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**IN THE YOUTH COURT  
AT AUCKLAND**

**I TE KŌTI TAIOHI  
KI TĀMAKI MAKĀURAU**

**CRI-2020-204-000034  
CRI-2019-204-000224  
[2021] NZYC 364**

**NEW ZEALAND POLICE**  
Prosecutor

v

**[HN]**  
Young Person

Hearing: 16 August 2021

Appearances: Sergeant D Robertson for the Prosecutor  
M Winterstein for the Young Person  
Dr J Nanai Lay Advocate

Decision: 16 August 2021

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**SENTENCING DECISION OF JUDGE A J FITZGERALD**

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## INTRODUCTION

[1] [HN], who turns 18 [shortly], has been before the Youth Court for 23 offences he committed between March 2019 and June 2020.

[2] The charges are, eight for aggravated robbery, three for assault with intent to rob, one for common assault, one for assaulting a police officer, one for aggravated assault, one for demanding with menaces, one for unlawful possession of a firearm, two for unlawfully getting into cars, one for unlawful use of a car, two for causing intentional damage and two for escaping from custody.

[3] [HN]'s first day in Court was [date 1] 2019 and so he has been before the Court for more than two years and two months. In that time, amongst other things, he has:

- (a) Spent 230 days (about seven and a half months) in secure custody;
- (b) Done more than 300 hours community work;
- (c) Successfully completed Family Group Conference ("FGC") plans;
- (d) Been on strict bail conditions (including, at different times, electronically monitored bail and supported bail) for about 17 months without ever breaching when he was in a safe, supportive placement;
- (e) Been in paid employment for about two months;
- (f) Appeared before 12 different Youth Court Judges over the various stages of the proceedings as well as a Community Magistrate and a District Court Judge.

[4] On 16 August 2021, I discharged four of the charges under s 282<sup>1</sup> of the Oranga Tamariki Act 1989 ("the Act"), made reparation orders on three more charges and discharged the remaining ones under s 283(a)<sup>2</sup> of the Act.

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<sup>1</sup> A s 282 order deems the charge to never have been laid; it is a complete and unconditional discharge.

<sup>2</sup> A s 283(a) order is a discharge without further order or penalty.

[5] Understanding why the proceedings have taken so long, and why I have made those orders despite the number and nature of the charges, requires knowing a great deal more about [HN], his life so far, his disability and the course of these proceedings, together with the relevant provisions of the Act and articles of the UN Conventions on the Rights of the Child (“the CRC”)<sup>3</sup> and the Rights of Persons with Disabilities (“the CRPD”).<sup>4</sup>

## **CHARGES**

[6] The facts, in brief, in relation to the 23 charges [HN] has admitted are:

### **In 2019:**

- (a) **Intentionally damaging a tree on 19 March** by flicking a cigarette butt into it causing it to catch fire and create a lot of smoke. No other information is provided about the damage done to the tree and no reparation is sought.
- (b) **Unlawfully getting into a stolen [car] on 29 March.** No summary of facts or other information was provided.
- (c) **Unlawfully carrying an imitation pistol** made of plastic while walking down a road on **12 April**. [HN] told police he was trying to look cool.
- (d) **Assault with intent to rob on [date 2]**. [HN] was with five other young people in [a Park] at 7.05 pm. They approached the victim and [HN] pointed a gun shaped lighter at his forehead which the victim thought was a taser. When the victim tried to run away, [HN] grabbed him, kicked him in the legs, punched him in the stomach and mouth causing his lip to bleed. He then kicked and punched the victim again

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<sup>3</sup> United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) [CRC].

<sup>4</sup> United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2006, entered into force 3 May 2008) [CRPD].

and took his watch. [HN] and his friends punched and kicked the victim some more before running away. As a result, the victim had a swollen cut lip, bruised cut leg, and trouble walking. There is no victim impact statement and no reparation is sought.

- (e) **Demanding with menaces, aggravated assault and common assault on [date 3].** [HN] was outside McDonalds in [location A] with four friends. They approached the first victim and, in a threatening manner, demanded his bag which was handed over. When [HN] demanded that victim's phone, he refused and tried to run away but [HN] caught him and punched him in the face. When a friend of the first victim stepped in, [HN] punched him in the face too. That second victim suffered a cut inside his lip. No other victim impact information is provided about either victim and no reparation is sought.
- (f) **Aggravated robbery on [date 4] at [location B].** [HN] and a friend approached the victim and asked for his phone. When told he did not have one, [HN] asked for the victim's bag instead and produced a pocket-knife which he pointed towards the victim who handed the bag over after removing his bank card and bus card. The victim was then told to empty his pockets. There is no victim impact statement and no reparation is sought.
- (g) **Aggravated robbery on [date 5].** At 5.30 pm, at [location C], [HN] approached two victims and asked one of them for cash. When she declined, he produced a hunting style knife which he held towards the victims in a threatening manner. They then told him he could have all their money and handed him a wallet from which he removed a handful of coins before throwing it back and walking away. There are no victim impact statements and no reparation is sought.
- (h) **Escaping custody on 16 December.** After being remanded in custody, and taken to a community home, [HN] left without permission.

- (i) **Escaping custody and assault** on 21 December 2019. [HN] was seen by the police in the Auckland CBD and tried to run away but they caught and arrested him. When being placed in the police car [HN] spat in the policeman's eye. There is no victim impact statement.

**In 2020:**

- (j) **Unlawfully getting into a stolen [car] on 14 January.** [HN] was the front seat passenger in the stolen car when it was pulled over by the police.
- (k) **Two aggravated robberies and unlawful use of a motor vehicle on [date 6] 2020.** The two victims of the aggravated robberies, who were aged 14 and 17 at the time, were in the foyer of a movie theatre in [location D] when they were approached by [HN] and another young person who asked the first victim to follow him to the bathroom. [HN] placed his hand in his pocket in a way that made that victim believe he was concealing a weapon and demanded the victim's phone and passcode. [HN] then demanded that victim's watch and when the victim refused [HN] and his friend backed him further into the bathroom and demanded that he empty his pockets. [HN] then approached the second victim who was seated in the foyer, took his cell-phone, spoke aggressively to him and demanded his passcode before he and his friend left with both phones. As well as losing their phones both victims describe being shaken and upset by the incident but were not physically injured. Reparation for the phones is not sought. However, \$400.00 is sought for the victim of the unlawful use of a motor vehicle charge, for which no summary of facts was provided.
- (l) **Intentional damage.** On **31 May** [HN] cut off his electronic monitoring bracelet and left home.
- (m) **Aggravated robbery on [date 7].** [HN] was on a bus with two friends. He demanded a phone and wallet from a victim who refused. He then

threatened to assault the victim, showing him a lump in his right sock and making comments that led the victim to believe [HN] had a knife and would stab him. A further demand was made for money and the victim handed over two \$50 notes. The victim, who was an 18 year old student, was shocked and shaken up as a result of the incident but not physically injured. Although he said the loss of money had a big impact on him, reparation is not sought.

- (n) **Two aggravated robberies and an assault with intent to rob on [date 8].** All three victims, who were aged 18, were sitting on the back seat of a bus travelling from [location E] to central Auckland. [HN], who was seated just in front of them, started talking to them before demanding a phone from the first victim who refused to hand it over. [HN] then pulled out a knife, flicked it open, threatened to stab the first victim and jabbed the shoe of the second victim with the knife – at which point the first victim gave [HN] \$40.00. [HN] then turned to the third victim who gave him \$60.00 before [HN] turned to the second victim again who had no cash. These three victims suffered no physical injury but were impacted emotionally in various ways including confusion, surprise, fear, anger, anxiety – even shame for letting it happen, in the case of one of them. Reparation of \$40.00 for the first victim is sought and \$60.00 for the third victim.
- (o) On **[date 9]**, another **assault with intent to rob**. [HN] approached four young people who were in the Auckland CBD at about 6.30 pm and asked them for coins which they said they did not have. [HN] demanded a victim's phone which was refused. When [HN] adopted a threatening pose, the victim started to walk away. [HN] kicked one of them and punched another in the face. That victim, who was 26 years old, suffered a sore jaw and chipped tooth; the emotional impact was such that he needed to take a couple of days off work and cannot stay out late anymore.

- (p) On [date 10], another **aggravated robbery** on a bus. [HN] started talking to the 15-year-old victim before putting on gloves and producing a knife which he pointed towards the victim and demanded a phone worth \$330.00 which was handed over as well as the passcode. The victim was then able to get off the bus. Although he was not injured physically, the victim was traumatised by the incident, suffering anxiety attacks for which he had counselling. No reparation is sought.

[7] Those brief summaries of the facts are taken from caption summaries provided by the police. Some refer to [HN] being with others when he committed the offences, and some do not. However, [HN] says that there were always others there with him when he offended, and his involvement was either under pressure from those he was with, or to impress them. The police do not take issue with that.

[8] Clarification was sought from the police regarding the impact on all of the victims of [HN]'s offending, as well as the position in relation to reparation. They confirm that the only victim impact information is that referred to above, and only three victims who were contacted seek reparation.

## **BACKGROUND**

### **[HN]'s upbringing**

[9] [HN] is Samoan but was born in New Zealand on [date deleted] 2003. He is the only child of his mother ([JD])<sup>5</sup> and father who separated when he was seven months old. His mother says her pregnancy, and the early period of [HN]'s childhood, was very stressful and emotionally distressing for her due to frequent violence by [HN]'s father and his abuse of substances.

[10] After the separation, [JD] says she was pursued relentlessly by her former husband and his family and to escape that she fled, with [HN], to [location deleted] where she sought refuge with relatives. [HN] had no relationship at all with his father following the separation.

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<sup>5</sup> This is her married name now.



[11] [HN]’s upbringing has been tumultuous with frequent moves between Samoa, New Zealand and [another country]. Over the years he has had a number of different homes and caregivers and the constant moving and disruption have had a huge impact on him in a variety of ways.

[12] From birth, [HN] showed developmental delays in several respects. He was slow to walk and, when he started, he did so awkwardly. When he started talking at three years of age, it was difficult to understand the words he used. He was also slow to toilet train. When he received his immunisations at age four, the doctor apparently told [HN]’s mother that “his brain is slow”.

[13] In [year deleted], [JD] relocated with [HN] to Samoa to live with her parents. She then returned on her own to Auckland [the following year] leaving [HN] in Samoa. After her mother passed away in [the next year], [JD] went to Samoa and brought [HN] back to Auckland [the following year].

[14] There were concerns about [HN]’s behaviour when he started kindergarten in 2007, and then primary school in 2008, including problems with toileting and falling asleep in class often, despite normal sleep patterns at night.

[15] [HN]’s birth father, with whom he had no relationship, died in [year deleted]. Soon after that, [HN]’s mother married [TD] in Samoa where they then lived. There, [HN] moved frequently between the homes of his stepfather and his [grandparent] with whom he shared a very close relationship.

[16] In 2013, [HN] was sent to [another country] to get a better education, staying with a cousin of his mother until mid-2014. He was returned to Samoa by the cousin because of his difficult “naughty” behaviour.

[17] [HN]’s grandfather died in [year deleted] and [HN] then lived with [TD]’s extended family in Samoa before coming to Auckland in 2017 when he was aged 13, where he has been living since.<sup>6</sup>

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<sup>6</sup> [HN] moved in with his mother and [TD] who have two daughters, [HN]’s half-sisters, who are now aged [deleted].

[18] Between the ages of 10 and thirteen, [HN] had three distressing experiences to cope with; Firstly, the unsuccessful move to [another country]. Secondly, within a year of his return to Samoa, his beloved grandfather died which was devastating for [HN]. Thirdly, when back in New Zealand, he learned that [TD], with whom he had previously had a good relationship, is not his biological father.

[19] [HN]'s ability to process each of those distressing events was seriously limited by his low cognitive capacity and he reacted with anger and hurt, especially when he was taunted by some boys at church who teased him about [TD] not being his real father.

[20] [TD] and [JD] responded to [HN]'s resulting anger and misbehaviour with punitive parenting strategies including physical beatings. They also emphasised the importance of him going to school where he was struggling and very unhappy. [HN] interpreted these things as further evidence of their dislike for him and he became even more angry and defiant. The more he misbehaved the more they punished him, leading to escalating hurt and estrangement between them all.

[21] In Auckland during 2018, when [HN] was aged 14 and 15, he was described by the school he attended as academically and behaviourally performing at a five-year-old, new entrant, level. He was identified as having severe learning difficulties and displayed various behavioural problems including [deleted] and yelling out inappropriately and lacking an age appropriate capacity to manage his behaviour, often acting like a pre-schooler.

[22] The special education needs coordinator at school said that although [HN] could show remorse and would say he understood things, she thought he did not actually appreciate or fully understand his actions. Other education sources said he was unable to regulate his impulses and had very poor awareness of danger. A teacher aide, who had a good relationship with [HN], thought that he did not have the capacity to learn and his reading, writing and numerical skills were below primary school level. The teacher-aide felt that [HN]'s parents did not really recognise the support that was needed for him.

[23] It was later discovered that English is [HN]’s second language; he did not learn to read or write in either English or Samoan and struggled greatly with schoolwork from the very beginning. [HN] later reported being the victim of violence from teachers in Samoa because of his delayed learning.

[24] As well as struggling academically during 2018, [HN] started to display concerning behaviours such as dishonesty, vandalism and physical violence against other students.

[25] Despite those various problems and concerns, [HN]’s strengths were identified as including his respectful manner towards his teachers, his passion for [sport deleted] and talent at art. He has been described by others too as engaging, respectful and polite.

[26] The movements between countries and various homes resulted in an inconsistent and disrupted family life and education for [HN] which will have been all the more difficult for him to cope with given his disability and associated behavioural problems and how they were being dealt with at home.

## **PROCEEDINGS**

### **[HN] enters the Youth Justice system**

[27] As a result of those problems, by 2019, [HN] had started absconding frequently from home and living with an anti-social subculture of friends on the streets of Auckland for periods of time.

[28] Inevitably he started coming to the attention of the police who made a referral to a FGC co-ordinator to convene an “intention to charge” FGC in relation to three charges.<sup>7</sup> When [HN] failed to attend that FGC, those charges were laid in court.

[29] [HN] first appeared in the Auckland Youth Court on [date 1] 2019, aged 15. He did not deny the charges and was bailed to reside with his mother and stepfather.

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<sup>7</sup> Being the charges referred to in paragraph 6 (a), (b) and (c) above.

[HN] admitted the charges at a FGC on 26 June 2019, where agreement was reached that he should have the opportunity to complete a plan monitored at the Pasifika Court for three months, with a s 282 order to be made if the plan was completed satisfactorily. That plan was approved by the Court.

[30] On 16 July 2019, [HN] appeared in Court again facing a new charge of assault with intent to injure<sup>8</sup>. This time [HN] was adamant that he did not want to go home, and he was therefore remanded in custody. A FGC held on 19 July reached no agreement about bail because [HN] remained adamant about not going home. The Youth Justice FGC co-ordinator made a referral to the Ministry of Education for an education assessment which arrived later in July and identified the severe learning difficulties that had caused concern at school the year before.

[31] Soon afterwards, [HN] was bailed to reside with an aunt and uncle in [location F]. The arrangement was far from ideal, with 10 people living in a three-bedroom home but [HN] said he preferred the living conditions there over a return to the home of his mother and stepfather.

### **Issues begin to emerge**

[32] Unlike most of the young people who appear in the Youth Court, [HN] was unknown to the agencies and professionals involved in the Youth Justice system before starting to come to the attention of the police in 2019. Having lived most of his life overseas, he and his family had no history with any agency and the issues and concerns that had been identified by the school in 2018 did not become known until the education assessment ordered by the FGC co-ordinator came back later in July 2019.

[33] When [HN] attended the Pasifika Court for the first time on 6 August 2019, Ms [TS]'s first lay advocate's report provided some valuable insights and information about dynamics within the āiga, the difficult environment for [HN] in the period before and immediately after his birth, and the travel between New Zealand, Samoa and [the other country]. These issues had not previously been known to anyone outside the family.

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<sup>8</sup> The charge referred to in paragraph 6(d) above.

[34] As a result of the education assessment findings, the Court ordered a s 333 psychological report on 8 August 2019. That report was eventually received by the Court on 29 October 2019.

[35] In the meantime, [HN] was appearing at the Pasifika Court for monitoring of his progress with the FGC plan which was very positive; he was engaging with his plan well in all respects. Although the living situation with his aunt and uncle was becoming increasingly untenable, [HN] remained adamant about not returning to live with his mother and stepfather.

[36] At an FGC held on 26 August 2019, [HN] admitted the charge of assault with intent to injure. The FGC recommended that [HN] be allowed to complete an updated and revised plan to incorporate the new charge on the basis that he continue to be monitored in the Pasifika Court for a period of four months with a recommendation that the four charges all be discharged under s 282 of the Act upon successful completion of the plan. That plan was approved, and the monitoring continued in the Pasifika Court.

[37] At this time [HN] moved from his aunt's and uncle's house in [location F], to live with [BC] who is related to [HN]'s lay advocate at that time, Ms [TS]. [HN] had been working with [BC] and also completing community service hours. This was to be a temporary arrangement, until [HN]'s matters were finalised, or until it was determined that he could return home, whichever of those two things occurred first.

[38] During September and October 2019, [HN] continued living with [BC] and appearing in the Pasifika Court. In that situation he began to thrive; he was complying with his plan, working with [BC] as well as doing a lot of community work, obeying his bail conditions and staying out of trouble. He also completed his CADS<sup>9</sup> course, provided a donation to one of his victims and completed his letters of apology.

[39] As [HN]'s matters progressed in the Pasifika Court, concerns were raised by a Judge there about the appropriateness of [HN] residing with [BC] given the close (but unspecified) relationship between [BC] and Ms [TS]. In addition, [BC] and his family

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<sup>9</sup> Community Alcohol and Drug Service.

were adopting a baby and would not be able to support [HN] for much longer as the family were planning to travel overseas between October and December 2019.

[40] At around this time awareness of the physical abuse [HN] had been subjected to at home started to emerge. [HN] did not speak ill of his mother and stepfather in accordance with the religious and cultural beliefs instilled in him. However, by September 2019, reports of concern were emerging which were investigated by [HN]’s social worker, including a substantiated incident when [TD] punched [HN] in the face, causing his nose to bleed, for picking up cigarette butts from the gutter. [HN] disclosed receiving hidings from his mother who admitted physically beating him and that this was one of the reasons he ran away from home and did not want to return.

[41] On 29 October 2019, the s 333 report was received by the Court. Not only did it set out in detail the various issues regarding [HN]’s upbringing that I have summarised above, it also drew attention to the nature and extent of [HN]’s disabilities, raising questions about his fitness to stand trial. The diagnoses made at that time included intellectual disability and conduct disorder, but I will return to say more about those issues later under the section of this decision on fitness. The author of that report made a referral to [name deleted – a support service]<sup>10</sup> given that the diagnosis of intellectual disability meant that [HN] is entitled to disability supports and services.

[42] At Pasifika Court on 14 November 2019, the presiding Judge;

- (a) made a referral to a care and protection FGC co-ordinator because of the concerns that had come to light regarding [HN]’s upbringing, disability and his treatment at home. It took until 25 March 2021 to get a report back in relation to that referral from a social worker who decided there was no need to have a care and protection FGC.
- (b) was not prepared to discharge [HN]’s four charges even though he had completed his FGC plan by then. [HN] wanted that to happen because he had done all that had been asked of him in terms of his plan and he

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<sup>10</sup> A non-profit organisation that provides supports and services for people with physical, intellectual, sensory disabilities or Autism Spectrum Disorder.

wished to have his matters finalised with the s 282 order he had been promised. He was unhappy about the length of time the proceedings were taking and frustrated those charges were not resolved then.

- (c) terminated Ms [TS]’s appointment as lay advocate because of the relationship between her and [BC], appointing Dr Nanai instead.
- (d) noted that [HN] was again staying at home with his mother and stepfather.

[43] On 23 November 2019, nine days after returning home, [HN] was arrested and charged with demanding with menaces, aggravated assault and assault.<sup>11</sup> [HN] was returned home and granted bail to appear at court on 28 November 2019 but he did not attend court and a warrant was issued for his arrest. He had been reported missing by his family.

[44] [HN]’s next appearance in court was on 20 December 2019 when he was remanded in custody before being granted bail by a Community Magistrate on 23 December 2019 with a condition that he reside with his mother and stepfather.<sup>12</sup>

[45] On 15 and 17 February 2020, [HN] appeared in court facing four new charges<sup>13</sup> and was remanded in custody and placed at Korowai Manaaki.<sup>14</sup>

[46] Although [HN] appeared at court on 5 March 2020, and did not deny all of the new charges, it was not until 25 May 2020 that he appeared again. That delay was the result of the COVID 19 lockdown during that period. On 25 May 2020, as a result of an agreement reached at an FGC on 18 May 2020, [HN] was released on EM bail<sup>15</sup> and Supported Bail to reside at home. Up to that point, [HN] had spent 97 days in secure custody.

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<sup>11</sup> Being the charges referred to in paragraph [6](e) above.

<sup>12</sup> By this stage he was also facing the charges referred to in paragraph [6](f), (g), (h) and (i).

<sup>13</sup> Being the charges referred to in paragraph [6](j) and (k) above.

<sup>14</sup> The secure Youth Justice residence in Auckland.

<sup>15</sup> Electronically Monitored Bail.

[47] Five days after [HN] was granted EM bail and Supported bail, he cut his EM bail bracelet and absconded from home. [HN] remained on the run and was living on the streets for 17 days before his arrest on 17 June 2020. During that time, [HN] amassed 7 new charges.<sup>16</sup> [HN] was again remanded in custody and placed at Korowai Manaaki.

### **The fitness process starts**

[48] The fitness process under the CP(MIP) Act<sup>17</sup> was formally triggered on 22 June 2020 and reports from two health assessors were ordered. The first of those is dated 25 August 2020 and the second, 2 September 2020.

[49] Both health assessors were in agreement regarding the nature of [HN]'s mental impairment, which I will refer to soon, but provided differing opinions on the issue of his fitness to plead and stand trial.

[50] A fitness hearing<sup>18</sup> was set down for 28 and 29 October 2020, but instead of deciding the matter the visiting judge directed that a third report be obtained from another health assessor on the issue of fitness. That third report was not received until 22 December 2020.

[51] However, there was agreement reached on 28 October 2020 about [HN] being granted supported bail. As at that date he had been in secure custody at Korowai Manaaki for a further 133 days, making a total of 230 days there.

[52] The bail placement with [DH] and his family, was sourced by [HN]'s new lay advocate, Dr Nanai. This home provided a nurturing, supportive environment where [HN] thrived. His time on supported bail, which ended on 8 January 2021, (about 12 weeks) was very successful. The reports about [HN]'s attitude, effort and progress are entirely positive. It is said he never complained or refused to attend every morning, never shied away from activities and had a positive attitude that he role-modelled well around other boys. He worked very hard and even on nights when the work he was

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<sup>16</sup> Being the charges referred to in paragraph [6](l), (m), (n), (o) and (p) above.

<sup>17</sup> Criminal Procedure (Mentally Impaired Persons) Act 2003.

<sup>18</sup> Under s 8A of the CP(MIP) Act.



doing finished at 2.00 am, he was still ready to get up on time for supported bail the next morning.

### **The fitness process ends**

[53] At the fitness hearing on 25 February 2021, I found [HN] to have a mental impairment on the basis of the evidence of the health assessors. They were all in agreement on this issue. [HN] meets the diagnostic criteria for Specific Learning Disorder,<sup>19</sup> Attention Deficit Hyperactivity Disorder, Conduct Disorder<sup>20</sup> and Intellectual Disability.<sup>21</sup>

[54] [HN]’s full-scale IQ has been assessed as being 61, with his adaptive behaviour assessments being in the low average, very low and extremely low ranges. He was particularly poor on processing speed and verbal comprehension. As already noted, [HN]’s mental impairment became apparent very early in his life, and therefore during his developmental period.

[55] Before the hearing began, the three health assessors had spoken and largely reached agreement on all issues including fitness. All three gave evidence on these issues at the hearing. There was agreement that [HN] understood the charges he faced and could recall the various incidents leading to those charges. He understood the concept of the trial process, what the evidence against him was and the relative strength of the evidence in relation to each of the charges. He understood his “plea”<sup>22</sup> options, the defences available to him and was capable of giving instructions to his advocate on that and other issues as well as making his version of events known.

[56] On the basis of all of the evidence I was satisfied, on the balance of probabilities, that [HN] was fit to “plead”. It was in relation to his ability to stand trial where the issues were more finely balanced. Given his significant difficulties with such things as verbal comprehension and processing speed, there could be

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<sup>19</sup> Being communication through written form; verbal communication appears adequate.

<sup>20</sup> Severe, adolescent onset.

<sup>21</sup> As defined by s 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

<sup>22</sup> A young person does not plead to charges in the Youth Court as a person does in the adult courts. If a charge is not denied an FGC is directed and the court does not enter a plea (see s 246).

problems for him participating in a lengthy trial where following the evidence and giving instructions to his Youth Advocate in real time would be required.

[57] However, the health assessors were confident that he was capable of participating meaningfully in such a process if the necessary supports were provided, in particular a communication assistant, as well as adaptations to the usual process. For example, [HN] becomes distracted after about 40 minutes and so regular breaks would be required, plus close monitoring of him during court sessions.

[58] A communication assessment report, provided by Talking Trouble in January 2020, had identified a number of significant issues and deficits including [HN]'s very limited ability to read, write and understand in both English and Samoan, although it was identified that his comprehension was probably stronger in Samoan because he had primarily been raised in homes where that was the language spoken. Following that report, [HN] was assisted, when necessary, by a Samoan interpreter and a communication assistant and it was apparent that such help enabled him to adequately follow what was happening in court.

[59] I found [HN] fit to stand trial on the basis that the supports and adaptations I have mentioned would be provided in the event that [HN] denied any charges and needed to go through the trial process. In terms of the test in s 4 of the CP(MIP) Act, I was satisfied, on the balance of probabilities, that despite his mental impairment, [HN] was able to conduct a defence or instruct his Youth Advocate, Ms Winterstein, to do so. He was able to "plead", adequately understand the nature, purpose and possible consequences of the proceedings and communicate adequately with Ms Winterstein for the purposes of conducting a defence.

[60] There are some aspects of the evidence of the health assessors that are relevant to other aspects of [HN]'s case:

- (a) Dr Gardiner commented on the fact that most, if not all of [HN]'s offending occurred in a group setting, and that it could be fairly hypothesised that his childhood relational difficulties have resulted in a drive to please others around him, meaning he is more likely to go

along with group ideas, or that he is eager to please and impress others in his group. Ms Ally noted that [HN] said his friends “tell me what to do” and he admitted being easily manipulated by his friends. [HN]’s mother also said he was easily influenced by friends.

- (b) Some of the health assessors, and others, have observed that, at first glance, [HN] appears to be able to function normally. Because he is bilingual and superficially expresses himself quite well, he can be mistaken for being normally intelligent and normally capable. However, on deeper assessment of his functioning, communication skills and other deficits become apparent relatively quickly. He has also been described as being skilled at masking his difficulties.
- (c) It was again noted that the diagnosis of intellectual disability entitled [HN] to supports and service which were not yet being provided despite the referral made by the health assessor who wrote the first report in October 2019.

## **FGC**

[61] Having been found fit, [HN] indicated that he did not deny those charges in relation to which no indication had been given previously. The FGC that was then directed, and held on 28 April 2021, was unable to reach agreement as to the outcome. The charges were however all admitted at the FGC, and those admissions were subsequently confirmed in court.

## **Sentencing**

[62] Given the non-agreement, directions were made for a social worker to provide a report and plan for disposition to be decided.

## Social work report and plan

[63] When the matter first came before me for sentencing in June 2021, the social worker's recommendation was for a four-month supervision order, the additional conditions of which were for [HN] to:

- (a) Continue residing with [DH] and his family, with whom he had been living and obey the house rules there;
- (b) Not possess or consume alcohol or illegal drugs;
- (c) Not threaten, or use violence against any person or property;
- (d) Not associate with a list of named young people;
- (e) Engage in full or part time work;
- (f) Attend church and the youth group there;
- (g) Attend mentoring;
- (h) Engage in transition support services
- (i) Pay reparation.

[64] Conditions (a) to (d) above were identical to bail conditions [HN] was on at that time and had been since October 2020. There had previously been a curfew<sup>23</sup> but that had been removed in April. He was also doing the things referred to in (e) to (h) then and was willing to pay the reparation sought.

[65] Notably absent from the plan were any provisions relating to [HN]'s family, with whom he still has a strained relationship, and no supports or services from [the disability agency] who were notified about [HN]'s case back in October 2019. That was still the position when the matter came back before me on 2 August 2021.

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<sup>23</sup> From 29/10/20 to 4/2/21 the curfew was 24 hours a day and then from 4/2/21 to 3/6/21 it was from 7 pm to 7 am.

## **Submissions**

[66] The Police submission was that supervision with residence<sup>24</sup> would have been the starting point for offending of this magnitude but the time [HN] has spent in custody, and on bail, supported a non-custodial sentence. They submitted that a supervision order for the maximum period of six months was appropriate.

[67] For [HN], Ms Winterstein submitted that the first four charges before the court<sup>25</sup> should be discharged under s 282 of the Act because that was the outcome promised for [HN] if he completed his plan, which he had done by 14 November 2019. A discharge of all of the other charges under that section was sought too, given the context of [HN]’s unsettled and unsafe home environment and his vulnerability. In further support of that submission, it was pointed out that [HN] had not reoffended since being granted bail on 28 October, 10 months ago, and he had spent the lengthy periods of time in custody, and on restrictive bail conditions.

[68] When the matter first came on for sentencing, I was told that although [HN] was still estranged from his family, there were plans for him to meet with them again and work towards a reconciliation. The absence of any mention of disability services was the apparent failure of [the disability support service] to respond to the referral made to them in October 2019.

[69] The reasons why I adjourned the sentencing until 16 August 2021, and for coming to the decisions I have, are best understood by reference to the relevant sections of the Act and articles of the CRC and CRPD. I begin with the Act.

## **LAW**

### **The Act’s purposes<sup>26</sup>**

[70] First, it is important that the purposes of the Act are to promote the well-being and best interests of both [HN] and his family, by complying with the long list of

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<sup>24</sup> This “Group 6 response” in terms of s 283 of the Act is the most restrictive order available in the Youth Court. See also n 28 below.

<sup>25</sup> See paragraph [6] (a) to (d) above.

<sup>26</sup> Section 4.

requirements to provide services, supports, assistance and the various other things detailed in s 4 of the Act. There is repeated emphasis on the well-being and best interests of [HN] being inextricably bound to his place within the family.

[71] Therefore, [HN]’s status within his family and his sense of cultural belonging, are notable features of tremendous importance which must be kept firmly in mind. Despite the rift between [HN] and his family, these purposes must still be honoured to the extent possible when making decisions about the conduct of the case, including disposition.

### **The lay advocates**

[72] A notable feature of this case has been the wonderful contribution made by the lay advocates. Both Ms [TS] and Dr Nanai have been very effective in ensuring that the court was made aware of all relevant cultural matters and have represented the interests of [HN] and the interests of his family, which has been especially important given the estrangement between them. Their invaluable input has permeated the proceedings in so many ways. For example, by;

- (a) Keeping some connection between [HN] and his family and the involvement of both throughout, as well as providing important information that would not have been available otherwise;
- (b) Ensuring that the cultural equivalents of *Mana tamaiti (Malosiaga O Tamaiti)*, *Whakapapa (Gafa)* and *whanaungatanga (So’otaga)*, as well as the *whare tapa wha model (the fonofale model)* were understood and included in reports and plans;
- (c) Providing regular progress reports, rich with cultural content, throughout the proceedings;
- (d) Arranging places for [HN] to live, when he had nowhere else to go, together with the necessary religious, cultural, prosocial supports and

employment opportunities; these acts of extraordinary kindness were very much above and beyond the call of duty;

- (e) Importantly, assisting [HN] to reconnect with his mother and family before the sentencing, which they attended.

### **Primary considerations<sup>27</sup>**

[73] The four primary considerations for me in reaching my decisions were -

- (a) [HN]'s well-being and best interests;
- (b) the public interest, including public safety;
- (c) the interests of the victims;
- (d) Accountability for his behaviour.

[74] [HN]'s wellbeing and best interests are best served by ensuring he is in a safe, stable and loving home where his needs are met and he has the support necessary to continue on the path he is on now.

[75] There is a strong public interest in seeing [HN] able to continue in his current situation, where he has been a law-abiding, productive, at times a tax-paying member of the community for over nine months.

[76] To the extent that he can, [HN] has put things right with his victims by making his apologies and by his willingness to pay reparation to any victim seeking that.

[77] He has well and truly been held accountable, having regard to the various factors referred to in paragraph [3] (a), (b) and (d) above in particular. The time spent on remand in a secure residence was significantly longer than he would have received

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<sup>27</sup> Section 4A.

if sentenced in the Youth Court to the most restrictive order available,<sup>28</sup> let alone the time spent subject to restrictive bail conditions.

### **General principles<sup>29</sup>**

[78] In relation to the general principles of the Act:

- (a) [HN]'s meaningful participation in the proceeding was enabled thanks, in particular, to the efforts of his youth advocate, Ms Winterstein and his communication assistant, Ms Wright;
- (b) His rights under the CRC and CRPD were not respected and upheld in various ways I will refer to later;
- (c) His need for a safe, stable and loving home was addressed during parts of the proceedings, despite the rift between [HN] and his family, thanks to the great kindness and efforts of his lay advocates. I will describe his current living arrangements later;
- (d) Again, thanks largely to the efforts of [HN]'s lay advocates, his mana and well-being were protected by recognising the Samoan equivalents of his whakapapa and endeavouring to engage the whanaungatanga responsibilities of his family;
- (e) Many of the important decisions needing to be made and implemented did not occur promptly, nor in anything close to a time frame appropriate to [HN]'s age and development, which I will say more about under the section below on rights;
- (f) To some extent, a holistic approach was taken that saw [HN] as a whole person including his developmental potential, educational and health

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<sup>28</sup> Supervision with residence under s 283 and s 311 of the Act is a sentence of 6 months in a secure residence but with eligibility for release after four months if the criteria are met, followed by a supervision order for not less than 6 months and not more than 12.

<sup>29</sup> Section 5.



needs, whakapapa, cultural identity, disability; and age. Issues in relation to [HN]'s disability are considered under the section below on rights;

- (g) For reasons already explained, [HN]'s place within his family was not able to be recognised to the greatest extent possible but the part played by his lay advocates was instrumental in helping to try and fulfil these principles regarding family and cultural involvement;
- (h) The importance of [HN]'s place within the community was recognised, and in particular the significance of decision's affecting his stability and the importance of networks of support for him, although this was largely done without the involvement of his family for reasons explained already.

### **Youth Justice principles<sup>30</sup>**

[79] The relevant Youth Justice principles have been largely covered already or will be before the end of this judgement. [HN]'s age was considered in determining the outcome as was taking the least restrictive option appropriate in the circumstances.

[80] Because I am exercising a power for the purpose of resolving [HN]'s offending I must also be guided by the principles that reasonable and practical measures or assistance should be taken or provided to support [HN] to prevent or reduce offending or reoffending, which I will return to later.

### **Factors relevant to sentencing<sup>31</sup>**

[81] Most of the factors relevant to sentencing have been covered already. [HN] has expressed remorse for all his offending and sympathy for the victims he hurt. He was willing to make reparation and to apologise to any victim of his offending. His mother expressed her disapproval and feelings of shame for [HN]'s behaviour and her sympathy for all of the victims.

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<sup>30</sup> Section 208.

<sup>31</sup> Section 284.

## **RIGHTS**

### **The CRC**

[82] The preamble to the CRC includes recognition that children, by virtue of their age, are entitled to certain safeguards and protection including legal protection. Articles that are relevant in [HN]'s case include:

- (a) Article 2 which requires States Parties to respect and ensure rights of every child are upheld without discrimination of any kind including disability;
- (b) Article 3 which requires that a young person's best interests be a primary consideration;
- (c) Article 23 which is dedicated to the rights and needs of children with disabilities;
- (d) Article 37(b) which states that custody shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (e) Article 40 which provides that sanctions and outcomes should be consistent with the promotion of a young person's sense of dignity and worth and also provides that a variety of disposition shall be available to ensure a young person is dealt with in a manner appropriate to his or her well-being and proportionate to their circumstances and the offence;
- (f) Article 40(2)(b) provides for the right to have the matter determined without delay.

[83] As I will explain in a moment, there have been breaches of [HN]'s rights on account of his disability, both under the CRC and the CRPD. Three significant ways in particular in which that has happened, common to most cases of young people in the Youth Justice system who have a disability, are the lack of access to appropriate

supports and services, the often long-term detention in Youth Justice facilities,<sup>32</sup> as well as significant delays in resolving the proceedings.<sup>33</sup> All three of those issues have been a feature of [HN]'s case. Such treatment is inconsistent with [HN]'s sense of dignity and worth as well as being contrary to his well-being.

**UN general comment no 9 (2006)<sup>34</sup>**

[84] This general comment focusses on the rights of children with disabilities under articles of the CRC.

[85] In relation to Article 2, it observes that children with disabilities belong to one of the most vulnerable groups of children, who often require special services in health and education to allow them to achieve their fullest potential. They are also more vulnerable to all forms of abuse, being five times more likely to be the victims of abuse.

[86] One issue addressed in the general comment, is that of discrimination in terms of service provision, often denying young people access to quality health and social services. That is an issue of concern in [HN]'s case given that, despite the referral made by the health assessor in October 2019, no supports or services had been provided for him when the matter came on for sentencing, initially in June and then on 2 August 2021. Apparently, [the disability support service] made contact with [HN]'s mother at some point when he was not living at home and took the matter no further.

[87] Of significance, in the section of this general comment on the juvenile justice system, it states:

Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of punishment.

Deprivation of liberty should only be applied if necessary with a view to providing the

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<sup>32</sup> In breach of article 37(b) of the CRC.

<sup>33</sup> In breach of article 40(2)(b) of the CRC.

<sup>34</sup> *Committee on the Rights of the Child General comment No. 9 (2006) on the rights of children with disabilities* UN Doc CRC/C/GC/9 (27 February 2007).

child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.

[88] Like many young people with a disability, this right was breached for [HN] for a considerable period of time. During the period of both remands at Korowai Manaaki, which is a regular detention centre, it was known that [HN] has an intellectual disability.

### **UN general comment no 24 (2019)<sup>35</sup>**

[89] This latest general comment, issued by the UN on 18 September 2019, focusses on children's rights in the child justice system. In the introduction it is pointed out, amongst other things, that children differ from adults in their physical and psychological make up, which constitutes the basis for lesser culpability and for a separate system with a differentiated individualized approach. It says that exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults. The commentary goes on to say that children accused of having infringed the criminal law need to be treated in a manner consistent with their sense of dignity and worth and that the evidence shows the prevalence of crime committed by children decreases after the adoption of systems in line with those principals.

### **The CRPD**

[90] Under the CRPD, disability is viewed through a human rights lens and is therefore not seen as an individual problem but is the result of a wrong organisation of society. Society must therefore restructure its policies, practices, attitudes, environmental accessibility, legal provisions and political organisations, to remove the barriers that prevent full participation of persons with disabilities in society. Persons

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<sup>35</sup> *Committee on the Rights of the Child General comment No. 24 (2019) on children's rights in the child justice system* UN Doc CRC/C/GC/24 (18 September 2019).

with disabilities whose rights are respected and upheld under this approach, are able to enjoy full participation on an equal basis with others. The burden of disability is not on them but on society.

[91] Further, disability is an evolving concept and results from the interaction between people with impairments and external barriers that impinge on their rights and hinder their participation in society on an equal basis with everyone else.<sup>36</sup>

[92] Importantly too, the concept of disability is not rigid, and is therefore not restricted to certain limited diagnostic criteria. Instead, **Article 1** has an open definition of who persons with disabilities are, stating that they **include** those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Emphasis added).

[93] **Article 5** requires States Parties to prohibit all discrimination on the basis of disability and to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

[94] **Article 7** requires States Parties to take all necessary measures to ensure that full enjoyment by children with disabilities of all human rights and fundamental freedoms is on an equal basis with other children. It also requires that the best interests of the child be a primary consideration in all actions concerning children with disabilities, who have the right to express their views freely on all matters affecting them.

[95] **Article 13** requires effective access to justice for persons with disabilities on an equal basis with others, including the provision of procedural and age appropriate accommodations as well as training for those working in the field of administration of justice.

[96] **Article 14** requires that those with disabilities are not deprived of their liberty unlawfully or arbitrarily...and that the existence of a disability shall in no case justify

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<sup>36</sup> The Convention on the Rights of Persons with Disabilities Training Guide HR/P/PT/19.

a deprivation of liberty. Also, that those who are deprived of their liberty shall be treated in compliance with the objectives and principles of the CRPD.

[97] **Article 26** requires States Parties to strengthen and extend comprehensive habilitation and rehabilitation services which go beyond health services and include employment, education and social services.

### **Respecting and upholding [HN]’s rights**

[98] In many and various ways [HN]’s rights under the CRPD have not been respected and upheld, but that is because, to a large extent, they cannot be due to the policies, practices, attitudes, legal provisions and so on that prevail. There would need to be a major re-structuring in society, and within our systems, before most rights under the CRPD could be respected and upheld properly.

[99] To start with, the very rigid definition of disability that applies currently is contrary to the CRPD, with eligibility for supports and services being limited to the few who satisfy the necessary diagnostic criteria, with the bar for eligibility set very high.

[100] For years now we have known that a large number of the young people who appear before the Youth Court have neuro-disabilities such as FASD,<sup>37</sup> TBI,<sup>38</sup> ASD,<sup>39</sup> but also communication disorders and learning disabilities, and more. These hinder their full and effective participation in society on an equal basis with others. For many, the disability might be such as to constitute a mental impairment which hinders their full and effective participation in court proceedings. However, it will usually not be such as to access the supports and services they need unless they also satisfy the rigid diagnostic criteria for intellectual disability,<sup>40</sup> as legally defined.

[101] Even when such diagnostic criterion are met, as they are in [HN]’s case, the necessary supports and services are often extremely difficult to access. It is more than

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<sup>37</sup> Foetal Alcohol Spectrum Disorder.

<sup>38</sup> Traumatic Brain Injury.

<sup>39</sup> Autistic Spectrum Disorder.

<sup>40</sup> Much more so than a mental disorder.

one year and ten months since the referral was made for [HN] to get the assistance he is entitled to and he has not yet received anything. That scenario is not unusual. It is hoped that will now change for [HN], but it required an adjournment of sentencing to get [the disability support service] involved.

[102] The time taken to obtain reports and advance proceedings for a young person with a disability whose fitness to stand trial is put in issue is hugely problematic and always in breach of the requirement in the Act to make and implement decisions in a time frame appropriate to the age and development of the young person.<sup>41</sup> For example:

- (a) The three reports ordered under s 38 of the CP(MIP) Act for [HN]’s fitness hearing took two months and two days, two months and 11 days and one month and 25 days respectively to provide. The time frame the CP(MIP) Act required them to be provided within was 14 days, given that [HN] was in custody on remand at Korowai Manaaki. The delays are due to a variety of systemic failings and not simply the time it takes health assessors, who have very heavy workloads, to complete their reports.
- (b) The fitness proceedings themselves took eight months and three days to complete, with a significant part of the delay being caused by the unnecessary adjournment in October 2020 to obtain a third report from a health assessor. There are a variety of systemic issues that account for these proceedings taking far longer than they should.
- (c) Although many of those delays could be addressed by case management of a complex case such as this, the rostering of judges does not enable that adequately, with [HN]’s case having been dealt with by 12 different judges over the course of the proceedings that lasted more than two years and two months. For a boy with the special needs [HN] has, that sort of time frame is far longer than it should be, is incompatible with his sense of dignity and worth and contrary to his well-being and best interests.

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<sup>41</sup> Section 5(1)(v) and article 40(2)(b) of the CRC.

- (d) For about seven and a half months, [HN] was remanded in a secure Youth Justice facility. During those periods it was known he has an intellectual disability. To hold him in such a facility at all, let alone for that period of time, was completely contrary to his rights under both the CRC<sup>42</sup> and the CRPD. He was therefore denied the enjoyment of his human rights and fundamental freedoms as well as respect for his inherent dignity as guaranteed by the CRPD.

[103] If the rights of a young person with a disability were to be enjoyed on an equal basis with other young people, it would be necessary to eliminate the systemic problems that cause these delays and inefficiencies. It would also require having appropriate facilities, able to accommodate young people who satisfy the CRPD definition of disability, with suitably trained staff. The time in such a residence, would always be for the shortest appropriate period and there would then be the necessary supports and services available in the community.

[104] One area where the needs of those with a disability is being addressed in the Youth Justice system is the involvement of communication assistants who are enabling young people, such as [HN], who have a communication disorder and learning disability to understand and engage adequately in the legal processes. The involvement of Ms Wright from Talking Trouble has had a significant positive impact on [HN]'s meaningful involvement in the proceedings from early 2020 onwards.

[105] Otherwise, as things stand, it can easily be seen that viewed through the human rights lens as required by the CRPD, the way systems operate currently does not enable the rights of young people with a disability to be respected and upheld.

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<sup>42</sup> See paragraph [87] above.



[HN]

### **Causes of offending**

[106] Like many people with a disability, [HN] has suffered abuse due to behaviour that is a consequence of his disability, such as the violence he received from teachers in Samoa and the physical beatings at home.

[107] All of his offending occurred when he was either living at home, and being subjected to such treatment, or on the run to get away from it and mixing with others with whom he was offending, either under pressure, or to impress them. Both [HN] and his mother talked about how easily manipulated he was by others and the health assessors all commented on that vulnerability too. That is not unusual; people with cognitive disability are known to be more susceptible to being exploited by others. The abusive home environment and susceptibility to exploitation would seem to be the two key aspects underlying [HN]'s offending.

[108] However, people with cognitive disability can be supported to live fulfilling and engaged lives and that has been very evident in [HN]'s case. Not only did his offending cease during the periods when he was with caregivers, he flourished when he was in safe, well supported placements. For example, when he was living with [DH] and his family, [HN] not only stayed out of trouble and complied impressively with his bail conditions; he got full time work and qualified as [occupation deleted], only stopping in the job because of the very onerous travel from [across the city] every day on public transport.

[109] [HN] does, however, become bored easily and so it is important for him to be well supported and engaged in positive activities long term. That does not require ongoing Youth Court involvement in my view. Indeed, to continue [HN]'s involvement past two years and two months, simply to oversee his continued good progress in a well-supported situation, or simply to have a higher-tariff order, would be contrary to the principles of the Act and his rights under the CRC and CRPD.

## **Current situation**

[110] [HN] has recently moved in to live with his girlfriend and her mother. He is happy and well supported there. Between the 2<sup>nd</sup> and 16<sup>th</sup> of August two important things were achieved.

- (a) One was an emotional reunion between [HN] and his mother and family which was also attended by [HN]'s girlfriend and her mother. They now plan to maintain contact in the future and to rebuild [HN]'s relationship with his family.
- (b) The other was a meeting with [the disability support service] who have now confirmed that [HN] is eligible for long term support. They plan to arrange an initial assessment to determine [HN]'s needs and what support they will put in place.

[111] Also significant is that, as a result of the time [HN] spent on remand in secure custody, he is eligible for Transition Support Services until he is 21 years old. That will include having a mentor who will be able to continue working with [HN] in relation to developing his academic, social and basic life skills as well as fostering his connection to family, culture and community. The mentor will also work closely with family, social workers and others such as [the disability support service]. Some short-term goals they have set already include [HN] getting his driver's licence and finding employment or attending a training course.

## **RESULT**

[112] Despite his disability, [HN] has been found fit to have his case dealt with in the Youth Court in accordance with the provisions of the Act and articles of the Conventions I have referred to above.

[113] I considered it appropriate to make the s 282 order for the first four charges, given that [HN] had done all that was asked of him in relation to them and he was frustrated that they were not dealt with at the time, back in November 2019. He would

have considered it an injustice not to get the order he was promised which would have been contrary to his sense of dignity and worth. In coming to that decision, I do not overlook that he went on to commit further offences. However, that happened after he was returned home at times when the problems there had become known.

[114] The reparation orders were made on the three charges where they were sought and [HN] had wanted to put things right with his victims as best he could.

[115] In deciding to make an order under s 283(a) on the remaining charges, I had regard to the many and various ways that [HN] had already been held accountable. I did not consider a supervision order necessary especially given that [HN] has, in effect, been compliant with the proposed terms to the order, without breach, for many months. For reasons explained above, the absence of any family or disability support or service provisions made the proposed plan inadequate in any event.

[116] Importantly, [HN] has been making excellent progress for about ten months, is in a settled living situation and has various supports to help keep him on the right pathway forward in life. Contact with his family has resumed and they were there in support of him at the sentencing. [The disability support service] have now become involved and with the ongoing involvement from the Transition Support Services the necessary community wrap-around supports should continue to be available.

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Judge AJ Fitzgerald

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 26/08/2021tiff