [2015] NZYC 822** in which Judge Recordon considers the admissibility of identification evidence provided by an off-duty police officer.

***Police v D W* [2016] NZYC 109** contains useful discussion of what youth justice residences may correctly be used for.

In ***Police v H R* [2015] NZYC 840**, Judge Malosi addresses the question of whether formal statements are admissible as evidence in s 9 CP(MIP) hearings in the Youth Court. Judge Malosi helpfully provides a list of steps that could be implemented in relation to most s 9 involvement hearings in the Youth Court (see page five).

This edition features briefs of two decisions relating to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. In ***Police v A T* [2015] NZYC 815** the Judge makes a compulsory care order after considering the evidence in reports provided to the Court. In ***Police v K T* [2016] NZYC 50** the Judge makes a secure care order, with reference to New Zealand's obligations under the United Nations Convention on the Rights of the Child.

***Police v E R* [2016] NZYC 125** is provided as an example of a case in which serious sexual offending results in an order of supervision with residence.

***Police v S B* (CRI-2015-209-000324, Youth Court Christchurch, Judge McMeeken)** involves the Judge declining to approve a transfer from one youth justice residence to another.

Finally, ***Police v M K* [2015] NZYC 821** concerns a successful application, pursuant to s 297 of the CYPF Act, to revoke a supervision order. The Judge encourages more extensive use of s 297.

Ngā manaakitanga

The Office of the Principal Youth Court Judge

courtintheact@justice.govt.nz

PRESS RELEASE: District Court decisions published online

Chief District Court Judge Jan-Marie Doogue
2 August 2016

A new website, www.districtcourts.govt.nz, has started publishing judicial decisions from the District Courts.
The website is run from the Office of the Chief District Court Judge and marks a significant milestone in the modernisation of New Zealand's District Courts.

About 200,000 criminal, family, youth and civil matters come before the District Courts every year, where 160 judges make about 25,000 decisions, sentences or orders.

> **This calendar year, the website expects to publish about 2500 decisions, rising to about 4000 next year.**

Chief District Court Judge Jan-Marie Doogue said that from now on, a Publications Unit working under an editorial board of senior judges, will select for online publication those decisions considered of high public or legal interest and which meet criteria for publication. This calendar year, the website expects to publish about 2500 decisions, rising to about 4000 next year.

Chief Judge Doogue believes the website will provide timely access to a wide range of significant decisions across all jurisdictions. It is hoped this will improve understanding of the court process and contribute to the open administration of justice.

"The information will serve the profession and legal community as well as the general public, by providing access to accurate, complete information about significant cases without the need to navigate individual court registries," Chief Judge Doogue said.

Criteria for publication in the criminal jurisdiction include sentencing notes and reserved decisions from judge-alone trials in cases of more serious offending, or cases where there has been discussion of high-level principles.

In the civil jurisdiction where volumes are lower, the aim is to publish all reserved judgments and costs awards, injunction decisions, judgments discussing interpretation of the District Court Rules, appeals from tribunals, and decisions related to professional bodies.

> **For the Youth Court, there will be emphasis on points of law on which there is little or no previous authority.**

In the Family Court, selection criteria differ depending on the legislation that proceedings are brought under. For the Youth Court, while criteria of public or legal interest will apply, there will also be emphasis on points of law on which there is little or no previous authority.

All decisions resulting from proceedings brought under the Harmful Digital Communications Act 2015 will be published automatically because this is a requirement of that legislation.

Chief Judge Doogue says the large volumes of cases in the District Courts mean not all decisions can be published, and she stresses that the service is not intended as a substitute for news media attending court.

Where there are statutory reporting prohibitions or suppression orders, such as in some Youth Court and Family Court proceedings, the website uses different names or initials and removes all identifying information.

The website was developed on time and under budget. ■

Home page of the new District Courts website: www.districtcourts.govt.nz

Admissibility of evidence

Police v Z H [2015] NZYC 822

Name: *Police v Z H*
File Number: CRI-2014-257-000043
Media neutral citation: [2015] NZYC 822
Date: 23 December 2015
Court: Youth Court Manukau
Judge: Judge Recordon
Key title: Admissibility of evidence

Facts

Witness A (a police officer) had been drinking and socialising with friends at a bar, and had noticed a group of young people across the street. Later, Witness A had felt one of that group reach over his shoulder and take a bag from the table. The witness chased after the alleged offender, who dropped the bag, ran up a driveway, and then behaved threateningly towards Witness A.

The alleged offender ran away when police arrived. Witness A searched the house at the driveway with two other police officers. Witness A did not recall whether he saw or heard Z's name while searching the house.

Approximately 10 minutes after searching the house, Witness A told the police officers that he recognised the alleged offender as being on police intelligence reports. The witness accessed the reports and identified Z, aged 16, as the alleged offender. Witness A had never met Z in person and did not participate in any formal identification procedure. Counsel for Z sought an order that identification evidence provided by Witness A was inadmissible evidence.

Law

Section 45 Evidence Act 2006

Visual identification evidence is governed by s 45 of the Evidence Act. The Judge noted that s 45 sets two different standards for admissibility of evidence depending on whether formal procedure was followed or not. In this case, formal procedure was not followed. The Judge set out the steps under s 45 as follows:

A) Was there good reason for not following a formal procedure?
B) If there was good reason, the evidence is admissible, unless the defendant proves on the balance of probabilities that the evidence is unreliable.
C) If there was no good reason for not following formal procedure, the evidence is inadmissible, unless the prosecution proves beyond reasonable doubt that the circumstances in which the identification was made have produced a reliable identification.

Case law concerning identification evidence

The Judge cited discussion in the Supreme Court authority *Harney v Police* [2011] NZSC 107, [2012] 1 NZLR 725 concerning the inherent dangers of identification evidence. The Court particularly warned that caution should be exercised before finding recognition (of the alleged offender) to be good reason for not following procedure.

The Judge cited other case authorities concerning the extent to which "recognition" can be a good reason for not following procedure. In *R v Edmonds & Keil* [2009] NZCA 303, the Court of Appeal found recognition evidence to be reliable as the defendants were well known to the witness. On the other hand, the Court did not consider seeing the appellant in a photograph to be reliable recognition evidence (*Tararo v R* [2010] NZCA 287, [2012] 1 NZLR 145).

Application

Was there good reason for not following formal procedure?

Prosecution argued that there was good reason for not following procedure, this being that per s 45(4)(e), the identification evidence was made soon after the offence was reported, and in the course of the initial investigation (in reliance on *Holmes v Police* [2012] NZHC 2227). In response to this submission, the Judge distinguished *Holmes* as follows:

> [47] […]The current situation is analogous to an identification by an undercover police officer, rather than an independent third party making the identification to an enforcement officer in the course of their initial investigation. It therefore follows that good reason for not following formal procedure does not exist under s 45(4)(e).

The Judge further considered whether the identification evidence could amount to recognition evidence. Citing *Lord v R* [2011] NZCA 117 (and earlier, *R v Edmonds & Keil* [2009] NZCA 303 and *Tararo v R* [2010] NZCA 287, [2012] 1 NZLR 145), his Honour found that it did not amount to recognition evidence, and that it would not be appropriate to extend the circumstances that amount to good reason:

> [52] The Higher Courts have extensively warned against extending the circumstances that amount to good reason. Giving due respect to these warnings and the authorities on this matter it cannot follow that the identification from a photograph in a Police Intel Report can amount to recognition evidence.

Finally, as noted by counsel for the young person, an argument under s 45(4)(d) – that no officer could reasonably anticipate that identification would be an issue at the trial – would fail on the basis that the Police should have identified that identification would be an issue, especially as Z denied the offending and gave an alibi.

Did the prosecution prove beyond reasonable doubt that the circumstances in which the identification was made have produced a reliable identification?

The Judge found that the prosecution had failed to satisfy the requisite standard, citing issues around the point at which Witness C identified Z. The connection was not made until quite some time after the witness had first observed Z. The witness searched the house with two other police officers and did not recall if Z's name was mentioned by the other officers during the search. Accordingly, the Judge was not satisfied that there was not a possibility of contamination, bringing an element of doubt into the reliability of the evidence. ■

Correct use of youth justice residences

Police v D W [2016] NZYC 109

Name: *Police v D W*
File Number: CRI-2015-279-000008
Media neutral citation: [2016] NZYC 109
Date: 24 February 2016
Court: Youth Court Hamilton
Judge: Judge Cocurullo
Key title: Care and protection crossover; Orders – type: Admonishment – s 283(b)

Facts

D appeared in respect of 14 "not denied" charges, the most serious charges being one charge of burglary and one charge of escaping custody. D had concurrent care and protection proceedings before the Family Court, and was subject to a s 67 declaration that he was in need of care and protection, as well as a s 101 custody order in favour of the Chief Executive (MSD).

On 15 January 2016, a youth justice FGC had recommended a 6-month supervision order pursuant to s 283(k).
At issue was the fact that the s 334 social worker report and accompanying s 335 plan contained the direction that D would be placed in a youth justice residence for the duration of the s 283(k) supervision order, in fulfilment of the s 101 'care and protection' custody order. The main reason for this was the high level of D's needs and the inability of the care and protection residence to care for D.

The question was whether it was proper and lawful for the Judge to approve a supervision order containing a direction, in the accompanying plan, for D to be held in a youth justice residence.

Law

By s 365(4) of the Act, a youth justice residence means a residence established and maintained under section 364 for purposes that are or include remand, the provision of custody under supervision with residence orders made under section 283(n), or both.

Application

The Judge found that by s 365(4), the purpose of placement in a youth justice residence needs to be, or to include, either remand or the provision of a supervision with residence order. In the present case, neither was present. His Honour therefore found that it would be both improper and unlawful for the Chief Executive to place D in a youth justice residence using the s 101 custody order:

> [41] Here in effect, what the Chief Executive is proposing to do is to ask the Court to make a Group 4 response of supervision only but in effect have an open ended sentence by way of detention in a Youth Justice residence. In my view that cannot be right.

Additionally, His Honour took the view that the matter was one that needed to be referred to the Family Court:

> [44] […] The view I take is that if the basis for holding D (the Chief Executive asserting an unfettered discretion) is under [the] s 101 custody order in the Family Court, surely it is for the amended s 128 plan that accompanies that s 101 order (in similar fashion to the s 335 plan that accompanies a supervision order) to detail the actual placement which D will have. In that way the Court can have some oversight of what is in effect to be delivered in a care and protection sense to the young person.

The Judge then considered whether a s 283(k) order would be an appropriate sanction. His Honour concluded that as D had already been on remand at a youth justice residence for about 3 months, a s 283(b) order (admonishment) was the appropriate order. ■

Criminal Procedure (Mentally Impaired Persons) Act 2003

Police v HR [2015] NZYC 840

Name: *Police v HR*
File Number: CRI-2015-290-000104
Media neutral citation: [2015] NZYC 840
Date: 27 January 2016
Court: Youth Court Manukau
Judge: Judge Malosi
Key title: Criminal Procedure (Mentally Impaired Persons) Act 2003: s 9 issues

H faced 17 charges. The question arose as to whether H was fit to stand trial, pursuant to the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP)). The s 9 CP (MIP) "involvement hearing" process was triggered.

Issue

In order to satisfy the Court that H had 'caused the act or omission that formed the basis of the offence' with which he was charged (s 9 CP(MIP)), counsel for the police argued that they should be able to rely upon formal statements of witnesses. H's youth advocate contended that they should be required to file affidavits from each of them.

A ruling was sought on this issue, which, the Judge noted, did not appear to have been dealt with by any Court before.

Law

Section 10 CP(MIP) provides as follows:

> **10 Inquiry before trial into defendant's involvement in the offence**

1) This section applies if the question whether the defendant is unfit to stand trial arises before the trial.
2) The court must ascertain whether the court is satisfied of the matter specified in section 9.

Police v HR [2015] NZYC 840, continued

3) For the purposes of subsection (2), the court may consider—
   a) any formal statements that have been filed under s 85 of the Criminal Procedure Act 2011:
   b) any oral evidence that has been taken in accordance with an order made under s 92 of the Criminal Procedure Act 2011:
   c) any other evidence that is submitted by the prosecutor or defendant.

Submissions and application of the law

Sections 85 and 92 of the Criminal Procedure Act 2011 (CPA), referred to above, are both found in Part 3, Subpart 8 of the CPA: 'Provisions applying only to jury trial procedure'. Section 10(3)(a) therefore only enables the Court to take into account formal statements given in relation to jury trials. Police submitted that it would be improper to allow the very same evidence excluded under one part of that section to then be admitted under another (i.e a formal statement admitted under s 10(3)(c)).

However, by Schedule One of the CYPF Act, only subparts one to four apply to the Youth Court. Accordingly, the Judge found that subsections 10(3)(a) and (b) of the CP(MIP) and corresponding sections 85 and 92 of the CPA did not apply to s 9 hearings in the Youth Court jurisdiction. Section 10(1)(c) CP(MIP), being a catch all provision, did apply. Her Honour stated as follows:

> [23] ... [Section 10(1)(c)] reflects the need for the Court to be able to 'satisfy' itself on the balance of probabilities as to involvement, and calls for an exercise of discretion as to what evidence it will and will not take into account.
>
> [24] Whilst the Court of Appeal has described the s 9 hearing as 'a relaxed and inquisitorial-type hearing, that view was tempered by a reminder that that should not come at the expense of natural justice nor the ability of an accused to test any evidence which may be inherently unreliable.
>
> [25] In order to make sense of s 10(3)(c) in the context of s 9 hearings in the Youth Court, I find it should be interpreted widely.

Conclusion

The Judge concluded that formal statements could be admitted as evidence in proceedings under s 9 CP(MIP) in the Youth Court for the following reasons:

> [27] Ultimately, I consider that the interests of a young person on the CP(MIP) track in the Youth Court will be no better protected or advanced by affidavits as opposed to formal statements. Either way those witnesses can be summonsed to give evidence, and be subject to criminal sanctions if issues arise in relation to their reliability. In both scenarios there is the risk that witnesses might not come up to brief.
>
> [28] It is a concern to all involved in proceedings under CP(MIP) that they often move at a glacial pace, particularly when measured in a time frame appropriate to a young person's sense of time. That offends against s 5(f) of the CYPF Act. In my view requiring affidavits runs the very real risk of further delaying and unnecessarily complicating proceedings, not to mention the issue of added cost to the State.

Advice regarding s 9 hearings

Additionally, the Judge set out a list of steps that could be implemented in relation to most s 9 cases in the Youth Court, which are reproduced below.

[29] Streamlining processes in respect of s.9 hearings in the Youth Court is imperative. In most cases the following steps could be implemented:

a) As soon as CP(MIP) is triggered each Charging Document should be specifically noted;

b) The Police shall then have 21 days (or such other timeframe as determined by the Court having regard to the number and nature of charges) to file a s.9 Memorandum setting out:
   (i) The charges they are proceeding with;
   (ii) The act or omission that forms the basis of the offence;
   (iii) The witnesses they intend to rely upon to prove that; and
   (iv) Any matters that are likely to impact on the estimate of time and scheduling of the s.9 hearing (need for Interpreter, unavailability of witnesses for specified periods).

c) The filing of the s.9 Memorandum shall be monitored in a Registrar's List at the expiration of the aforementioned timeframe. In the absence of a request for an extension of time, if the Memorandum is not filed within the stipulated time, the matter shall be called in the Youth Court on the next available date (but no later than 7 days after the due date).

d) Upon service of the s.9 Memorandum, the Youth Advocate shall have 14 days thereafter to advise the Prosecution and the Court which witnesses (if any) they require for cross examination, and what if any preliminary issues need to be dealt with.

e) At the same time as the s.9 Memorandum is directed to be filed by the Police, the matter shall be allocated a call-over within 10 days of the expiration of the timetabling directions.

f) Three days prior to that call-over the Prosecution and Youth Advocate shall file a Joint Memorandum confirming which witnesses are to be called, whether there is any dispute in respect of same, any challenges to admissibility of evidence (particularly if that involves the young person's statement), and the estimate of time required for the s.9 hearing. ■

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Police v A T [2015] NZYC 815

Name: *Police v A T*
File Number: CRI-2015-282-000004
Media neutral citation: [2015] NZYC 815
Date: 10 December 2015
Court: Youth Court Wairoa
Judge: Judge Taumaunu
Key title: Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003: compulsory care recipient order

Facts

A appeared on one charge of burglary and one charge of possession of cannabis. A had been found unfit to stand trial earlier in July, and a disposition hearing had been held in September. The decision had been deferred for three months in order to enable time to evaluate and assess community-based options available to A.

The Judge discussed disposition reports available to the Court. These were:

A) **A special assessment report by a clinical psychologist**, which found that A met the criteria for intellectual disability, that A was eligible for compulsory care status, and that the restrictions inherent in the special care recipient status were beyond that required for A. The psychologist also found A's risk of re-offending as very high and noted that a compulsory care order would provide both containment and rehabilitation components, but would remove A from his home environment and destabilise A. The report recommended that the disposition be deferred to determine whether the local community could provide adequate support, or for a two-year secure compulsory care order to be made including a number of interventions.

B) **A compulsory care coordinator's report**, which recommended deferral of disposition, and that the compulsory care order be made under s 25(1)(b) CP (MIP) Act, rather than under the ID(CCR) Act.

C) **A second compulsory care coordinator's report,** which was positive about interagency work that had been completed in the community and considered that that work could continue. However, subsequent to that report being filed, an emergency intervention was required to remove A from his home after he became violent and angry.

The Judge noted that A's youth advocate supported a further deferral of the compulsory care order for two or three months. However, A's youth advocate did concede that there were risks associated with A remaining in the community. A was easily led and vulnerable.

Analysis and conclusion

The Judge considered A's family to be "crying out for help". His Honour also considered A to be at risk of going "right of the track" and ending up committing very serious crime. The Judge further noted that while the charges themselves were serious but not top-end, the compulsory care order was not just about making a secure order, but also about rehabilitation. His Honour was therefore ultimately satisfied that a compulsory care order was the appropriate order to make.

The Judge made a compulsory care recipient order under s 25(1)(b) of the CP(MIP) Act and made A a care recipient under the ID(CCR) Act 2003. The degree of security was to be 'secure', and the length of the care order was for two years. ■

Police v K T [2016] NZYC 50

Name: *Police v K T*
File Number: CRI-2015-243-000009
Media neutral citation: [2016] NZYC 50
Date: 28 January 2016
Court: Youth Court Manukau
Judge: Judge Hikaka
Key title: Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003: secure status; Stay of proceedings

K, aged 17 at the time of the hearing, had been found to be "involved" under s 9 Criminal Procedure (Mentally Impaired Persons) Act in two charges of indecent assault against a child. K was then found unfit to stand trial on the basis of an intellectual disability. Accordingly, K was to be a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act.

The primary issue was whether his status should be that of 'secure care recipient' or 'under supervision'. The secondary issue was whether a stay of proceedings should be ordered.

Concerning the first issue, both the Compulsory Care Coordinator (CCC) and the specialist in attendance at the hearing recommended secure status. The CCC had provided a 3-year plan, and the specialist a report, to this effect. The family ultimately accepted the 'secure care' plan, which accommodated their desire for contact with K, and for K not to be away for too long. The Judge noted that the plan met requirements under the United Nations Convention on the Rights of the Child. It involved a high level of care, which was only available under the 'secure care' status.

On the second issue, the Judge issued a stay of proceedings so as to resolve the charges. This was in light of:

- the length of time proceedings had already been before the court,
- the comprehensive plan for K's rehabilitation,
- the possibility that not granting a stay would be an impediment to rehabilitation, and
- the evidence to date that K would not be found fit to stand trial in the future. ■

Supervision with residence – s 283(n)

Police v E R [2016] NZYC 125

Name: *Police v E R*
File Number: CRI-2015-242-000082; CRI-2013-242-000056
Media neutral citation: [2016] NZYC 125
Date: 2 March 2016
Court: Youth Court Nelson
Judge: Judge Russell
Key title: Orders– type: Supervision with residence– s 283(n)

E, aged 16, appeared facing four sexual offence charges: unlawful sexual connection, two charges of indecent assault on a female under 12, and compelling an indecent act with an animal.

The charge of unlawful sexual connection had occurred in 2013 and involved a seven year old boy. E had been charged and sent on a STOP programme, which he had completed. E had then been disposed of with a s 283(c) order (to come before the Court for sentence if called upon).

Following disclosure of further offending, this time against a four year old girl E was charged with two counts of indecent assault and one count of compelling an indecent act with an animal. He was also brought back for sentencing on the earlier offending.

A s 334 social work report and accompanying s 335 plan recommended that E receive a six month supervision with residence order, followed by a supervision order.

The social worker had considered the option of conviction and transfer to the District Court, but was concerned that this would not allow E to continue to receive treatment for his harmful sexual behaviour and would result in a conviction against E's name. Both E's parents and the police agreed to the social worker's recommendation. There was no argument presented in favour of conviction and transfer to the District Court, but the option was considered by the Judge, who described E as being on "thin ice" due to the seriousness of the offending.

Conclusion

Nonetheless, the Judge approved the plan and sentenced E to supervision with residence for five months, two weeks and three days. His Honour adjourned proceedings for the purpose of fixing the conditions of the supervision order. ■

Transfer between youth justice residences

Police v S B [2016] NZYC 125 (CRI-2015-209-000324, Youth Court Christchurch, Judge McMeeken)

Name: *Police v S B*
File Number: CRI-2015-209-000324
Date: 29 January 2016
Court: Youth Court Christchurch
Judge: Judge McMeeken
Key title: Transfer between youth justice residences - s 312

Facts

S was being held in Te Puna Wai as a result of a s 311 supervision with residence order. S's social worker wrote to the Court requesting that the Court approve a new plan for S and approve his transfer from Te Puna Wai to another youth justice residence.

Law

Section 312 of the Act states that when the Court has made an order under s 311 the Chief Executive may, with the approval of the Court, transfer the young person from any residence to any other residence. The Act is silent as to the criteria for such a transfer.

Analysis

The Judge noted that the Court must look at all of S's circumstances and must apply the objects and principles of the Act in making such a decision.

The primary reason for the request was that S was alleged to have assaulted young people at Te Puna Wai, including a young person who was scheduled to be on the MAC camp with S. S's social worker suggested that new surroundings may assist S.

The Youth Advocate opposed the transfer on the basis that S's limited cognitive functioning made changes difficult for S, S's family and agency-based support networks were located near Te Puna Wai and S did not wish to change residences. To make the transfer would therefore contravene objects and principles codified in ss 4 and 5 of the Act.

Additionally, s 7 of the Act creates an obligation for the Chief Executive to take "positive and prompt action" to ensure the objects of the Act are attained in a manner that is consistent with the Act's principles. The Judge noted that this duty remained in place even though Te Puna Wai was not operating at full capacity.

The Judge gave particular weight to the negative impact a change in location would have on S's ability to access his support networks, particularly in light of S's cognitive difficulties. The Judge considered that a transfer would for this reason be in contravention of the s 208(f) principle that a sanction should take the least restrictive form that is appropriate in the circumstances. Additionally, a transfer would negatively impact on the Court's ability to create a supervision plan for S.

Conclusion

As a result, the Judge declined to approve the transfer. ■

Variation of Youth Court orders: section 297

Police v M K [2015] NZYC 821

Name: *Police v M K*
File Number: CRI-2015-092-000260
Media neutral citation: [2015] NZYC 821
Date: 23 December 2015
Court: Youth Court Manukau
Judge: Judge Recordon
Key title: Variation of order: s 297

Facts

This case concerned an application under s 297 for the Court to revoke an existing supervision order, and make in substitution another supervision order on the same terms and conditions, but which would also refer to a recently proved charge.

Law / Application

The Judge noted that Youth Court practice is to make a single order in response to a number of charges, whereas Sentencing Act practice is for sentences to be specific to a single charge (with sentences then being served either concurrently or cumulatively).

Section 297 gives the Court the power to revoke an order to which a young person is subject and make another order, where a new charge against that young person has been proved:

> **297 Powers of court in dealing with young person subject to order made under this Part**
>
> Where a court finds a charge against a young person proved, and that young person is subject to an order made by a court under this Part, the court may-
>
> (a) subject to section 285(5), make such order under section 283 as the court thinks fit in addition to the order which the young person is subject:
>
> (b) revoke the order to which the young person is subject and make such order under section 283 as the court thinks fit.

The Judge referred to *Police v T T* (DC Manukau, CRI 2008-292-000352, CRI 2007-292-000731, 2 October 2008), in which Judge Malosi described s 297 as a useful alternative to cancelling a supervision order as a result of reoffending:

> "Another way to approach these situations is under s 297. I encourage more use of this procedure. It is much simpler because it allows the Court to make additional orders or substitute orders under s 283 so long as a charge against a young person is proved."

The Judge also noted that the case at hand was not covered by s 296B (by which the Court can cancel and order and make any other order under s 283).

Conclusion

Pursuant to s 297, the Judge revoked the order that was in place and made a new supervision order which had the same terms and duration as the previous order, but which included the recently proved offence in addition to the other offences. ■

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