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**IN THE YOUTH COURT
AT MANUKAU**

**CRI-2016-292-000363
[2017] NZYC 351**

**NEW ZEALAND POLICE
Informant**

v

**[AD]
Young person**

Hearing	12 May 2017
Appearances:	Natalie Walker and Sacha Norrie for Crown Clare Bennett for young person Chris Merrick Counsel to Assist
Judgment:	12 May 2017
Reasons:	22 June 2017

**REASONS FOR DECISION OF JUDGE F J EIVERS
[Disposition]**

Introduction

[1] This is a reserved decision from a disposition hearing before me on 12 May 2017.

[2] [AD] is 16 years old. He is charged with the attempted murder¹ of [CT] on [date deleted] 2016. The maximum penalty is 14 years imprisonment. He not denied the charge on 16 January 2017. The Crown seek conviction and transfer to the High Court for sentencing under s 283(o)(ii) of the Act².

[3] Ms Bennett for the young person filed submissions stating that although there is no consent to the matter being transferred, having taken instructions she does not wish to be heard further on the matter. In oral submissions at the hearing she indicated that in the circumstances of this case, the High Court would be the preferred jurisdiction in respect of sentencing for [AD]. The social worker's report³ supports the Crown position and recommends that [AD's] matter is transferred to the High Court.

[4] Notwithstanding consensus on the way forward, it is important to examine the law on this issue and consider whether this is the appropriate disposition in this case, having regard to the law and the principles of the Act⁴. I have been assisted in this decision by detailed submissions prepared by Counsel for the Crown.

Facts

[5] The victim in the matter is 31 year old [CT] ([AD's] stepmother) who at the time of the offence resided in Papakura with her husband [SR] – [AD's] father), their [infant child], her [young child] and [AD]. [AD] slept in a sleep out at the address while the rest of the family slept inside.

[6] At the time of the incident [AD] was under the care of Whirinaki Child and Adolescent Mental Health Services being treated for a depressive episode and taking medication for that. He was not under a Compulsory Treatment Order.

¹ s173 Crimes Act 1961

² Children Young Persons and their Families Act 1989

³ Filed 31 March 2007 by Yvette Finlayson.

⁴ s 208 CYPF.

[7] On the evening of Thursday [date deleted – day before the offending] August 2016 [AD] was in his sleep out. Throughout the evening he had a number of homicidal thoughts, and he only slept for a couple of hours as a result. At about 7.30am on Friday [date deleted] August, [AD's] father left for work. Remaining in the house was the victim, her [young child] and her [infant child]. Upon waking, [AD] went into the house. At about 8.00am the victim took her [young child] to a nearby day-care centre while [AD] looked after her [infant child]. Ten minutes later she returned and began to do housework. While she was doing the housework [AD] moved around inside the house watching her, including following her outside when she went to hang out the washing. She thought the behaviour was strange but took no further notice of it.

[8] At about 12.15pm the victim was asleep in a reclining chair in the lounge with her [infant child], when she was woken by the kitchen door closing. She heard [AD's] footsteps approaching from behind. In his right hand [AD] had a silver coloured kitchen knife which was approximately 15cm in length. He walked around to the back of the couch and began to stab the victim multiple times to her head, neck and shoulder areas with the sharp end of the knife. She leant forward to protect her [infant child] from being hurt and was stabbed in her back. The stab wound punctured her lung and narrowly missed her heart. She bent over, putting her [infant child] on the floor before she stood up, turned around and faced [AD]. He was holding the knife in his right hand and continued to lunge forward at her in a repeated stabbing motion, and punctured skin on her scalp, ear, cheek, neck and hands. She tried unsuccessfully to grab [AD's] hands to stop the attack. The attack stopped only when [AD] inflicted a deep wound to the base of his left thumb during one of his stabbing motions. This caused him to drop to the floor holding his hands together saying "*So sorry, so sorry*" to the victim. She picked up her [infant child] and ran to the bedroom and looking for her cell phone to call for help. She was unable to find her phone so she ran outside to the roadside screaming for help. She collapsed on the roadside and members of the public came to her aid.

[9] [AD] was arrested without incident. An analysis of [AD's] laptop computer identified a number of keyword searches and Google searches that had been completed, as well as websites he had been accessing in the period leading up to the attack on the victim. These included the following:

- On 11 July 2016 a search was made for “*best place to stab and kill*”.
- On [date deleted – the day before the offending] August 2016 a number of Google searches were made on his computer including “*best serial killer movies*”, “*Ted Bundy*”, “*most flammable household items*”, “*stabbing and raping*”, and “*stabbing and raping porn*”.
- Analysis of data from his cell phone showed a number of text messages that were sent and received in the month leading up to [date deleted] August 2016 which included the following:
 - At 9.02pm on 10 July 2016 [AD] sent a text message to his girlfriend saying “*I was sitting at dinner and we had steak knives. I imagined killing my whole family right then and there. I imagined exactly how and everything just consumed me and it almost felt like I was doing it*”.
 - At 9.18pm on 10 July 2016 [AD] sent a text message to his girlfriend saying “*When I see a girl walking down the street I think 2 things. One part of me wants to take her out and talk to her, be real nice and sweet and treat her right. The other part of me thinks about what her head would look like on a stick.*”
 - At 11.14pm on [date deleted – the day before the offending] August 2016 [AD] received a text message from his father saying “*Goodnight Mr. Tomorrow’s a new day*”. [AD] responded to this text message one minute later saying “*Tomorrow’s definitely going to be different ...*”

[10] The victim sustained various injuries as a result of the attack including a punctured left lung, a fractured 12th rib (left-hand side), a contusion to the right submandibular gland (salivary gland at the lower aspect of the jaw), a laceration to the right of her [laceration details deleted]. She underwent approximately 10 hours of surgery for the wounds that she received and spent 7 days in hospital before she was

discharged. Since the attack she has suffered from panic attacks, flashbacks, nightmares, and cannot sleep at night. Her physical movement and strength have been significantly reduced to the point where she cannot bend over or pick up her children. She is expected to have further plastic surgery in the near future[details deleted].

Professional opinions

[11] There were three s 333 reports obtained. The first was prepared by Dr James Gardiner and Dr Karmyn Billing⁵. The brief was to consider mental health status and diagnoses, assessment of fitness to stand trial and a comment on insanity. Due to the seriousness of the charge the authors did not comment on the issue of insanity, preferring to do so once a plea had been entered. The report notes that [AD] meets the criteria for conduct disorder and there is a possibility of a diagnosis of borderline personality disorder, although given he is still adolescent that diagnosis is not formally made. He was found fit to stand trial.

[12] The second report was prepared by Dr Mhairi Duff⁶, sought specifically to address whether he has a defence of insanity. Her view that he is unlikely to have a defence of insanity as he does not show evidence of a disease of the mind or natural imbecility. Further, he does not show evidence that he did not understand the nature or quality of his actions, the wrongfulness of his actions nor evidence of insane delusions before or after the act. Her opinion is⁷ that there are strong and consistent reports of a number of features of borderline and antisocial personality disorder, presenting as features of narcissistic personality disorder.

[13] The third report was done by Mr Nick Lascelles⁸, to specifically consider [AD's] risk of further serious offending. It is his opinion that [AD] is at high risk of further violent offending with the potential for grievous bodily harm or death for future victims⁹.

⁵ Dated 14 September 2016.

⁶ 11 December 2016.

⁷ page 22 at [106].

⁸ 20 March 2017.

⁹ Page 16 at [90].

The Law

[14] Attempted murder is a Category 4 schedule offence with a maximum penalty of 14 years imprisonment¹⁰.

[15] Conviction and transfer to the High Court for sentence is contained in s 283(o)(ii), of the Act which provides:

283 Hierarchy of court's responses if charge against young person proved

The Youth Court before which a charge against a young person is proved may...

- (o) exercise the powers conferred by one of the following subparagraphs:
 - ...
 - (ii) the court may, in the case of a young person charged with a category 4 offence or an offence for which the maximum penalty available is or includes imprisonment for life and if the court considers that a sentence of imprisonment for life may be appropriate, order that the young person be brought before the High Court for sentence or decision and may enter a conviction before doing so; and the [Sentencing Act 2002](#) applies accordingly if the young person is of or over the age of 14 years.

[16] Pursuant to s 289 of the Act , before a young person can be convicted and transferred to the District Court or High Court under s 283(o) the Court must:

- (a) Consider the need to impose the least restrictive outcome, and
- (b) Be satisfied that in imposing such a sanction any less restrictive outcome is clearly inadequate, having regard to the principles in s208 and the factors in s284.

[17] The factors listed under s 284(1) are set out for ease of reference:

284 Factors to be taken into account on sentencing

- (1) In deciding whether to make any order under [section 283](#) in respect of any young person, the court shall have regard to the following matters:
 - (a) the nature and circumstances of the offence proved to have been committed by the young person and the young person's involvement in that offence:
 - (b) the personal history, social circumstances, and personal characteristics of the young person, so far as those matters are

¹⁰ Refer Criminal Procedure Act 2011 Schedule 1.

relevant to the offence and any order that the court is empowered to make in respect of it:

- (c) the attitude of the young person towards the offence:
 - (d) the response of the young person's family, whanau, or family group to—
 - (i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so.
 - (ii) the young person himself or herself as a result of that offending:
 - (e) any measures taken or proposed to be taken by the young person, or the family, whanau, or family group of the young person, to make reparation or apologise to any victim of the offending:
 - (f) the effect of the offence on any victim of the offence, and the need for reparation to be made to that victim:
 - (g) any previous offence proved to have been committed by the young person (not being an offence in respect of which an order has been made under [section 282](#) or section 35 of the Children and Young Persons Act 1974), any penalty imposed or order made in relation to that offence, and the effect on the young person of the penalty or order:
 - (h) any decision, recommendation, or plan made or formulated by a family group conference:
 - (i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so.
- (2) The court shall not make an order under any of paragraphs (k) to (o) of [section 283](#) merely because the court considers that the young person is in need of care or protection (as defined in [section 14](#)).

Conviction and transfer to the High Court

[18] I agree that conviction and transfer to the High Court for sentencing is the appropriate course having regard to s289 of the Act.

Section 289 considerations

[19] The facts and circumstances of this case supporting conviction and transfer from the Youth Court to the High Court are set out in the Crown submissions, which I summarise as follows:

- (a) The offending is unusual for one so young, and the facts disclose offending more serious than is usually seen in the Youth Court. It is therefore so serious that any order short of conviction and transfer to the High Court for sentencing would not adequately address the principles of accountability and public interest and appropriately responding to offending of this type;
- (b) Any order short of conviction and transfer would be insufficient to address the underlying causes of the offending and the high risk of serious violence/death that [AD] poses to the community;
- (c) Any of the Youth Court sentencing options are clearly inadequate to respond to the seriousness of the offending. Relevant in this consideration is:
 - (i) [AD's] murderous intent and premeditation;
 - (ii) His use of a weapon;
 - (iii) The high level of violence used , attacking the victim from behind;
 - (iv) An unprovoked and prolonged attack on a vulnerable victim; and
 - (v) The serious injuries and psychological harm caused to the victim.
- (d) The likely term of imprisonment in the District Court or High Court is relevant as to whether an order short of conviction and transfer is

clearly inadequate in the circumstances. With reference to *Taueki*,¹¹ and taking in to account the aggravating and mitigating features in this case, the likely end sentence is in the range of 6 years imprisonment¹².

(e) As to s 284(1) factors:

- (i) *The nature and circumstances of the offending* are serious involving a degree of premeditation and murderous intent. At the time of the offending he reports that he was angry at life and his family, that he “*felt like attacking the whole family*” and had taken the knife from a storage box and hid it in his room. On the night before the attack, [AD] “*just wanted to do it*” after realising that the victim would be alone in the house. He reported that he had always imagined female victims, as they “*hurt me more*” and were “*easier and more vulnerable*”.¹³
- (ii) *His personal circumstances* are well set out in the various reports. He has loving parents, who although separated when he was young, have done their best to try and raise him. His behaviour has always been an issue for the family to manage.
- (iii) *His attitude to the offence* is gleaned from the s333 reports. [AD] initially denied any ill feeling towards the victim, stating that she was “*the wrong person in the wrong place*”¹⁴. However this account is inconsistent with his later admission regarding his perceived mistreatment by his family, his desire to prove a point and his homicidal tendencies towards members of his family.

¹¹ *R v Taueki* [2005] 3 NZLR 372 (CA)

¹² Refer pages 12-16 of Counsel’s submissions for a full analysis

¹³ Report of Dr Lascelles at [50]- [55]

¹⁴ The first report Dr Mhairi Duff at [54].

- (iv) He has reported that he has no empathy for the victim. He reported that after the attack he had to pretend that he was sorry and was “*just a little boy who lost his mind*”.¹⁵
- (v) Since in residence his behaviour has been of concern and is relevant to the assessment of insight into the offending as well as his prospect of rehabilitation. While on remand he reported fantasising about killing a female member of staff, despite liking her. He stated that he had not wanted to act on his thoughts and had asked for her to be removed from his unit.
- (vi) He disclosed sadistic fantasies which involved victims screaming in pain or begging for mercy.¹⁶
- (vii) With respect to future offending he has said that since being remanded in custody he has a goal of becoming “*the best serial killer*”, that he would not get caught when he committed his next murder, and that he would not have been apprehended for this attack if he had not injured himself.
- (viii) *[AD’s] family* are supportive and this is well set out in the social worker’s reports. *[AD’s]* mother maintains her support of *[AD]* but has concerns for her safety.
- (ix) *[AD’s]* father maintains his support of *[AD]* but describes the difficulty in balancing the victim’s ongoing fears for her safety, and his desire for *[AD]* to receive appropriate therapeutic interventions.
- (x) *Effect on the Victim*: this has been profound, both physically and emotionally as set out earlier in this decision. She has since

¹⁵ At [66]

¹⁶ At [65]

returned to [country deleted] and is uncertain whether she will return.

- (xi) *He has no previous offending.*
- (xii) *There was no agreement reached at FGC.*
- (xiii) *Underlying causes of offending and the measures available to address them:* [AD] has been assessed as posing a high risk of further violent offending during the next year if released to the community. The risk is dynamic and can alter over a relatively short period of time.¹⁷ If he were to reoffend, it is anticipated he would initiate a sudden unprovoked attack on a female known to him using a knife or blunt instrument. The victim would likely suffer either grievous bodily harm or death.¹⁸ He demonstrates the potential for sexual violence in the future, given his reporting of rape and accessing pornography with themes of rape and necrophilia.¹⁹
- (xiv) It is Dr Lascelles opinion that there would need to be substantial and consistent change in [AD's] functioning to support a reduction in risk²⁰. While it is possible that the risk [AD] poses may decline significantly in the future, this will depend on several factors, including his preoccupation with violent imagery and idealisation of violent antisocial characters, the presence and intensity of homicidal ideation, his perception of this treatment by others, response to medication, and his ability to learn and utilise constructive coping strategies²¹.
- (xv) Further, the integrity of any future assessment of [AD's] risk will rely on his willingness to self-disclose a genuinely stable

¹⁷ Report of Dr Nick Lascelles, at [84]

¹⁸ At [85]

¹⁹ At [85]

²⁰ At [84]

²¹ At [86]

change in his desire to perpetrate violence on others. To date, he has appeared to enjoy gaining attention by disclosing violent ideation. However, as he matures into adulthood and potentially develops a higher degree of emotional behavioural control, his potential for concealing homicidal ideation will increase.²² This risk assessment is particularly telling as it places [AD] at high risk of violent re offending.

Interpretation of s283 (o)(ii)

[20] There is no case law on the interpretation of s283 (o)(ii). This is likely due to the rare circumstances in which a young person is charged with a category 4 schedule offence.

[21] The section is worded in a way that it is open to alternative interpretations. Is the discretion to convict and transfer to the High Court in respect of all category 4 offences, or only those category 4 offences where the maximum sentence is one of life imprisonment and the court considers that a sentence of life imprisonment may be appropriate? As discussed in the Crown submissions, legal commentators such as *Adams* and *Brookers* appear to differ on the interpretation²³.

[22] It is a relevant consideration in this case because if the latter interpretation is correct, then I have no jurisdiction to convict and transfer [AD] to the High Court, as the charge of attempted murder has a maximum penalty of 14 years, not life imprisonment.

[23] Section 275 of the Criminal Procedure Act 2011 states that charges of murder and manslaughter brought against a young person are to transfer to the High Court after first appearance in the Youth Court. All other charges, (with one exception,²⁴) are to be heard and determined in the Youth Court, unless trial by jury is elected. Therefore a category 4 schedule offence, other than murder or manslaughter, could remain in the Youth Court provided trial by jury is not elected.

²² At [88]

²³ Pages 22-24 Crown submissions

²⁴ Non-imprisonable traffic offences unrelated to existing Youth Court charges

[24] On a straightforward reading of 283(o)(ii) and bearing s 275 CPA in mind, it makes sense to interpret ss(ii) as applying to two distinct groups of offences: category 4 offences *or* those offences for which the maximum penalty is or includes life imprisonment and the court considers that life imprisonment may be appropriate.

[25] This interpretation means that the court has the ability to transfer charges to the High Court when the circumstances may warrant it, but only in relation to two specified groups of offences, being:

- (a) category 4 offences such as attempted murder; or
- (b) any offences which are not category 4, but for which there is a maximum penalty of life imprisonment, for example possession of Class A controlled drug for supply, which is a category 3 schedule offences.

[26] It is clear from the two groups of offences specified in ss(ii), that the discretion is reserved for offences of a serious nature, and when applying the principles of the Act, in cases which are so out of the ordinary that they should not remain in the Youth Court.

[27] The discretion to transfer to the High Court therefore applies to all category 4 schedule offences. However it is important to note that a discretion remains with the court and it is not the case that category 4 schedule offences in the youth court will always be transferred to the High Court. I disagree with the Crown submissions on this point.²⁵

Directions and Order

[28] Having regard to the legal principles and the exceptionally serious and unique circumstances of this case, I am satisfied that this is an appropriate case where there should be a conviction and transfer to the High Court for sentence. It is the least

²⁵ Paragraph 6.12

restrictive outcome in the circumstances, and any less restrictive outcome is clearly inadequate having regard to the requirements of the Act.

[29] Accordingly, [AD] is convicted and transferred to the High Court for sentence.

I make the following directions and orders:

- (a) He is remanded under s175(2)(a) Criminal Procedure Act 2011 to appear in the Auckland High Court on 28 June 2017 at 9am for call over.
- (b) Subject to any order or direction of the High Court , his attendance is excused on 28 June 2017;
- (c) There is an order for Interim name suppression and suppression of details which may identify the young person or his family, until further order of Court;
- (d) A restorative justice conference is directed; and
- (e) All reports on file (s 333, Social Workers' and Lay Advocates) are to be placed on the High Court file.

F J Eivers
District Court Judge