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**IN THE YOUTH COURT
AT HUTT VALLEY**

**I TE KŌTI TAIOHI
KI TE AWAKAIRANGI**

**CRI-2020-296-000117
[2022] NZYC 37**

**NEW ZEALAND POLICE
Prosecutor**

v

**[PE] and [NE]
Young Persons**

Hearing: 26 January 2022

Appearances: A Jeffares for the Crown
R Newell for the Young Person [PE]
S Robinson for the Young Person [NE]
S Gill as Lay Advocate
G Sayer as Care Co-ordinator

Judgment: 28 January 2022

WRITTEN REASONS OF JUDGE M N E O'DWYER

[1] [PE] and [NE] are twin sisters born on [date deleted] 2005. They are 16 and a half years old.

[2] They have both been found unfit to stand trial on the following charges:

- (a) A charge of wounding with intent to cause grievous bodily harm – s 188(1) Crimes Act 1961 – date of offence [date 1] 2020; and
- (b) A charge of possession of offensive weapon – s 202A(4)(b) Crimes Act 1961 – date of offence [date 1] 2020.

[3] The Court has obtained detailed reports to assist with disposition of these charges in the Youth Court.

[4] Following a finding that both young persons are unfit to stand trial, the Court proceeded to establish whether the twins were involved in the offending on [date 1] 2020 in an Involvement Hearing. On 9 September 2021, the Principal Youth Court Judge, Judge Walker, found that [PE] and [NE] were involved in both offences and directed a psychological report from a specialist assessor under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (“ID(CCR)”) to assist with disposition.

[5] On 14 October 2021, a report was filed through the Compulsory Care Coordinator, Mr Sayer. The report included a specialist assessor’s report from Ms Maggie Dewar, Clinical Psychologist, the intellectual disability needs assessment, and a care rehabilitation plan in respect to each young person. The Court also had available the previous consultant psychiatric report from Dr Denys Delmage to assist with disposition.

[6] Oranga Tamariki, have custody and additional guardianships orders under the Oranga Tamariki Act in respect to each young person. I directed Oranga Tamariki to

provide a report and address whether each young person's rehabilitative and youth justice needs could be met by a community plan. Ms Masoe filed a report on behalf of Oranga Tamariki on 16 November 2021.

[7] Prior to the disposition hearing I invited the youth advocates and Ms Gill as lay advocate to visit the unit at [a secure mental health unit] to meet with the doctors and care staff to gain more information regarding the proposed Secure Care Order. That visit took place and was beneficial to the information available for the disposition hearing.

Decision

[8] At the hearing in the Youth Court on 26 January 2022, I advised [PE] and [NE], and their whanāu, that disposition orders would be made in the Youth Court. I made the following orders in the presence of [PE] and [NE], who were supported by their mother and sister, [ME], and the lay advocate, Ms Gill:

- (a) That [PE] is made a care recipient under a Secure Care Order to be placed in a secure facility, [the secure mental health unit], at hospital level care for a period of one year from today.
- (b) That [NE] is made a care recipient on a Secure Care Order at [the secure mental health unit], at hospital level care for a period of one year from today.

[9] I advised that my full reasons would follow.

The offending

What occurred as outlined in the summary of facts

[10] On the evening of [date 1] 2020, the victim, who was then 13 years old, was at a friend's house in [Lower Hutt]. During the day there had been discussion between the young people and the victim about having a fight.

[11] [PE] and [NE] both obtained large kitchen knives from home in preparation for a fight and went to the victim's address armed with the knives. They arrived at the address and knocked on the windows and front door.

[12] The victim answered the door and told the twins to go away. The twins would not leave, so the victim and her boyfriend went out to the driveway to tell them to leave. Both young people took out their knives and approached the victim, challenging her to a fight.

[13] The victim's boyfriend approached [PE] and recovered the knife from her after a short struggle. He cut his hand in the process of preventing [PE] from getting to the victim.

[14] [NE] continued to approach the victim and began swinging a knife at her. The blade connected with the victim's right thigh, above the knee. [NE] continued to try to stab the victim who took action to avoid the knife blade.

[15] The victim's boyfriend ran to the victim's assistance and, after a short struggle with [NE], he managed to get the knife off her.

[16] The victim was taken to the hospital. She had a 10-centimetre wound to her right thigh above the knee. She stayed at the hospital and had several stitches.

[17] The charge against [NE] proceeded on the basis that she stabbed the victim and was jointly charged with her sister. [NE] also offended by possessing a knife for the purposes of the attack.

[18] [PE] did not stab the victim. Judge Walker found that she went to the address armed with a butcher's knife with the intention to attack the victim, but she did not do so. Judge Walker found that she was involved as a party to the charge of wounding and was involved directly in the charge of possession of an offensive weapon, namely the butcher's knife.

Impact on the victim

[19] The young victim suffered a severe injury to her leg, and she initially feared she might lose her leg. She had two hospital visits and regular nursing care to attend to the wound. It took time for the scar to heal and her activities were restricted during that period. The victim has been able to move on from the offending and has no lasting physical or emotional injuries.

Crown submissions

[20] The Crown submits that both young people should be made the subject of an order under s 25 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (“CP(MIP) Act”). The order sought by the Crown is that both young people should be cared for as care recipients under a Secure Care Order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, pursuant to ss 25(1)(b) and 26(2)(a) of the CP(MIP) Act. The proposed duration is a period of 12 months.

[21] The Crown submits that this order is required, given both young people have been assessed as having intellectual disabilities pursuant to s 7 of the ID(CCR) Act and the recommendation of the clinical psychologist, Ms Dewar, in respect of both young people is that they be made compulsory care recipients to be held in secure care for one year.¹

[22] The Crown, in summary, submits that an order placing both [PE] and [NE] in secure care would focus robustly on rehabilitation whilst mitigating the identified high risk of re-offending. The Crown argues that there is no other viable or appropriate alternative option and that the orders would align with the principles and purposes of youth justice under the Oranga Tamariki Act 1989 (“the Act”).

Outcome sought/submissions of youth advocates

[23] Both youth advocates filed helpful written submissions and spoke to their submissions at the hearing.

¹ Health assessor’s reports both dated 11 October 2021.

[24] I also heard from [PE] and [NE]’s mother, [AE], and their sister, [ME] (aged 21) and Ms Gill, lay advocate.

[25] [NE] and [PE] want to continue living with their mother and their brothers. Their sister, [ME], lives outside the area but returns to visit them each weekend. [ME] has a very strong relationship with her sisters and has great skill in communicating with them and settling their emotions.

[26] [AE] loves her daughters deeply and wants the best for their growth and development. She has struggled to cope with their high needs. She feels let down by Oranga Tamariki. There is a current investigation regarding the reasons for the girls’ move from [a care and protection service] which has shaken her trust in authority. [AE] wants the girls needs to be met by a community plan where the girls could live at home. She emphasises the girls have not offended throughout 2021 and have been stable in her care. She has cared for the girls 24/7 over that time and needs to return to work. She has little confidence in the staff at [the secure mental health unit] because of negative experiences with agencies in the past.

[27] The girls’ sister, [ME], wants the best for them. She stresses the importance that they need to continue learning to improve their life skills and their opportunities for the future. She is not opposed to them residing at [the secure mental health unit] but she questions whether the resources promised will be given to her sisters.

[28] Ms Gill asked the Court to recognise that when the twins have structure, they respond appropriately to direction and follow the rules. She stressed the importance of whanāu to the twins and she submitted that intervention would only be successful if the girls’ whanāu were involved and supported. Ms Gill emphasised the twins’ unique needs and she expressed disappointment that providers could not be put forward to present a supported programme for the twins in the community. Ms Gill recognised that in the absence of a robust and appropriate community plan, the twins’ needs could only be met through a Secure Care Orders.

[29] In his submissions for [PE], Mr Newell acknowledged that the psychologist’s reasoning in support of an order placing [PE] in [the secure mental health unit] as a

secure care recipient was compelling. He said that it is regrettable that the unit at [the secure mental health unit] presents as “spartan” and “prison like”. He feared that [PE] would be very upset at being placed in the unit. However, he was impressed by the staff and the unit’s educational and supporting facilities, the teachers attuned to Māori cultural values and the experience of the staff in teaching troubled young people. Mr Newell accepted that [PE] would have her educational, disability, trauma and behavioural needs addressed by trained and competent specialists. Mr Newell reluctantly submitted that the Court should make a Secure Care Order for [PE] to receive treatment at [the secure mental health unit].

[30] For [NE], Mr Robinson submitted that the ideal outcome to address the risk of re-offending and [NE]’s complex needs would be a comprehensive community-based wrap around plan. He pointed to [NE]’s positive engagement and progress when she has structure, her compliance with bail conditions over a long time and that she has not re-offended since [late] 2020. He said that Oranga Tamariki has heavily relied on positive whanāu support since [PE] and [NE] were required by leave [the care and protection service]. Mr Robinson acknowledged that the resources and the professionals available for [NE] at [the secure mental health unit] were impressive. He regretted that those resources are only available within what he submitted presents as a punitive setting.

[31] Mr Robinson accepted that the Court has little alternative but to make the Secure Care Order. He strongly submitted that Oranga Tamariki had not done enough under the s 101 Custody Order and s 110 Additional Guardianship Orders to develop a suitable community plan with appropriate providers.

Youth Justice purposes and principles in the Act

[32] It is not necessary for me to set out the purposes of the act in ss 4 and 4A or the principles of the Act in ss 5 and 208 in this decision. They are helpfully referred to in the Crown submissions and Mr Robinson’s submissions.

[33] I must have regard to the principles in ss 5 and 13 of the Act, and s 208 of the Act, in summary:

- (a) The wellbeing and best interest of each young person as the paramount consideration;
- (b) The public interest;
- (c) The interests of any victim; and
- (d) The accountability of the young person for their behaviour.

[34] I agree with counsels' submissions that the principles that are particularly important are:

- (a) Responding to the offending by promoting the best interests of the young people in acknowledging their needs, whilst taking steps to prevent or reduce re-offending, recognising the interests of victims and holding each young person to account for their behaviour.
- (b) Measures that will supporting and protect each young person to prevent re-offending;
- (c) Assisting whanāu to prevent these young persons from re-offending; and

[35] I highlight the importance set out in s 208 of taking account of the interests of the victim, including their views.

[36] I accept Mr Robinson's submissions that the principle in s 208(2) of the Act must guide the outcome. That requires me to consider, in assessing the options, what measures are proposed to strengthen the whanāu, and foster the ability of whanāu to assist the young people to deal with the offending.

[37] I accept the principle that each young person should be kept in the community so far as practicable and consonant with the needs to ensure public safety. The Court should adopt the least restrictive intervention as is consistent with justice appropriate to meet the causes underlying the young person's offending.

[38] I note, from Mr Robinson's submissions, that s 12 of the ID(CCR) Act emphasises:

- (a) The importance of whanāu participation in decisions to be made for these young people;
- (b) The importance of strengthening whanāu relationships;
- (c) That wishes of the young person must be taken into account, and
- (d) The importance of implementing decision in a timeframe appropriate to the young person's sense of time.

Assessment of the options

[39] There were three options for consideration in counsel's submissions:

- (a) Mr Newall submitted that an order could be made under s 25(d) of CP(MIP) Act ordering release of both young people from the Youth Court on the basis that each young person's needs could be met by Oranga Tamariki care and protection plans within the jurisdiction of the Family Court. There are current care and protection orders under s 101 of the Act and additional guardianship orders under s 110 of the Act in favour of the Chief Executive of Oranga Tamariki. This option would depend on an adequate community-based plan managed by Oranga Tamariki.
- (b) The second option proposed was a whanāu/community-based option with supports. This order could be made under s 25(1)(b) CP(MIP) Act. Each young person could be placed voluntarily as care recipients under the ID(CCR) Act. This option would require Oranga Tamariki to coordinate adequate specialist supports to meet each young person's complex needs. This option would allow each young person to remain in their current home address with their mother and whanāu. The

option is only viable if the specialist supports that are necessary are available from providers in the community.

- (c) The third option is a Secure Care Order under the ID(CCR) Act. This option which is proposed in the s 23 CP(MIP) Act report from the care co-ordinator, Mr Sayer, is strongly recommended by the specialist assessor and supported by the Crown.

[40] At the hearing these options were summarised as two possibilities for me to consider: a community-based plan overseen by Oranga Tamariki under the care and protections plan, or a Secure Care Order for 12 months as recommended in the s 23 CP(MIP) reports.

Disposition reports

[41] On 14 October 2021, Mr Sayer², filed a report enclosing:

- (a) The specialist assessor's report and affidavit dated 11 and 13 October 2021 from Ms Dewar;
- (b) A copy of the s 23 CP(MIP) Act order for enquiry dated 9 September 2021;
- (c) A full needs assessment dated 11 September 2021 produced by the Forensic Co-ordination Service; and
- (d) A care and rehabilitation plan for each young person dated 13 October 2021.

[42] Ms Dewar recommended that [PE] and [NE] be made secure care recipients for a period of one year. I summarise the main points of her report:

² Compulsory Care Co-ordinator appointed under s 140 of the ID(CCR) Act.

- (a) Both [PE] and [NE] have had full cognitive assessments which diagnose that they both have an intellectual disability in the mild range. As such, [PE] and [NE] meet the criteria to become care recipients under the ID(CCR) Act. Both young people have a close bond with each other, their twin.
- (b) Both young people have been exposed to family violence, changes of placements, disrupted schooling, sexual trauma and neglect. They have spent lengthy periods out of school with little supervision and have often been bored. There has been frequent involvement of Oranga Tamariki in their lives, but adequate interventions have been marred by poor and distrustful relationships between [PE] and [NE]'s mother and Oranga Tamariki. Ms Dewar noted that this has been fuelled by the inability of Oranga Tamariki to address the needs of the family for support in a timely fashion, including the girls' disability needs.
- (c) In terms of risk assessment, Ms Dewar found that both girls present with a high risk of further offending and a range of criminogenic needs which have not been met. [PE] has been involved in offending from the age of 10, and her education had been disrupted after assault on a student. Both girls have experienced lack of supervision, and a lack of organised work or leisure activities. They have experimented with alcohol and drug use which is not current. Ms Dewar noted [PE]'s strengths
- (d) Ms Dewar considered two options. She noted that the first option of putting supports into the family had not been successful in the past and had led to lengthy periods of disengagement of both twins from educational and recreational activities. Ms Dewar doubted that the wide range of unmet needs of both young persons could be met and co-ordinated within the family, particularly when their mother returns to work. She noted that there were times when the young people chose not to comply with plans.

- (e) Ms Dewar recorded that [PE] and [NE] complied with a placement at [the care and protection service] where they had education, a range of positive activities, developed life skills and had regular family contact. This place ended due to an alleged inappropriate relationship by a staff member with [PE]. There had been no offending during this period and the girls had not been aggressive or ran away.
- (f) Ms Dewar reported that both [PE] and [NE] have strengths, they are open to structure and support, they respond well to care and attention, they are keen to develop skills, and are developing more pro-social attitudes.
- (g) After [PE] and [NE] returned to the mother's care, they abided by their bail conditions but have not been involved in any education or organised leisure or therapeutic interventions since the end of July 2021. I note that whanāu place responsibility of this lack of activity and interventions on Oranga Tamariki.
- (h) Ms Dewar recommended that [PE] and [NE]'s needs were such that they required specialist intervention from skilled professionals as care recipients of the ID(CCR) Act. She recommended a Secure Order than a less restrictive order so that each young person would be able to access and benefit from an experienced, multi-disciplinary team with a youth and disability focus.

Decision

[43] I am satisfied that the wellbeing and best interests of each of the young people, [PE] and [NE], can only be met by providing therapeutic interventions set out in Ms Dewar's report and the Care and Rehabilitation plans for each young person.

[44] Ms Dewar carefully considered the possibility of both young people remaining in the community with their whanāu. Ms Dewar has assessed their likelihood of further offending as high. She highlighted the background of offending that both [PE]

and [NE] had been involved in over some years. A significant concern in the past has been aggression, impulsivity and risk-taking behaviour, and an inability to withstand the influences of others.

[45] [PE] and [NE] do not fully understand the seriousness of this offending and in the past, they have seen this behaviour as justified. They have both said they will not re-offend, and I accept that they say this genuinely. They need professional help to develop emotional regulation, empathy for victims, and the skills to resist anti-social influences.

[46] I directed Oranga Tamariki to investigate whether the identified needs could be met in the community. Ms Gill proposed a community-based plan with a highly skilled social worker contracted to co-ordinate all the services needed for these young people. Ultimately, that proposal could not be advanced because Oranga Tamariki could not guarantee the wrap-around services required.

[47] I asked Oranga Tamariki to investigate whether living at home with whanāu, but with wrap-around services to address intellectual disability, trauma and behaviour needs, development of life skills and independence towards adulthood could be provided through community disability services.

[48] Ms Masoe filed a report on 16 November 2021. Oranga Tamariki consulted the regional disability providers. A NASC referral was completed. Oranga Tamariki's advice to the Court is that the Care and Rehabilitation plan available at [the secure mental health unit] under the Secure Care Order is unlikely to be available through community providers, including intellectual disability providers, given their current age (under 17 yrs) and their complex criminogenic and personal needs.

[49] I considered whether this disposition should be adjourned for further inquiries to be made as to the availability of Intellectual Disability Services and others in the community. I have determined that delaying disposition would not meet the principles and purposes of youth justice under the Oranga Tamariki Act. It is now over 12 months since the offending occurred and although there have been interventions, they have not been successful. Resources provided by Oranga Tamariki, including support from

Challenge 2000 and placement at [the care and protection service], have not met the special needs of these young people.

[50] It is clear now that these young people's needs are best met through the Intellectual Disability Services and specialist intervention. Placement at [the secure mental health unit] will enable planning and work to begin immediately to meet the girls' needs across the spectrum of cognitive development, education, life skills, behaviour and emotional regulation. The stated goal of a Secure Care Order is to work immediately towards rehabilitation in the community with the young people's needs being met.

[51] The conclusion I reached is that a Secure Care Order is the only viable disposition option for each young person. They will each have highly skilled care and support from specialists in intellectual disability, education and behaviour for young people with their special needs. The care plans make it clear that the young people will have their education, disability, trauma and behavioural needs met by skilled specialists.

[52] [PE] and [NE] have a supportive whanāu. Youth justice principles require their relationships with whanāu to be strengthened while meeting their other needs. It is important that they have contact with whanāu and that they receive support from whanāu while they are receiving treatment.

[53] It is important to recognise that the girls' mother has worked co-operatively with the Youth Court planning, has supported her daughters in all inquiries made and the previous community options explored. I am hopeful that the skilled staff at [the secure mental health unit] will establish a constructive working relationship with [AE] and the girls' sister, [ME], as an essential part of the girls' wellbeing. I have been assured by Mr Sayer that this aspect of whanāu support and involvement will be promoted.

Court review and oversight

[54] With these orders the Youth Court proceedings will be concluded, but there will be oversight and review by the Family Court. In the care and protection proceedings I have directed an updated care and protection plan which will be filed this month. It will reflect the outcome in the Youth Court. Keeping that plan under review will provide regular opportunity for oversight of the progress of the young people.

[55] In the care and protection proceedings, Mr Newell and Mr Robinson will be appointed to represent the interests of each young person. That will provide continuity. I am hopeful that Ms Gill will be appointed a lay advocate following the required procedures, to keep continuity for the young people as they go through treatment.

[56] The Secure Care Orders will be reviewed in the Family Court under the ID(CCR) Act within six months. Again, Mr Robinson and Mr Newell will be appointed as counsel for each care recipient to keep continuity.

[57] At the hearing I explained my decision to [PE] and [NE] in very simple terms. I was greatly assisted by the guidance from the communication assistant, including how to keep the message simple, and the language to use. I was also assisted by [ME] and Ms Gill with keeping [PE] and [NE] engaged and calm throughout the hearing.

[58] Despite the breakdown of trust between the whānau and Oranga Tamariki, Ms Masoe the social worker was committed to exploring all the options for the young people that might be achievable. I acknowledge her work on behalf of [PE] and [NE].

[59] I acknowledge the positive contribution of Youth Aid. They have approached this case with great empathy for the victim, and for the young people and their whānau. The whānau have confidence in [Sergeant A] in particular, and [Sergeant B], and I acknowledge the assistance that these experienced police officers have given the victim, these young people and their whānau.

Result

[60] For the reasons given, I make orders under ss 25(1)(b) and s 26(2) CP(MIP) Act as follows:

- (a) [PE] and [NE] are each made a care recipient under the ID(CCR) Act under a Secure Care Order for a period of one year.
- (b) The facility that the young people will reside at under the Secure Care Order is [the secure mental health unit], c/- National Intellectual Disability Forensic Services.

[61] A copy of this decision is to be released to each young person's youth advocate, Ms Gill, the Crown, with leave to provide a copy to [Sergeant B] from the Police Youth Aid Service, to Oranga Tamariki, and to forensic services.

Judge M O'Dwyer

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 02/02/2022