EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].



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**IN THE YOUTH COURT**
**AT CHRISTCHURCH**

**I TE KŌTI TAIOHI**
**KI ŌTAUTAHI**

**CRI-2020-209-000205**
**[2020] NZYC 399**

**NEW ZEALAND POLICE**
Prosecutor

v

**[FM]**
Young Person

Hearing: 18 August 2020

Appearances: Sergeant G Nilsson for the Prosecutor
A James for the Young Person

Judgment: 18 August 2020

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**MINUTE OF JUDGE D C RUTH**

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[1] [FM] is a young person facing a number of charges in the Youth Court in Christchurch. Those charges are that on [date deleted – date 1] he intentionally damaged a property of [the victim charitable trust]. On the same date he also damaged a wall of that institution and on the same day damaged a printer also belonging to [the victim]. On [date 1] he is also charged, that knowing his conduct was likely reasonably to frighten [the victim], threatened to damage the property of that institution, namely some chairs and tables.

[2] Each of those charges are Summary Offences Act charges and carry a maximum of three months' imprisonment, therefore to be regarded as not trivial but on the other hand at the lower end of the criminal calendar.

[3] He also faces though a charge of theft of a motor vehicle, again the property of [the victim]. Those charges were not denied.

[4] The summary of facts records as follows: that [FM] is currently under the care and protection of Oranga Tamariki and was residing, at that time at least, at [the victim's] address in [location deleted – location A]. The wilful damages arose at around 2 o'clock or just after on [date 1] last, where there was some difficulty over lunch arrangements. It is alleged he took a chair, throwing it down a hallway and then picked up a speaker and threw it at the wall, causing damage to it. At 2.15 that day he was sitting in the driver's seat of a Hyundai vehicle in the driveway of the [location A] address. He was revving the engine and threatened to take the car. A social worker attempted to remove the keys from the ignition. He grabbed her hand to stop her and then reversed down the driveway. He struck the fence of the property, scraping multiple panels on the passenger's side of the vehicle and breaking the side mirror from that vehicle. He drove up and down the driveway several times in that vehicle before driving away once police had been called. At about 3 o'clock that same day he was observed driving that vehicle on Breezes Road in Christchurch . He was stopped and [FM] was the driver.

[5] The vehicle is the property of [the victim], valued at $15,000. He had no permission to take it and when spoken to by police he agreed that that was so.

[6] In relation to the other matter of wilful damage and behaving threateningly, at about six in the evening of [date 1] [FM] was released on police bail into the care and protection of [the victim's] staff at the [location A] address. That arose from the charges that I have just read the summary for. At about 6.20 that evening [FM] was at the [location A] address and became aggressive and argumentative in relation to bail conditions imposed upon him. He was throwing various household items around the living and kitchen area. He adopted a fighting stance with his fists clenched and began verbally abusing and trying to intimidate the social workers. During this, numerous household and food items had been thrown over the living and kitchen floors. He continued into the office, where he knocked over a filing cabinet, damaging a Canon printer which also is the property of [the victim] and valued at $200. He was arrested by police, a short time later.

[7] When [FM] appeared in the Court with Mr James' assistance, he did not deny the charges as I have indicated and a family group conference was, as is the normal course of events, ordered. There was no prospect available for him in terms of living arrangements, given the offending was against the then caregiver and there was a minute provided by the presiding Judge ordering a remand under s 238(1)(d) of the Act.

[8] On 13 August, again Mr James appeared and informed the Court that a family group conference had not then been convened. There was talk about a transfer to the [location deleted – location B] Youth Court because it was said there were substantial numbers of [FM]'s whānau in that area. However, it was a matter that concerned His Honour Judge Lynch, who was the presiding Judge and he provided what I might call a rather "tersely" worded minute principally for the benefit of Oranga Tamariki.

[9] He recorded that in relation to the suggestion that there be a transfer to [location B], he said he would not do that. He wanted Oranga Tamariki to do what they had been directed to do, which was to hold a family group conference including a custody family group conference, given the remand status imposed earlier when he first appeared.

[10] His Honour was of the view that this had to be treated urgently because of the remand status. His Honour noted that the charges were not, in his words, "the most serious in world" and I have covered that at the start of this minute. He noted however there was a more serious charge under the Crimes Act 1961 but on any view of it, His Honour said and this could hardly be seriously challenged, that none of those should on the face of them require a remand in to residence and it seems to me it was simply a culmination of circumstances which caused that, rather than it being an indicator of some risk factor pertaining to [FM] or the lack of any other family source, they being, further away.

[11] The net result of course is [FM] at aged 14, has been in custody now for 18 days. That would be a 36-day remand for an adult in custody or the equivalent prison sentence in relation to that time and, for a 14 year old, I think that is quite unacceptable.

[12] His Honour Judge Lynch then gave a very short remand to today to see what progress might be made.

[13] Today, I have two main documents. They are firstly, a memorandum from Mr Barr, who has spoken to me today, and he indicates that the family group conference was not held within the timeframes. He said he had spoken to his colleague in [location B], and her advice was that she had been in contact earlier in August with Mr James and the police and the victims and the Youth Court to advise them she would not be able to complete the family group conference within the timeframes, and it was her belief the matter should be transferred to [location B]. Her view, as presented by Mr Barr, is that the practice in [location B] is to seek agreement to a delay through a series of emails, as she has done here. The reason that she has given to Mr Barr at least, for not holding the family group conference was this ongoing theme that [FM] has a large family unit and more time was needed to ensure they were all able to attend a family group conference. Apologies have been rendered.

[14] In relation to Mr James' position, he has chronicled the course of events here. He notes that at the time of the first appearance there was no bail application made because there simply was not an alternative address available at that time. Mr James notes that [FM] is also subject to a s 101 custody order in favour of the Chief Executive

of Oranga Tamariki. The expectation that Mr James had, and no doubt others did too, was that the family group conference would simply follow the normal course and be convened within the statutory timeframes.

[15] The provisions of the Act, particularly s 249, has a series of provisions which require the family group conference to be convened no later than seven days after the making of the order directing the conference. For clarification of course, that does not mean the conference has to be held in that timeframe but must at least be convened.

[16] It is all the more urgent, where a person in [FM]'s circumstances and, given his age, has been remanded in a custodial situation. And so there must be special reasons that the family group conference not be completed seven days after it has been convened.

[17] Here there has been no convening of the family group conference, let alone completion of it, and until a short time ago in this Court there was no indication as to when there might be a conference. I am now told that there is a suggested date but that, at the moment, does not sway my view about these matters.

[18] I am grateful for Mr Barr's input into this and, as was the case with Judge Lynch, I do not suggest any prevarication or failure to comply with the Act on the part of Oranga Tamariki personnel who are present in the Christchurch Youth Court today.

[19] In Mr James' submissions, he indicated that there had been no contact at all but Mr James today tells me that [FM] did receive one phone call from a social worker yesterday. That however does not progress the matter that is currently under my consideration.

[20] Mr James points out, and I agree with him, that a simple request to transfer proceedings does not of itself overcome the statutory timeframes in relation to the convening and holding of a Family Group Conference and if it was intended that such be the case, then there ought to have been a formal application setting out the reasons for delay, bearing in mind they had to be special reasons. I point out now for the benefit

of the [location B] Oranga Tamariki, by way of disabusing any notions they might have, that it is simply not satisfactory despite what might be their local practice to simply undertake a number of emails or other sorts of correspondence with interested parties such as youth advocates, prosecution or others to achieve some delay. The reality is that these decisions are for the Court and it may be that parties do agree and the Court could take that in to account, but it is not good enough simply to rely upon an exchange of correspondence between various of the players involved in this case to justify this sort of delay that has occurred here.

[21] Mr James has referred me to the case of *Police v V & L*.[1]

[22] The Act, of course, has undergone a number of adjustments since 2006 but the principles that the High Court Judge enunciates here seem to me to be of equal applicability to the amended legislative provisions.

[23] His Honour talks about the extent of the delay and the longer the delay he said, the more serious will be the non-compliance. Secondly, the reasons for the failure within time must be explored and that negligence or gross inefficiency on the part of the youth justice co-ordinator may call for a condign response. If it is however a mere matter of oversight, or the effects of a third-party intervention, this may be looked at on a more benign basis.

[24] The next matter raised by the High Court is that the consequences of non-compliance must be examined including the seriousness of the offending and the personal circumstances of the young offender. His Honour points out that if there is no special reason advanced for not holding the family group conference within the statutory timeframes, then there should be a response that is appropriate to those circumstances. Special reasons relate to not completing a family group conference but here it is a degree worse because there has not even been a convening of such a family group conference.

[25] Another matter that is touched on by His Honour is the seriousness of the offending which is why I took some time to delineate the offending and where it sits

[1] *P v V & L* [2006] NZFLR 1057, (2006) 25 FRNZ 852.

in the calendar of criminal offending. Here I regard the offending as being something of a mix of minor offending and one charge which might be regarded as being more serious. However, it does not seem to me that the offending looked at as a whole is of such a nature as to render it inadvisable and inappropriate to dismiss the charges, if that is the point I reach.

[26] The position seems to me to be this. There was signalled early on a delay in the convening of a family group conference for reasons which I do not find are special. They are really makeweight reasons in my view. There was no real reason why arrangements could not be made for there to be at least a custodial family group conference arrangement to be made urgently. It was a matter of urgency because this boy is 14 and found himself in a secure remand situation.

[27] I also am of the view that the attitude of the [location B] Oranga Tamariki personnel is far from satisfactory. It is almost disrespectful to the Court to simply suggest that the family group conference could not be held because there had been an exchange of correspondence but with various other parties, not including the Court. I have mentioned this earlier in the body of this minute.

[28] My view, and I have some sympathy for the prosecutor here because there are identifiable victims, is that there are times when the overall justice of the case, having regard to the principles and purposes of the Oranga Tamariki Act 1989 requires that the Court take a stand that is commensurate with the circumstances it confronts. This is one of those rare occasions where, in my view is that the wellbeing and circumstances of the young person must prevail.

[29] I was anxious that if I made such a finding that I should not then contemplate [FM] simply being released, as it were, on to the street but I am assured and take some comfort from the fact that there is the dual status pursuant to s 101 and that there will be adequate arrangements for [FM]'s care, pending him being transported down to [location B] to his family.

[30] It may be that [FM] walks away from this thinking he has got away with something. I hope in time he will come to understand that this was really a matter of

weighing competing interests and that, in the end, I have taken the view that justice requires that I dismiss these charges.

[31] They are now dismissed for the reasons I have given.

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Judge DC Ruth
District Court Judge

Date of authentication: 19/08/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.