

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

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

**IN THE YOUTH COURT  
AT WHANGAREI**

**CRI-2021-288-000021**

**IN THE FAMILY COURT  
AT WAITAKERE**

**FAM-2021-090-000334**

**[2021] NZYC 254**

**NEW ZEALAND POLICE**

Prosecutor

v

**[RL]**  
Child

Date: 15 June 2021

Appearances: No appearances were made

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**MINUTE OF JUDGE A J FITZGERALD**

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[1] [RL], who is thirteen, faces a charge of assault with intent to rob. That offence is alleged to have been committed on 26 May 2021. [RL] is next due to appear at the Whangarei Youth Court on 25 June 2021 in relation to that charge.

[2] On Friday 11 June 2021 [RL] appeared before me in the Auckland Youth Court having been arrested on a warrant. I remanded him to the Whangarei Youth Court on 25 June 2021 and made an order regarding his custody under s 238(1)(d).

No bail application was made because there was no known suitable address. I therefore directed that there be an FGC before the next youth court date to look at bail options for [RL].

[3] Later in the day on 11 June 2021, Constable Paki applied to the Waitakere Family Court for a Care and Protection Order (on notice) and without notice for a s 78 Interim Custody Order in relation to [RL]. Her Honour Judge Pidwell, being aware of the situation in the Youth Court, directed that the application for Interim Custody Order proceed on notice and adjourned those proceedings to come before me at 3.45pm today 15 June 2021 in the crossover list. When the matter was called Constable Paki was not present although he had been here earlier in the day apparently.

[4] The Family Court coordinator, Shirley Davis, has spoken to me because she had been unable to find a suitably qualified lawyer to represent [RL] in the family court proceedings at such short notice.

[5] This is another example of what seems to have become a common practice by the police in relation to children suspected of offending; that is laying a charge in the youth court and either at the same time, or in close proximity, also bringing proceedings before the Family Court relying on the grounds in s 14(1)(e). As I have been explaining in the other cases coming before me that approach thwarts the exercise of the pushback in s 280A; that is, if the application Constable Paki filed on 11 June had come before Judge Pidwell as a result of a Youth Court Judge exercising the pushback, the charge before the Youth Court would be deemed discharged. I do not think I can deem the charge discharged in this situation, but it certainly raises a question as to whether the charge before the Youth Court should now be discharged given the police decision to apply to the Family Court. I should add that the application to the Family Court also relies on other offending that is not serious enough to bring before the youth court.

[6] At the moment what I am doing is adjourning these family court proceedings to the crossover list on 13 July 2021 at 2.15pm back before me.

[7] At this stage it is not clear exactly where [RL] will be living. In the interests of achieving some coordination of what is going on I will appoint his youth advocate, Julie Young, in Whangarei to also be his lawyer in relation to the Family Court proceedings. She is very experienced both as a youth advocate and as a lawyer for children and so will look after [RL] in regard to both proceedings well. If [RL] ends up staying in Whangarei, she would be able to continue representing him up there. If [RL] ends up living in the Auckland region then we can sort out the necessary arrangements then.

[8] Ms Young is welcome to join the conference on 13 July by telephone or VMR.

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Judge AJ Fitzgerald  
District Court Judge

Date of authentication: 16/06/2021

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