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IN THE YOUTH COURT
AT MANUKAU

CRI-2016-290-000347
[2017] NZYC 190

NEW ZEALAND POLICE
Prosecutor

v

[E W]
Young Person

Hearing	9 March 2017
Appearances:	Sergeant Spendelow for the Prosecutor S Alofivae for the Young Person
Judgment:	9 March 2017

MINUTE OF JUDGE G F HIKAKA

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[1] [E W] is young person born [date deleted] 2002. He has two sets of proceedings before the Court today - this Court sitting as the Youth Court as well as Family Court. That is to ensure there is a consistency with what is planned for [E W] given his age and the discrete proceedings before the Youth Court and the Family Court.

[2] The police applied under s 14(1)(e) for a declaration that [E W] is in need of care and protection. They applied without notice for an interim custody order in favour of the Chief Executive and that order was made under s 78 Children, Young Persons, and Their Families Act 1989 on 13 February 2017. There are a raft of offences referred to in the application for declaration but the most serious one is aggravated robbery on 17 September 2016, when [E W] was 13 years of age. That offending made [E W] eligible for a prosecution in the Youth Court and thereafter consideration under s 280A Children, Young Persons, and Their Families Act as to which jurisdiction would best advance the public interest and also [E W]'s interests.

[3] It was agreed at a Family Group Conference that was directed earlier on that and the other charges that form the basis of the police application for declaration, that proceedings would best be dealt with in the Family Court. The recommendation was made to, in the colloquial parlance "push back" the Youth Court matters to the Family Court. There is something of an issue with respect to what has been filed in the Youth Court when compared with the evidence that is relied on for Family Court proceedings. What is before the Youth Court are four charges, the aggravated robbery charge that I have already referred to, a charge of escaping custody on 18 October last year as well as intentional damage of a window of a Child, Youth and Family Services property on the same date and then following that, a charge of unlawfully taking a motor vehicle on 10 December 2016.

[4] There are more charges referred to in the police application for declaration than have been put before the Youth Court. A reason for that I am sure is because those offences did not qualify as charges that could be part of the criminal jurisdiction of the Youth Court, but they did qualify for consideration under the umbrella of magnitude, nature and number of offences referred to in s 14(1)(e).

[5] The dilemma today is effectively with the Chief Executive's policy guidelines about which office is responsible for the social work for a young person. The particular focus for today, as it was when I considered [E W]'s situation on 9 February, that even then there was no opposition to the "push back" of the Youth Court charges to the Family Court, and, at that time a family address for [E W] in [South Island location deleted] had been proposed. On 9 February I was told that checks were being done to assess the suitability of that address.

[6] I have been told today that the [South Island location deleted] office only picked up the referral for those checks to be done on 28 February this year. Today it was confirmed through direct contact with the [close family member] who lives at the [South Island location deleted] address that [the close family member] would be willing to have [E W] in [the close family member's] care from today. I understand the advice from the Chief Executive is that if that was to be by way of a care and protection s 78 interim custody order then there would be no guarantee that [E W] would be placed with his [close family member], because the [South Island location deleted] office would not pick up the social work responsibility under that s 78 order until something more was formalised with the [South Island location deleted] office. That appears contrary to the purposes and principles and in fact, duties of the Chief Executive when one considers the overarching responsibilities that the Chief Executive has for the care, protection and welfare of vulnerable people, in particular in this case, recognition that care and protection is the appropriate forum for dealing with [E W]'s concerning criminal behaviours as well.

[7] It has been suggested that in order to get around the policy that the Chief Executive has imposed, bail be imposed on some of the charges, with [E W] bailed to his aunties' address and then proceedings transferred to the [South Island location deleted] Youth Court and Family Court to follow through on the recommendations that had been recorded as a result of a Family Group Conference on 15 March in Auckland.

[8] Section 280A(3)(a) refers "at any time" proceedings in respect of a charging document filed against a child for an offence are adjourned, the Court may discharge the charge under s 282, but paragraph (b) says that if not discharged earlier, the charge is deemed to be discharged if and when an application for a declaration under s 67 on

"that" ground, first comes before a Family Court Judge. That has happened twice already. The police do not oppose a 282 discharge and have reminded the Court of that deeming provision under paragraph (b).

[9] I approach matters in this way. [E W]'s situation is one that should be tailored for his particular circumstances, and there should be a lawful response to his particular circumstances. I had considered discharging certain of the charges currently before the Court so that the "push back" process can be given proper effect as intended, but it is a discretion as to timing of the discharge and indeed timing of the "push back". The deeming provision found in s 280A(3)(b) is linked to the same subsection paragraph (a) which refers to the Court may at any time discharge the charge.

[10] I have taken the approach that because Child, Youth and Family Service's policy could mean [E W] falls between cracks in the system, and thereby becomes even more vulnerable as a result of what appear on the face of it, as I have already said, quite inappropriate policy guidelines, I intend to bail [E W] on all matters and direct a transfer of these proceedings, Youth Court and Family Court, to the [South Island location deleted] Youth Court and Family Court for consideration in two weeks' time. I direct that the respective files be put before a Judge who is warranted to exercise jurisdiction in the Family Court as well as has a Youth Court designation. The delay of two weeks will also ensure that issues with respect to service of the Family Court proceedings can be attended to and clarified for that next call of the matter.

[11] [E W] will be bailed to the [close family member's] address in [South Island location deleted]. A bail memorandum will be provided to me so that the conditions [E W] needs to stick with are clear to him before he leaves Court today.

[12] The Ministry appears to want to use the Youth Court jurisdiction in order to better effect a better care and protection environment – indeed, ease the care and protection branch of CYFs responsibilities. That is an issue that is specifically referred to as being inappropriate in the principles that are applicable. Again I reiterate that I do not know all that is going on in the background, but if there is slavish adherence to the policy guidelines that are put forward as intended to have paramouncy over what is lawfully required, then obviously the Chief Executive needs to carefully reconsider

that policy guidelines and make the necessary changes so as to not fall within foul of the law.

[13] This Minute needs to be transcribed to go with the file and provided to the [local area manager], and the chief social worker.

G F Hikaka
Youth Court Judge