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**IN THE YOUTH COURT  
AT HAMILTON**

**I TE KŌTI TAIOHI  
KI KIRIKIROA**

**CRI-2017-219-000184  
CRI-2009-209-000113  
[2019] NZYC 313**

**NEW ZEALAND POLICE  
Prosecutor**

v

**[BQ]  
Young Person**

Hearing: 9 July 2019

Appearances: Senior Constable S Leet for the Prosecutor  
R Swarbrick for the Young Person

Judgment: 9 July 2019

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**ORAL JUDGMENT OF JUDGE N D COCURULLO**

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[1] [BQ] appears before the Hamilton Youth Court. I am concerned about the way that his matters have come before this Court and need to explain that.

[2] There are two work types before me.

[3] The first is an application by Mr Martin, a senior social worker for a declaration that [BQ] has failed to comply with a condition of his supervision order. Mr Martin seeks an interim suspension of that order and a review of [BQ]'s custodial status together with a direction to convene a family group conference and for the conference to consider what orders should be made in substitution of the supervision order.

[4] That application through [BQ]'s youth advocate Mr Swarbrick is not opposed. I now grant the interim suspension of the order and direct the family group conference.

[5] I will return to the substance of that application in a minute.

[6] [BQ] also faces a fresh charge under the Summary Offences Act 1981 from 26 June 2019 that at [location A deleted] knowing that his conduct was likely reasonably to frighten the named complainant threatened to injure that person.

[7] [BQ] today has not denied that charge. The charge is now confirmed with that plea position. It sets out that the victim in the matter was a youth worker at [residential centre deleted]. [The residential centre] is a residential facility in [location deleted] set up to endeavour to rehabilitate young persons who have found to have seriously sexually offended. [BQ] is one of those young people.

[8] It is said that in the courtyard on 26 June [BQ] had uttered some words that if a person continued to look at him he was going to give that person a punch to the face and continued to say that he should have punched the person and given the person two black eyes.

[9] The victim impact statement sets out the victim's position in respect of that.

[10] When [BQ] appeared in Court in [location A] it seemed that the threatening charge was the only matter before the Judge. The Judge remanded [BQ] on bail and

the [conditions] are generic - that he was to live where directed by the social worker and was not to threaten or use violence against anybody.

[11] I infer but do not know as to whether the [location A] Court were aware of the pending declaration proceedings that I have talked about, nor were they aware of the ongoing systemic and significant concerns there had been with [BQ] being at [the residential centre].

[12] If the Court did not know about those matters at the time [BQ] appeared, the Court ought to have known about those matters.

[13] I return to the declaration proceedings that has its starting point in my in fact sentencing [BQ] for those matters in about July of last year. He was given a high end residential supervision order but the Chief Executive had planned that he would remain with [the residential centre] in [location A] to do the residential component before being stepped down to a 12 month supervision order whilst remaining with [the residential centre].

[14] I remind myself of the offending which was not denied. It was offending all from [date deleted] 2017 at [location B deleted] and were charges of sexual violation by unlawful sexual connection x 5 in respect of one female young complainant. The factual outline to the allegations need not be repeated save that the confirmed actus reus from [BQ] involved offending where if he was an adult it was subject to a maximum penalty of 20 years' imprisonment on each charge. As I say, high end sexual offending occurred and I have had occasion to review that situation.

[15] I have received two updated reports. One is a progress type report from [the residential centre] which really augments the useful information Mr Martin has put into the affidavit in support of the declaration that [BQ] is in breach of his supervision order. The other report is a report from [a men's support service] in [location C deleted]. I express my gratitude for the representative of that organisation being here today. He is the tracker for [BQ] and has spoken to me about something of this organisation. The two reports could not be more poles apart if they tried. That is not to disbelieve either report and part of the answer to it may be that [BQ] feels more of

an affinity in [location C] because of the tikanga perspective that that programme brings for him.

[16] The Youth Court works as a process of victims first. That is not to discount that causes of offending need to be addressed and here there is every reason why that does need to be addressed - but it is important to understand that in any bail decision, a Court's primary function is the protection of the community against further offending.

[17] The report from [the residential centre] makes grim reading. What that and the Mr Martin affidavit says is that on a continuum - notwithstanding that [BQ] was effectively in residence at [the residential centre] for about 11 months, that [BQ] was the creator of destructive and violent behaviour, inappropriate behaviour, property damage including smashing up his room on a couple of occasions, anti-authoritarian behaviour and inappropriate remarks and/or gestures towards female staff. In addition to that, the [the residential centre] report recounts of inappropriate writings against females when his room was cleared out upon his exit.

[18] The clear sense I have, despite the 11 months that he has been there, is that little has been achieved therapeutically for him in terms of addressing sexual offending but that [the residential centre] would say that they are not equipped to deal with his explosive and potentially violent behaviour nor of the inappropriate stance he takes towards females.

[19] Despite the 11 months [the residential centre] has taken it upon themselves that he can no longer be with the organisation. A challenge there would have been to put proper supports in with [the residential support centre] to see if he could remain but I suspect from the report that it got so bad, not even that could be countenanced.

[20] When he appeared without the declaration proceedings in [location A] and was given bail, the Chief Executive needed to find a place to put him in and found [the men's support service] in [location C]. They have written a report to me in glowing terms in respect of [BQ]. What they say is that he has settled in very well. He is [details deleted]. I was told that this is primarily a residence for males only, that he

has a tracker with him at all times, that this is an organisation heavily enmeshed with matters tikanga to which [BQ] has affinity for and that [BQ] has at all times been respectful of people and property, shows initiative and is a polite and engaging young man.

[21] It will now be evident to all as to the impasse that I have about this. I observe readily that he has really only been with [the men's support service] for at best about three or four days. It is early days in terms of how his behaviour settles but I am not sure that his behaviour in a living situation is [necessarily] in the issue. The issue for me to address is what risk this young man faces and effectively the decision from [location A] was to place him in the community with little if any redress to endeavouring to rehabilitate him from the sexual offending.

[22] It would also be the hope that having spent 11 months in a specialised programme, some gains had been made but tragically I am told that off the indicators there are 14 points that remain of concern and in fact his risk is seen as the highest risk out as a 'predominant risk' of further sexual offending.

[23] I have a sense that the people at [the men's support service] are good people. They are new to the process in contracting with Oranga Tamariki-Ministry for Children. They seem to be well equipped and certainly have the confidence of [BQ] but I do not understand anyone to tell me that they are a specialist residential facility to treat sexual offending.

[24] The risk staying elevated to predominant risk is a real concern for this Court.

[25] As I indicated to Mr Martin, in the community it is either SAFE as the rehabilitation organisation or Oranga Tamariki will simply need to contract a psychologist to deliver the therapeutic interventions that [BQ] so desperately needs. I do not discount that in the [men's support service] report they spoke of [BQ]'s observation of young females when they were out on a trip but generally the reporting from [men's support service] is very favourable to him.

[26] The affidavit in support of the declaration recommends a s 238(1)(d) order be made. Mr Martin I infer is in two minds about that. In the one hand he sees and appreciate[s] what has been told by the experts in terms of the high risk. On the other hand, I think he sees something in this current placement having a settling effect for this young man and maybe this is a community placement not too dissimilar from his home environment for which a therapeutic intervention can be run.

[27] The answer to this is not easy. The police are strongly opposed to bail. Their thumbnail sketch is that there is jurisdiction to entertain s 238(1)(d). On bail there is likely in their view to be further offending and the risk for further offending is not ameliorated by the reporting out of [the residential centre]. In addition to that they would see a manipulation in the [men's support service] report of [BQ]. But in any event, even if that is not there, what they report of is good manners and social interaction with staff members does not address the high risk opinion given in the [the residential centre] reporting that this Court has to grapple with.

[28] There is a part in this for [BQ] which troubles me. The troubling aspect is that a Youth Court Judge has already granted him bail and he would have an expectation about bail. The change of circumstance might be a lack of appreciation from that Court that was dealing with a fairly low level charge -at the wealth of information I have now, which is the application for declaration, the breaches of the supervision and the risk this young man poses in the view of the report writers. I can only remand [BQ] in custody if I am satisfied that there is likely to be further offending. This is the troubling aspect. I have seen a bail conditions form. It sets out a tight bail structure but I am well aware that that will have no detainment or detention policy within it.

[29] There clearly needs to be a substantive Family Group Conference and one needs to be held quickly. If it is that I remand him in custody, there just needs to be immediately the work done to source psychological intervention for him and for a discussion of a bail option if it is to be [the men's support service] and a quickly held Family Group Conference.

[30] Having considered all matters while it pains me somewhat to revisit effectively the bail decision, on a principle[d] basis looking at this - the risk of further offending

even under a current structure is so great, that the Court must err on the side of prioritising the community at large and at this juncture I intend to remand [BQ] in Oranga Tamariki's custody pursuant to s 238(1)(d). It is my hope that a custody Family Group Conference can work out a bail placement with initiatives of rehabilitation and indeed with conditions that might ameliorate that risk.

[31] For now [BQ] you are remanded in the Chief Executive's custody under 238 (1)(d) with a substantive Family Group Conference and a custody Family Group Conference directed and you are to be back here on 17 July at 3.00 pm for further progress of this matter.

[32] Thank you whānau for your attendance.

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Judge ND Cocurullo  
District Court Judge

Date of authentication: 10/07/2019

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