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**IN THE YOUTH COURT
AT MANUKAU**

**I TE KŌTI TAIOHI
KI MANUKAU**

**CRI-2019-292-000453
[2020] NZYC 214**

**NEW ZEALAND POLICE
Prosecutor**

v

**[RP]
Young Person**

Hearing: 29 April 2020

Appearances: Sergeant D Cooper for the Prosecutor
V Letele for the Young Person

Judgment: 4 May 2020

RESERVED DECISION OF JUDGE S MOALA

[1] [RP] faces the following charges:

- (a) Unlawfully in a building x2;
- (b) Attempted burglary;
- (c) Burglary

[2] He was scheduled for a s 8A hearing under the Criminal Procedure (Mentally Impaired Persons) Act 2003 to determine fitness. I had not read the three health assessors' reports prior to the hearing. Ms Letele had no issues with the reports and agreed with their findings that he was likely to be unfit. The Police filed a memorandum also agreeing with the findings.

[3] Mindful of the delays, I set the matter down for an involvement hearing on 13 May 2020. I reserved my decision on the fitness issue so that I could read the reports and deliver a formal decision.

Legal principles

[4] Section 8A requires me to determine two issues in relation to fitness, based on the evidence of two health assessors:

- (a) Whether the defendant is mentally impaired, and if so, record the finding (s 8A(1)); and
- (b) Whether, on the balance of probabilities, the defendant is unfit to stand trial and record such a finding (s 8A(2)).

[5] "Mental impairment" is not defined in the Act. A broad interpretation has been adopted the Courts and includes conditions other than mental disorder and intellectual

disability such as cognitive disorders, mental impairment caused by degenerative condition and acquired brain injury.

[6] If the defendant does not have a mental impairment, the defendant is fit to stand trial and the proceedings continue in the ordinary way.

[7] If the defendant does have a mental impairment, the court must determine whether the defendant is unfit to stand trial.

Reports

[8] Clinical psychologist Bridget Fleming's report dated 19 December 2020 concluded that the Court was likely to find [RP] unfit to stand trial. I note the following from her report.

[9] In terms of mental impairment, she said:

- (a) He has several possible diagnoses that require further investigation including: psychosis, autism spectrum disorder, foetal alcohol spectrum disorder. In the absence of clear diagnosis, [RP] does not meet the criteria for mental disorder.
- (b) Despite this, [RP] has impaired verbal communication including comprehension and expression which affects his ability to communicate reasonably well. He has verbal comprehension index in the extremely low range and below that of 2% of his same aged peers.
- (c) Problems with his social functioning and understanding will impact on his ability to communicate.
- (d) His working memory abilities are impaired, and this will make it difficult for him to attend to and recall complex verbal information.

[10] In her opinion these difficulties would be considered a mental impairment.

[11] She opined that [RP] struggled with is expressive language; his answers were brief and often no more than three to four words in length. [RP]'s ability to define his charges were reasonably adequate, but as the terms became more abstract, such as defining evidence and in describing the seriousness of different charges, this became more difficult for him. He declined further assessment which could have provided more information as to his ability to understand language. His ability to communicate, particularly in regard to legal terms, deteriorated over the three assessment sessions which possibly reflects a deteriorating mental state. He cannot retain information even when education is provided.

[12] Dr Fleming said he was unable to identify any evidence or defence that could be used to support his defence. His understanding of the need to instruct, work with his lawyer and consider her advice was limited. He would struggle when in a position of having to give evidence in Court. The demands of a JAT would be extremely challenging for him.

[13] Overall, she was of the opinion that he would be unfit to stand trial.

[14] Clinical psychologist Penelope Sender provided a report dated 6 January 2010. She opined that the Court was likely to find [RP] unfit. I note the following from her report:

- (a) [RP] did not meet the criteria for an intellectual disability;
- (b) She was unable to say whether [RP] meets the criteria for mental disorder. She said that [RP] has several very odd behaviours and might meet criteria for an Autism Spectrum disorder and/or a psychotic disorder and this needs to be further explored.
- (c) Despite the diagnostic uncertainty, [RP]'s very odd behaviours and significant deficits in communication, working memory and social interactions are severe enough to constitute a mental impairment.

- (d) [RP] had a very basic understanding of Court processes. While this might be due to his lack of experience in Court, he was not able to articulate his answers to assist in the assessment.
- (e) He was not able to recall information discussed with his Youth Advocated nor was he able to apply information in hypothetical scenarios, even when information was provided. He articulated odd and potentially self-defeating choices. Moreover, he refused to discuss or explain his choices.
- (f) His communication, social interactions, and judgment are considered so poor that Ms Sender does not believe he is able to conduct a defence or to instruct counsel to do so. He would have difficulty following proceedings in Court, even with accommodations such as communication assistants. His responses indicated that he would take a passive role in the Court and he was not able to demonstrate an ability to challenge evidence. She said that he would have significant difficulties if required to give evidence or to follow the course of a defended hearing.

[15] Psychiatrist Dr Craig Immelman and clinical psychologist Kay McCabe provided a report dated 20 April 2020. They said:

- (a) Their examination does not support a diagnosis of intellectual disability.
- (b) They concluded that their examination did not support a diagnosis of any psychotic disorder, and that [RP] does not meet the definition of mental disorder.
- (c) They concluded that [RP] suffers from Foetal Alcohol Syndrome Disorder (FASD) and Attention Deficit Hyperactivity Disorder (ADHD), and that these disorders are a mental impairment.

- (d) They noted that whilst [RP] was able to provide a reasonable account of many aspects of the Court proceedings, it was at a level which indicated a lack of appreciation of the details.
- (e) They concluded that their examination was “not consistent with someone who is able to conduct a defence or to instruct counsel to do so, nor is it consistent with someone who is able to plead, to adequately understand the nature or purpose or possible consequence of the proceedings.”

Result

[16] Based on the three health assessors’ reports, I am satisfied that [RP] has a mental impairment, namely, Foetal Alcohol Syndrome Disorder (FASD) and Attention Deficit Hyperactivity Disorder (ADHD).

[17] As a consequence, his presentation, combined with his diagnosis means that [RP] is, on the balance of probabilities, unfit to stand trial.

[18] I record those findings in relation to all of his charges. I confirm the involvement hearing for 13 May 2020.

Judge MJ Moala
District Court Judge

Date of authentication: 05/05/2020

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.