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**IN THE YOUTH COURT
AT MANUKAU**

**I TE KŌTI TAIOHI
KI MANUKAU**

**CRI-2018-292-000355
[2019] NZYC 539**

**NEW ZEALAND POLICE
Prosecutor**

v

**[YL]
Young Person**

Hearing: 5 November 2019
Appearances: Sergeant P Devane for the Prosecutor
H-A Cherrington for the Young Person
Judgment: 5 November 2019

ORAL JUDGMENT OF JUDGE I M MALOSI

[1] [YL] was born on [date deleted] 2003, so is 16 years old. He is before this Youth Court charged with 16 offences in total. The earliest 13 of those occurred between 26 January 2018 and 25 March 2019. They involve:

- (i) Burglary x3;
- (ii) Unlawfully getting into a motor vehicle x2;
- (iii) Unlawfully getting into a motor vehicle x2;
- (iv) Unlawful taking of a motor vehicle x2;
- (v) Attempted unlawful taking of a motor vehicle;
- (vi) Possession of instruments for burglary;
- (vii) Possession of instruments for conversion; and
- (viii) Aggravated robbery.

[2] On 16 July 2019 [YL] was found unfit to stand trial on those charges pursuant to s 8A of the Criminal Procedure (Mentally Impaired Persons) Act 2003, primarily on the basis of a complex neurodevelopmental picture and intellectual disability.

[3] The Court then proceeded to a s 10 hearing on 20 September 2019 and was satisfied as to his involvement in all of the offending.

[4] Today's hearing is to determine disposition, with the focus being on [YL]'s risk factors and rehabilitation.

[5] As mandated by s 23, enquiries have been made as to the most suitable method of dealing with him. Because he was found to have an intellectual disability at the s.8A hearing, he has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 pursuant to s 23(5).

[6] The Court has six discrete options regarding disposition as set out in s 24 and s 25:

- (i) Special patient;
- (ii) Special care recipient;
- (iii) Inpatient or community patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (iv) Care recipient under the IDCCR Act;
- (v) Release of the young person/defendant;
- (vi) Make no order because the young person/defendant is likely to be detained in prison on another charge.

[7] Ingalise Jensen, a registered clinical psychologist/specialist assessor, has provided the mandatory s 23 report which is dated 1 November 2019. She is well-known to this jurisdiction from her years working with young people through the Regional Youth Forensic Service in Auckland. Ms Jensen has determined, based on data from historical psychometric testing and an adaptive functioning assessment, that [YL] does meet the criteria of having an intellectual disability as that is defined in s 7 IDCCR Act. In her report at para 52 she opines that '[YL] has significantly sub-average general intelligence (FSIQ=62, 95% confidence interval = 58-69), confidence interval 58 to 69.' She then goes on to comment (at paragraph 53) that, 'With regards to adaptive functioning, [YL] has been recently rated as having deficits in communication and functional academics, and this is consistent with his presentation and history.'

[8] Ultimately, Ms Jensen recommends that the Court considers making an order under s 25(1)(b) CP(MIP) Act that [YL] be cared for as a care recipient, at secure care level, under the ID(CCR) Act for a period of 18 months. I note that period of time has been arrived at in consultation with other professionals who have considered [YL]'s

situation. She proposes he be placed at the National Adolescent Forensic Intellectual Disability Service in [location deleted], [care centre deleted].

[9] I cannot improve on Ms Jensen's summary in her report regarding the need for a compulsory care order which she sets out at paras 64 to 67 which I now recite in full 64-67 of because it so clearly captures what the risks are for [YL] and the needs in terms of his treatment and rehabilitation:

64. Overall, [YL] is considered to be at high risk of reoffending. In the past 12 months he has come to the attention of the Police many times. Despite considerable input from a number of services, his risk of re-offending has not been manageable in a community setting. Currently, his risk of offending is escalating despite the concerted efforts of professionals and his whānau. This is particularly evident in the number of incidents and issues with him complying and engaging over the past six weeks.

65. Overall, I do not consider that [YL]'s risk can be effectively managed in the community. Even now that he within the contained, structured environment of [the youth justice residence], there have been significant issues. In conclusion, when taking into account the risk [YL] poses, and considering the least restrictive alternative to manage that risk, I consider that [YL] would benefit and that his risk would be effectively managed and addressed through a period of specialised rehabilitation as a care recipient under the ID(CCR) Act.

66. With regards to the level of care that is required to manage the risk, I do not consider that [YL]'s risk could be contained and managed in a supervised care setting at the present time. In particular, I would argue that he is at risk of absconding and significant disruptive behaviour towards care staff. I understand after consulting with Mr Paul Harvey (Compulsory Care Co-ordinator) that [the care centre] (National Adolescent Forensic Intellectual Disability Service in [location deleted]) would likely be where [YL] would be placed given his age. This is a specialist unit for adolescents with an attached school and it is co-located with Nga Taiohi, the National Youth Forensic Inpatient Unit. [The care centre] will provide structure and rehabilitation and will also provide an additional opportunity to further consider [YL]'s complex neurodevelopmental presentation (eg presence of traits suggestive of ASD, his difficulties with speech and ADHD symptoms).

67. With regard to the length of the order, I am recommending 18 months. [YL] has been resistant to all interventions and support, and I would anticipate that this will continue to be the case for at least some time. He also requires considerable input to address a number of risk factors and realistically I don't consider that this could be achieved in a shorter timeframe. In my experience, a shorter timeframe also increases the chance of the young person focussing on the end date rather than their rehabilitation goals. However, it is important to note that the care orders are subject to six-monthly reviews and that the order can be varied to a less restrictive order once reasonable gains have been made.

[10] To that I would add it is not unheard of to have applications made to the Family Court at the time of reviews, for orders to be discharged earlier than the original timeframe.

[11] Having dealt with [YL] on many occasions over his time before the Youth Court, I concur with Ms Jensen's conclusions entirely.

[12] Before proceeding to make orders, I turn to consider the remaining three offences with which [YL] has been subsequently charged. They arose on 14 and 15 October 2019 and include unlawfully taking a motor vehicle, careless use of a motor vehicle and driving whilst forbidden.

[13] Bearing in mind the time it has taken to get to this point, the Prosecution and [YL]'s Youth Advocate have agreed that the s 38 reports completed on 18 February 2019 by Consultant Psychiatrist, Dr James Gardiner and on 2 July 2019 by Clinical Psychologist, Dr Karmyn Billing can be relied upon in respect of these three charges to similarly conclude that [YL] is unfit to plead.

[14] Having regard to Judge Patel's finding at the s 8A hearing on 16 July 2019, with respect, I agree with his conclusions. Indeed I am fortified in my position about that by the subsequent s 23 report of Ms Jensen.

[15] Accordingly, I find [YL] unfit to plead in respect of the October 2019 charges.

[16] I move immediately to consider his involvement in this subsequent offending, as required by s 10, and note that I am only able to do that because the Prosecution have been so diligent in providing a detailed memorandum setting out very carefully the evidence relied upon to satisfy the Court, on the balance of probabilities, as to [YL]'s involvement in each offence.

[17] Ms Cherrington has confirmed this afternoon that she has had an opportunity to consider this evidence and no challenges are put forward in respect of same.

[18] I am satisfied on the balance of probabilities as to [YL]'s involvement in this offending based on the following findings:

- (i) Between 8.00 pm, Monday 14 October 2019 and 6.00 am, Tuesday 15 October 2019 [YL] stole a vehicle from outside a property in Hillsborough;
- (ii) He gained entry to it by breaking the rear left quarter light and then broke the ignition barrel to start the car;
- (iii) He was alone;
- (iv) At about 6.26 am the vehicle was reported as being driven carelessly towards the Hill Road off-ramp in Manurewa. [YL] was undertaking vehicles, cutting them off and driving above the speed limit in torrential weather conditions;
- (v) [YL] clipped another vehicle and came to a stop on the hard berm. He then got out and made a run for it but was apprehended by the Police;
- (vi) On 1 February 2017, [YL] was forbidden to drive until he had obtained a valid driver's licence. He still does not hold one.

[19] For all of those reasons then, s 10 is satisfied.

[20] I now make the following orders in respect of all 16 offences with which [YL] has been charged:

- (i) Pursuant to s 25(1)(b) CPMIP Act, [YL] is to be cared for as a care recipient under the ID(CCR) Act;
- (ii) Pursuant to s 26 CP(MIP) Act, that care is to be provided at a secure level by [the care centre] in [location deleted];
- (iii) Pursuant to s 46 ID(CCR) Act, the care recipient order is made for a term of 18 months commencing on 6 November 2019 when [YL] is to be transported to [the care centre] by Oranga

Tamariki and physically handed over to support staff at [the care centre]. Until that point, he is to remain in the custody of the Chief Executive of Oranga Tamariki pursuant to s 238(1)(d) Oranga Tamariki Act 1989;

- (iv) To avoid any doubt as to the status of the 16 charges, an order is made pursuant to s 27 CP(MIP) Act staying these proceedings in which [YL] has been found unfit to stand trial.

I M Malosi
Youth Court Judge