

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

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**IN THE YOUTH COURT
AT WHANGAREI**

**CRI-2017-288-000104
[2017] NZYC 859**

NEW ZEALAND POLICE
Prosecutor

v

[KL]
Young Person

Hearing	14 November 2017
Appearances:	Sergeant B Iggo for the Prosecutor D R Whitehead for the Young Person
Judgment:	14 November 2017

MINUTE OF JUDGE G L DAVIS

[1] I have before me [KL].

[2] [KL] came before the Court yesterday having been arrested on a number of charges including a burglary charge, unlawful taking of a motor vehicle charge, a theft of petrol charge, a reckless driving charge and a failing to stop for red and blue flashing lights charge.

[3] I dictated a note yesterday having remanded [KL] in custody under s 238(1)(d) Children, Young Persons, and Their Families Act 1989 and directed that a s 333 report be obtained, and invited Mr Whitehead to prepare a brief for the terms of that s 333 report.

[4] Matters have moved on since then. I expressed my concern at the time that if [KL] were an adult and in the adult Court and he had been remanded in custody, a s 38 report would or was required by law to be completed within 14 days. It seemed to me to be an unusual situation that a youth would have a regime put in place that was less advantageous to him or her than that which would apply to an adult.

[5] Overnight, I have quickly reviewed the legislative framework and I note that the following provisions appear to be relevant. I have not had the opportunity to look at it in detail and simply make the following comments.

[6] Section 333 Oranga Tamariki Act 1989 provides that:

If at any stage of proceedings under Part 4 of the Act, which is the youth justice regime, it appears to the Court that a medical, psychiatric or psychological report should be available to the Court. The Court may make an order that the Family Court is empowered to make under the provisions of ss 178, 181 and various other provisions. That report may include an enquiry and to determine whether the young person is unfit to stand trial within the meaning of s 4 Criminal Procedure (Mentally Impaired Persons) Act 2003.

[7] As I read the section, if the s 33 report is ordered and the provisions of s 178 to about s 185 Oranga Tamariki Act specifically exclude the application of the Criminal Procedure (Mentally Impaired Persons) Act. However, I do not read s 333 of the Act as making it mandatory that a 333 report be obtained. It appears by the use of the word “may” to be discretionary.

[8] Given [KL]'s custodial status, I am of the view that there is a pathway more advantageous to [KL] in terms of his custodial status available under the provisions of s 38 of the Act.

[9] I am directing that a s 38 report to determine whether [KL] is fit to enter pleas and to stand trial be obtained in accordance with s 32(2)(b) of the Act. [KL] is in custody by virtue of his status under s 238(1)(d) Oranga Tamariki Act. The report is to focus solely on that issue. Pending the receipt of the report, a custodial family group conference is to be held with a view to looking at placements, but those will not be available to the Court before 24 November when this matter is to be bought back in the Youth Court.

[10] Accordingly, I am remanding [KL] in custody under 238(1)(d) Oranga Tamariki Act to 24 November in the Youth Court in Whangarei.

[11] I am directing the s 38(2)(b) report be obtained simply to address whether [KL] is fit to enter pleas and to stand trial.

[12] The matter is to be called again in the Youth Court on 24 November.

[13] I am directing that the neuropsychological assessment from Te Roopu Kimiora dated 20 April 2017 is to be made available to the forensic team and the s 38 to the report writer. I trust that will ensure then that whatever information has come out of that report can be filtered in or fed into the report writer.

[14] I also thank the Ministry staff for their efforts in getting [KL] a placement somewhere.

[15] [KL], what is going to happen now is that you are going to go to Korowai Manaaki, a residence, and come back to Court on 24 November. In that time, I want the Department to convene a family group conference, a hui for want of a better word. You are probably familiar with those in the care and protection context to try and find a placement for you with whānau somewhere. So, I want that all done by 24 November. At the same time, I want to get this report done to help the Court decide

whether you are fit to enter pleas and to stand trial. I want all that in Court for 24 November so you and the whānau know where this is all going.

G L Davis
Youth Court Judge