

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

**This judgment cannot be republished without permission of the Court. Publication of this judgment on the Youth Court website is NOT permission to publish or report. See: [Districtcourts.govt.nz](http://Districtcourts.govt.nz)**

**NOTE: NO PUBLICATION OF A REPORT OF THIS PROCEEDING IS PERMITTED UNDER S 438 OF THE ORANGA TAMARIKI ACT 1989, EXCEPT WITH THE LEAVE OF THE COURT THAT HEARD THE PROCEEDINGS, AND WITH THE EXCEPTION OF PUBLICATIONS OF A BONA FIDE PROFESSIONAL OR TECHNICAL NATURE THAT DO NOT INCLUDE THE NAME(S) OR IDENTIFYING PARTICULARS OF ANY CHILD OR YOUNG PERSON, OR THE PARENTS OR GUARDIANS OR ANY PERSON HAVING THE CARE OF THE CHILD OR YOUNG PERSON, OR THE SCHOOL THAT THE CHILD OR YOUNG PERSON WAS OR IS ATTENDING. SEE**

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

**IN THE YOUTH COURT  
AT PORIRUA**

**I TE KŌTI TAIOHI  
KI PORIRUA**

**CRI-2018-291-000040  
[2021] NZYC 117**

**NEW ZEALAND POLICE  
Prosecutor**

v

**[JD]  
Young Person**

Hearing: 18 March 2021  
Appearances: Constable A Alexander for the Prosecutor  
J Bonifant for the Young Person  
Judgment: 18 March 2021

---

**ORAL JUDGMENT OF JUDGE J A R JOHNSTON**

---

[1] [JD], you are 16 years old, and you are here today for the Youth Court to consider whether you are entitled to early release from your supervision with residence order that was imposed by her Honour Judge Kelly on 14 January this year.

[2] The second matter before the Court today is that if you were to be released early, the imposition of a supervision order for a period of four months, which is recommended by Oranga Tamariki.

[3] I have before me two reports; one, a report under s 314 of the Oranga Tamariki Act 1989 from Norman Pati, residential case leader, and that deals with early release matters.

[4] Second, I also have a plan under s 335 of the Oranga Tamariki Act 1989 for implementation of a proposed supervision order for four months. That has been presented by Mr Sakaria and supervisor Ms Pritchard, dated 16 March.

[5] The sentence originally imposed, if there was no early release, would run until 13 May.

[6] The test for whether someone is eligible for early release is set out in s 314 of the Oranga Tamariki Act 1989. What that says is that the Court must, in certain cases, release a young person from custody before expiry of a supervision with residence order, but that is on the basis that the Court is satisfied that during the period that the young person has been in custody, that;

- (a) the young person has neither absconded nor committed any further offences; and
- (b) either the young person's behaviour and compliance with any obligations placed on them by the plan prepared, have been satisfactory or that any misbehaviour and non-compliance has been minor; and
- (c) the young person has complied satisfactorily with any conditions of the order, that they have undertaken any specified programme or activity.

[7] From the report received from the residential case leader, Mr Pati, there has been no absconding, so that is good. However, it is also clear that you have been involved in what Mr Pati describes as being the perpetrator of a 'serious unprovoked assault' on another young person on [date 1], where it is said that you delivered a kick to the side of the head of the victim while they were seated. Now that incident led to some consequences for you. You were admitted into secure care and further, I am told that the incident has been referred to the police for investigation. That referral was done some days later, on 9 March, so just over a week ago, for further action by the police. I am also told that you are currently awaiting a police interview about that matter.

[8] The report also, in looking at s 314(1)(b), says that you have been displaying behaviours that have been a mixture of positive and some negative incidents. The report says that whilst you have shown some improvement in your behaviour, you have been involved in some misbehaviours, not only the assault allegation that I have referred to but also threatening behaviour and that you have in fact been admitted into the secure care unit on two occasions. The report discloses that there was an incident on [date 2], so the day before the other allegation on [date 1] and the details of that have been set out in the report from Mr Pati. That showed that there was a heated exchange between you and another young person, that you ignored staff in their efforts to attempt to mediate between the two of you and when it was your turn to speak, that you used the chance to make threatening comments towards everyone involved in the mediation process. Due to your unwillingness at that stage to actively engage in a mediation process and what is reported as your continuation of threatening and inciting comments towards others, you were admitted to secure care for threatening behaviour.

[9] I note that whilst in secure care on the first occasion that you completed some secure care problems which are set out, that is the chain of events, the reviewing admission to secure and a threatening behaviours programme and were discharged later that same day.

[10] The report from Mr Pati then goes on to refer to the incident on [date 1]. In that particular situation, two others had been admitted to secure care for assaulting others and it was whilst that was happening that it is said that you have gone on to

assault the other young person by kicking that person in the face whilst they were not looking. The report tells me that you were restrained by staff and admitted to the secure care unit for that allegation of assault.

[11] You completed several programmes whilst you were in secure care for this second incident. Those are set out and that is very positive. I accept the submission made by Ms Bonifant in that regard, that you have taken responsibility and indeed you have accepted that you were involved in that assault.

[12] You served a seven-day secure care retention for what is described by Mr Pati as the seriousness of your part in the incident and the 'vicious assault' on the young person that again, according to Mr Pati, was 'unprovoked'. Mr Pati also refers to the positive aspects of you taking full ownership for your part and that you had an opportunity to reflect on your actions and confirms that once you had completed the programmes, that you were discharged from secure care on 9 March which of course is the same day that the complaint was made to the police.

[13] Whilst the report from Mr Pati says that overall, for the most part of your supervision with residence order, you have behaved in a manner that is satisfactory to the conditions of the order, he reports that this, however, has significantly been impacted and undermined by the two recent secure admissions, including the assault that I have referred to that is under police investigation.

[14] The report then goes on to say that most of your other actions have been satisfactory and that is very positive to read. That includes matters involving literacy and numeracy, managing yourself, your transition, an interim plan, health and physical education and an external programme where you sat your [course with a training centre] and achieved both written and practical assessments. You have also been encouraged to participate in supervised vocational opportunities.

[15] The summary from Mr Pati is that whilst your progress through the residence order to date has been satisfactory in attitude and when interacting with others and that you have settled throughout the majority of the supervision order, he reports that you

have let yourself down by being admitted to secure care for the assault and serving a seven day secure care retention.

[16] He goes on to say that whilst you deserve credit and recognition for your achievements, the incidents of serious behaviour displayed by you and the potential new offending referred to, constitute what he describes as a serious breach of expectations.

[17] Ms Bonifant argues today that the s 314 criteria have been made out. She submits that the fact that you have not been formally charged means that s 314(1)(a) has not been established, that is that you have not committed any further offence or offences. She also submits that it is relevant that you agreed to the extended secure stay, initially three days, extended to seven days, because you wanted to think things through. You have accepted your involvement in the assault. You have accepted that you lost your temper, and this is not something that you are normally known for, and the police have also expressed that view. The charges before the Court are not charges involving violence.

[18] She submits on your behalf that with the apology and the tensions that usually occur at residence, that you have really done everything that you can do and that it is important that the Court consider the spirit of the Act as well as the specific legislative requirements. She submits that you should be given credit for trying to put things right and that in the circumstances, the Court should exercise its discretion and grant early release.

[19] The police oppose the application. They confirm that the allegation of assault matter was only reported to them on 9 March. It is still under investigation. It is likely that if the matter is to proceed, it will be by way of intention to charge. The police also confirm that you have not been spoken to yet by police. The police position is, however, that the assault allegation is a serious matter involving an unprovoked kick to the head of an unsuspecting victim and that as a result, despite some of your compliance in other areas, that s 134 is clear and that you have either committed a further offence or alternatively have engaged in misbehaviour that is not minor. That means you are not therefore eligible for early release as a result of your actions.

[20] Oranga Tamariki have briefly addressed me today. They seem to be neutral, apart from confirming that [JD] has expressed remorse for his actions.

[21] Having weighed all of the matters up, s 314 of the Oranga Tamariki Act 1989 is clear. The Court must release a young person by way of early release if it is satisfied that during the period that the young person has been in custody, of the matters set out in paragraphs (a), (b) and (c). All of those are required.

[22] I do not accept the submission made by Ms Bonifant that you have not committed any further offences. In my view, whilst it is an allegation, it has been referred to the police and further action is likely, albeit intention to charge. I have considered the strength of the evidence that is before me and that is included in a copy of the report to the New Zealand Police that has been attached to Mr Pati's report. The incident was witnessed by residence staff. It occurred in the residence and involved another resident. I also consider the admission made today by [JD] and that he has very responsibly expressed remorse and apologised for his actions. In these circumstances however, I consider that the serious assault allegation does, in these circumstances as presented to me today, amount to a further offence being committed by [JD] during the period that he has been in custody, occurring only a short period of time before this hearing.

[23] Even if I am wrong in that regard, I also consider that s 314(1)(b) has also not been complied with. In my view [JD]'s misbehaviour and non-compliance that has been referred to is not minor. The two occasions that he has had to go to secure care, in my view, are serious, the second being considerably more serious than the first the day before.

[24] Accordingly, I consider that the grounds in s 314 for early release have not been made out.

[25] In this regard I also rely upon the decision of the then Principal Youth Court Judge in the case of *Police v R N*.<sup>1</sup> I agree with the Principal Youth Court Judge that the conditions in s 314 required to be met for early release are mandatory. In this

---

<sup>1</sup> *Police v R N* [2015] NZYC 564.

instance, as they have not been met by [JD], I have no option but to rule that your early release pursuant to s 314 is refused.

[26] That brings us to the supervision order. Because there is no early release the consideration of a supervision order will need to be adjourned to a date before the end of the supervision with residence order and an update social work report now ordered to be considered at that point.

[27] In the circumstances I am adjourning the matter through to 13 May at 10am. That will be for an update report from the social worker to consider the proposed supervision order, intended to follow the supervision with residence order.

---

Judge J Johnston  
Youth Court Judge

Date of authentication: 06/04/2021  
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.