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**IN THE YOUTH COURT
AT AUCKLAND**

**I TE KŌTI TAIOHI
KI TĀMAKI MAKAURAU**

**CRI-2018-204-000200
[2020] NZYC 438**

THE QUEEN

v

[FG]

Hearing: 20 August 2020

Appearances: H Clark for the Crown
M Winterstein for the Young Person

Judgment: 20 August 2020

ORAL JUDGMENT OF JUDGE P J SINCLAIR

[1] [FG] faces one charge of aggravated robbery. [FG] was facing two other charges of aggravated robbery and one unlawful taking charge. Those three charges were [recently] dismissed after a pretrial hearing before his Honour Judge Fitzgerald. Today, the Crown seeks leave to withdraw this charge. Ms Winterstein seeks that the charge be dismissed.

[2] By way of background, all of the charges were initially laid in November 2018. The aggravated robbery charge before me allegedly occurred on 16 September 2017. Because of a procedural irregularity in relation to a pre-charging family group conference, all four charges were withdrawn and subsequently re-laid on 30 September 2019.

[3] A delay application was heard in respect of all of the charges but dismissed. As I have mentioned, the two aggravated robbery and unlawfully taking charges were dismissed by his Honour Judge Fitzgerald on 20 July this year. They were dismissed after a pretrial hearing involving a challenge to the admissibility of DNA evidence and issues in relation to [FG]'s interview, specifically admissions he made during that interview.

[4] The remaining charge of aggravated robbery before me was not dismissed at that point, because the Crown indicated it also had fingerprint evidence, over and above the other evidence involving the other three charges.

[5] Ms Clark advises that the police had [FG]'s fingerprints relating to an earlier burglary, which he admitted, and was subsequently discharged under s 282. Ms Clark advises the fingerprint memorandum indicated that [FG]'s fingerprints were on items linking him with this aggravated robbery charge. That fingerprint evidence has been disposed of, because the burglary charge has concluded. So, the Crown would require a search warrant to take [FG]'s fingerprints in order for them to proceed with the prosecution of this aggravated robbery charge.

[6] A decision has been made by the police not to seek a search warrant and, therefore, the Crown are not in a position to fully prosecute this matter. The matter

has been set down for a two-day judge alone trial on 25 and 26 August; that is, next week.

[7] In my view, the charge should be dismissed, for the following reasons:

- The Crown would not be ready to prosecute the charge on 25 and 26 August, because of the issues I have addressed. The Crown would be required to seek an adjournment. Without hearing the full facts, it is difficult to determine whether an adjournment would be granted but, in my view, it would be unlikely, firstly, given the length of time this matter has been on foot and, secondly, the fact that the police omitted to take fingerprints from [FG] at the time of the alleged incident. I anticipate that Ms Winterstein would vehemently oppose an adjournment. In any event, as I have said, in light of the recent delay application and the length of these proceedings, in my view it is unlikely an adjournment would be granted.
- [FG] has been subject to the Youth Court processes for some time. As mentioned, this incident allegedly occurred on September 2017. I understand he has not offended since this date, and has not offended whilst on bail.
- In my view, given all of these circumstances and in the interests of justice, it would be inappropriate not to dismiss this charge.

[8] The charge is dismissed.

Judge P J Sinclair
District Court Judge

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