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**<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>**

**IN THE YOUTH COURT  
AT MANUKAU**

**I TE KŌTI TAIOHI  
KI MANUKAU**

**CRI-2020-292-000131  
[2020] NZYC 357**

**NEW ZEALAND POLICE  
Prosecutor**

v

**[MW]  
Young Person**

Hearing: 10 July 2020  
Appearances: B Colville for the Prosecutor  
A Ulu for the Young Person  
Judgment: 10 July 2020

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**ORAL JUDGMENT OF JUDGE I M MALOSI**

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[1] [MW] appeared today by way of audio visual link from [a youth inpatient service] in [location A] for his disposition hearing under the Criminal Procedure (Mentally Impaired Persons) Act 2003. He was accompanied by Mr [Blanchard], the manager of that unit.

[2] Once I advised [MW] what my decision was, he elected to go back to the unit and go about his business. Ideally, [MW] would have been brought to Court today or this matter transferred to the Porirua Youth Court for disposition, but given the report that was before me it seemed counter-productive to disrupt [MW]'s routine and transport him up and down the country, and it was too late to make alternative arrangements.

[3] I see that on 18 May 2020 [MW] was found unfit to plead pursuant to s 8A in relation to three charges of burglary and one of escaping. The reports submitted for the purposes of that hearing focussed on different issues. As held by Judge T Clark in her decision of 18 May 2020:

Ms Fleming concentrated on cognitive and adaptive functioning, whereas Dr Gardiner concentrated on mental health issues. I could not really get a clear appreciation based upon the reports of exactly what was causing the unfitness, although I accept that [MW] is unfit.

[4] On 10 June 2020 the Court was satisfied as to s 10 of the Act in relation to [MW]'s involvement in all of the offences and enquiries were directed under s 23(1) and (5) to determine the most suitable method of dealing with him under either s 24 or s 25.

[5] Worth noting at this point is that [MW] and his siblings are all subject to s 101 custody and s 110(2)(b) additional guardianship orders in favour of the Chief Executive of Oranga Tamariki. Those orders were made on 18 April 2016, off the back of concerns in relation to the children's neglect and exposure to family violence, physical abuse, parental drug and alcohol abuse, and criminal activity.

[6] [MW] has spent time at the [two residences — names deleted] Care and Protection Residences, and more recently the [name deleted] Youth Justice Residence.

[7] A review of plan was filed in the Family Court in April of this year, but at that time he was living at home in [location B] with his mother and was required, amongst other things, to engage with Whirinaki. Clearly, things went off track. An updated review of plan is required.

[8] Dr [Hodges], a Consultant in Adolescent Forensic Psychiatry, at [the youth inpatient service] has provided a report in respect of [MW] pursuant to s 23 CP(MIP) Act. He ultimately recommends that the Court make an order pursuant to s 25(1)(a) that [MW] be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

[9] Mr [Blanchard] has confirmed that [MW] is currently subject to a s 30 inpatient order and has been for the past two or three weeks. I am obliged for his assistance in explaining that upon making a further order under the MH(CAT) Act, pursuant to the CP(MIP) Act, the existing s 30 order will automatically cease to exist.

[10] Dr [Hodges] reports that:

[MW] was first referred to mental health services in 2016 following concerns that his mental health had deteriorated and that he was becoming more aggressive, violent, and threatening. He was also noted to be strangling himself when distressed to the point where he had passed out. He had further contact with mental health services in [month deleted] 2019 during which time he had been pacing the streets, had apparently been wielding a machete, and had misinterpreted events around him. Some sexually inappropriate behaviour was noticed in the emergency department when he was brought in. He admitted to some drug use at the time.

[11] Indeed, I note that drug and alcohol abuse has been an issue for [MW] since he was 11 years old. Furthermore, at one point when he was admitted to the Child and Family Unit at Starship Hospital it was alleged he had engaged in an attempted sexual violation of another patient who did not subsequently make a formal complaint. I am unsure whether this was the incident Dr [Hodges] referred to which occurred in the emergency department or something different. In any event, upon discharge from Starship in [mid-2019], [MW] was made subject to a s 29 community treatment order. It eventually lapsed when [MW] refused to engage in the review process, but he did agree to continue with the depo injection.

[12] Returning to the present situation, in Dr [Hodges] opinion [MW] is suffering from a mental disorder in the form of a schizophrenic illness. He comes to that conclusion based on [MW]'s clinical presentation which included paranoia and auditory hallucinations. No issue is taken by any party with that diagnosis and the Court has no basis upon which to take a different view.

[13] Although intellectual disability has been queried in relation to [MW] in the past, at this stage Dr [Hodges] does not consider he meets the criteria for consideration under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. I note that [MW] had an intelligence assessment in December 2016 which resulted in a full-scale IQ of 71, although there were some inconsistencies in that test. Ms Fleming, a Clinical Psychologist, was unable to fully complete some of the tests that would ordinarily be done in respect of cognitive functioning.

[14] Working with what is before the Court however, alongside the fact that [MW] does not appear to have engaged in any form of formal education in the past four years apart from that which has been provided to him now in his current placement, I am satisfied that there is no jurisdiction for the Court to make an order that [MW] be cared for as a care recipient under the ID(CCR) Act.

[15] [MW] has been at [the youth inpatient service] since 22 May 2020. He is being effectively treated with medication in the form of olanzapine depot, 150 milligrams fortnightly, and olanzapine oral, 10 milligrams daily. It is fair to say that although [MW] reported to Dr [Hodges] that he feels he has improved since being in hospital, he did not feel that the medication had been helpful. The evidence suggests otherwise. I note that [MW] has presented no management problems whilst at [the youth inpatient service] of any great concern at least, which is in contrast to some of his time at [the Youth Justice Residence].

[16] A discharge plan has not yet been formulated for [MW]. That will be critical given his concerning care and protection history and ongoing mental health issues. Until that is in place, I concur with Dr [Hodges] view that further rehabilitation and support is required, and the best setting for that to occur is in the hospital. It is not anticipated that [MW] will remain in hospital for a protracted period. Mr [Blanchard]

has predicted around four months, but the Court will certainly not hold him to that prediction because as we all know with mental health the situation can change unexpectedly.

[17] When the time comes for [MW] to be discharged it may be that he goes out on leave subject to the provisions of the inpatient order, but I acknowledge the logistics of that might be insurmountable given that [MW]'s home is in [location B] and that is where he will want to return.

[18] Of course, that remains the key question for [MW]; whether or not there is a realistic possibility of him returning to his mother's care and, if so, is that a viable, sustainable, option? So far it has not proved to be. Whenever [MW] leaves [the youth inpatient service], Oranga Tamariki will need to be right across that, as the legal parent and additional guardian of this young man. The Chief Executive has a responsibility to ensure that.

[19] For all of these reasons then, I make the following orders:

- (i) Pursuant to s 25(1)(a) CP(MIP) Act, an order that [MW] be treated as an inpatient under s 30 Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (ii) Pursuant to s 27 CP(MIP) Act, an order staying all charges currently before the Youth Court, namely three of burglary and one of escaping.

[20] The care and protection Social Worker is directed to file an updated review of plan within 21 days.

[21] Lawyer for Child is to report within seven days thereafter.

[22] The Family Court file is to be placed before a Judge in chambers in four weeks for further directions to be made in relation to that review.

[23] Given [MW]'s situation, this file must not be allowed to drift. A copy of this decision should also be placed on the Family Court file and sent to Lawyer for Child, Mr Litchfield. It may be – and I put it no higher than that – that Mr Ulu wishes to initiate a discussion with Mr Litchfield about whether or not going forward he continues to represent [MW] in the Family Court.

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Judge I M Malosi  
District Court Judge

Date of authentication: 26/07/2020

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