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**IN THE YOUTH COURT  
AT WELLINGTON**

**I TE KŌTI TAIOHI  
KI TE WHANGANUI-A-TARA**

**CRI-2021-219-000182  
[2022] NZYC 77**

**NEW ZEALAND POLICE  
Prosecutor**

v

**[KG]  
Young Person**

Hearing: 22 February 2022  
Appearances: Senior Constable P Starr for the Prosecutor  
M Baker for the Young Person  
Judgment: 24 February 2022

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**WRITTEN REASONS OF JUDGE M N E O'DWYER**

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[1] [KG] appeared in the Wellington Youth Court today for a disposition hearing in respect to a charge of Common Assault. [KG] is 17 years old.

[2] [KG] was found unfit to stand trial on the following charges:

- (a) Common assault under s 196 Crimes Act 1961. The charge arises from an assault on [HM] on 12 June 2021.
- (b) A charge of impeding breathing under s 189A(b) Crimes Act 1961 was withdrawn by leave on 21 December 2021.

[3] At the disposition hearing today, I made the following order:

- (a) That [KG] is made a Care Recipient under the ID(CCR) Act under a Secure Care Order for a period of two years. She is to be placed at [ a secure unit for intellectually disabled youth] pursuant to the Care and Rehabilitation Plan.

[4] At the hearing [KG] attended from the hospital by VMR. She was supported by Ms Baker, her youth advocate, [her communications assistant], and [her responsible clinician – doctor 1] in [a youth inpatient mental health service] where [KG] is placed under the Mental Health Compulsory Inpatient Treatment Order. I explained the purpose of the hearing to [KG], and the decisions that I had to make. I advised [KG] that I had decided that [KG] should become a care recipient under the ID(CCR) Act under a secure care order as recommended. I explained the decision in a way that [KG] would understand, assisted by guidance from [her communications assistant].

[5] I now give my reasons in writing.

## **Background**

[6] The Court has obtained detailed reports to assist with disposition, in particular a report from [doctor 2] on 5 January 2022, and the report from the specialist assessor,

[doctor 3], clinical psychologist and neuropsychologist, dated 14 February 2022. I will refer to those reports later in this decision.

[7] On 7 December 2021, I made a finding that [KG] was unfit to stand trial. This finding was based on the report of [doctor 4], dated 15 October 2021, and [doctor 2] of 25 November 2021.

[8] At the hearing on 7 December 2021, I made a finding that [KG] had been involved in the assault of her caregiver on 12 June 2021. I directed the psychological report under s 23 of the CP(MIP) Act and for an assessment of [KG]'s needs under the ID(CCR) Act.

[9] On 14 February 2022, the disposition report was filed through [the care co-ordinator]. The report made the following recommendations in summary:

- (a) That [KG] meets the criteria for intellectual disability.
- (b) [KG] is estimated to be at high risk of re-offending.
- (c) [KG] requires intensive support to mitigate her risk which could not safely be provided in the community.
- (d) A compulsory care order was recommended, with a secure level of care for a period of two years. The recommended period was to give enough time for [KG]'s needs to be met.
- (e) The report recommended that the care be provided initially in a hospital setting in a youth facility as this would allow time to address [KG]'s complex needs.

[10] Oranga Tamariki have custody and additional guardianship orders in respect to [KG] under the Oranga Tamariki Act. In the Family Court proceedings, directions have been given for Oranga Tamariki to provide updated reports to address her needs. The reports currently provided for by Oranga Tamariki confirm that [KG]'s needs

could not be met at the moment by community resources, other than under the ID(CCR) Act.

### **The charge**

[11] [KG] was in Oranga Tamariki care at the time of the events that led to the charge. She had spent 14 months in [a care and protection residence]. [KG] was at [location deleted] and had a glass beer bottle in her possession. She approached her caregiver in a threatening manner. She raised the beer bottle above her head and threatened to smash it over the caregiver's head. [KG] placed the caregiver in a headlock and held her there for about 30 seconds. She then hit her caregiver numerous times on the arm. Police attended and had to restrain [KG] for a significant period of time before her emotions were contained.

[12] The victim had sore arms, a sore chest and sore neck as a result of the assault.

[13] [KG] reported that she had consumed alcohol that day. She was absent from her supported placement, was in an emotionally disturbed state and had taken and overdose. She said she had wanted to harm herself with the glass bottle. [KG] accepted that she had grabbed the female caregiver and in the initial discussions she had minimised the impact that the assault had on that person.

### **Police submissions**

[14] The recommendation part of the specialist assessor's report was released to Police Youth Aid for their consideration. The police support the recommendation made in the s 23 report that the charge in the Youth Court be disposed of with an order placing [KG] as a care recipient under the ID(CCR) Act. The police consider that the level of care that [KG] would receive under a secure care order is likely to address the identified risks and reduce the likelihood of re-offending.

### **Ms Baker – Youth Advocate**

[15] Ms Baker has met [KG] several times, has discussed the charge with her and her current circumstances. She has discussed the hearing today and the recommendation in the report and the likely outcome.

[16] Ms Baker has spoken with [doctor 1]. [Doctor 1] reported that [KG] had made enormous progress whilst at [the youth inpatient mental health service]. He confirmed at the hearing that in recent weeks [KG] had demonstrated a greater ability to control and manage her emotions to keep herself safe and to keep others safe around her. He confirmed that he would expect that if [KG] continues to progress at the same rate, he would expect she would progress to the next stage of the plan into the community after six months.

[17] At the hearing [doctor 1] described the leave that [KG] had been permitted to have, which included both ground leave and leave off the grounds. She had contained herself well with that leave and complied with the requirements. He was pleased with the progress. [Doctor 1] said that he was confident that [KG] would transition well to [the secure unit], which is in the same building as [the youth inpatient mental health service] and that [KG] already knew some of the staff members which would help with her transition.

### **Youth Justice principles**

[18] I must have regard to the purposes of the Oranga Tamariki Act in ss 4 and 4A, and the principles in ss 5, 13 and 208 of the Act. In summary they are:

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

[19] The principles that are important are:

- (a) The goal is to respond to the offending by promoting the best interests of the young person in acknowledging her needs, while taking steps to prevent or reduce re-offending and recognising the interests of victims and holding [KG] to account for her behaviour.
- (b) Adopting measures that would support and protect [KG] to prevent re-offending.
- (c) Assisting whānau to prevent [KG] from re-offending and in this regard is the importance of [KG]’s family and their support for her.

[20] It is an important principle that the young person should be kept in the community as far as practicable and is consistent with the need to ensure public safety. In this case [KG] is a patient under the Mental Health Act. She has mental health and intellectual disability needs. The least restrictive intervention at present is in a hospital setting with a view to transition to the community after intensive treatment.

[21] I must also take into account [KG]’s views, the views of her family, particularly of her mother, [CG], with whom [KG] has a very close relationship.

### **Whānau participation**

[22] Prior to the hearing I explored with Ms Baker, [KG]’s youth advocate, whether [KG] wished her mother to be present at the hearing. [KG] advised that she did not want her mother present and did not want her mother to hear the details of the offending. I extended Ms Baker’s brief for her to ensure that [KG]’s mother, [CG], had a copy of the report and was clear about the process and could make any contribution she wished. During the hearing I asked Ms Baker to communicate with [KG]’s mother, [CG], after the hearing.

### **Disposition reports**

[23] I have referred to the report of [doctor 2] of 5 January 2022, and [doctor 3], the specialist assessor’s report of 14 February 2022. I also refer to the needs assessment and the detailed care and rehabilitation plan that has been filed for [KG].

[24] The recommendation from [doctor 3] is for a secure order for two years. I summarise the main points from her report:

- (a) [KG] is now 17 years old of [European] descent. She was placed in a care facility for infants in [a European country] when she was eight years old or thereabouts. She remained there until she was two and a half years' old. It is unclear what quality of care was provided in the first two and a half years of her life. It is reported that she had visits from her grandmother, but the frequency and nature of those visits are not known.
- (b) It is well known that institutional care in the early years of a child's life is disruptive to normal brain development. Psychological attachments are affected, as is cognitive development as well as other essential skills. It is highly likely that the difficulties that [KG] has experienced since she was nine years old in part reflect the disrupted beginnings in her life.
- (c) When she was four years old, she was fostered by a family before being adopted. When she seven years old, she was adopted by [CG] and [WG]. She grew up in New Zealand with her half-brother, [DG]. She was joined by another half-brother, [TG] in later years. It is a strength for [KG] that she has two brothers who are linked to her genetically.
- (d) [KG] was diagnosed with ADHD and intellectual disability. Since she was 14 years' old, she experienced difficulties at school, in particular bullying. She ran away many times. Since early 2020, she was placed in Oranga Tamariki care and protection facilities. Difficulties escalated for [KG]. In 2021, whilst in a care and protection facility, [KG] assaulted her caregiver as described in the summary of facts.
- (e) In the Youth Court proceedings [KG] was originally charged with additional charges of impedes breathing, assault and possession of an

offensive weapon. Apart from the assault charge, the other charges were withdrawn by leave.

- (f) [KG] had been involved in a number of fights in her life and other assaults. At times she had used weapons in a fight and many events were associated at times when [KG] was struggling with her emotions. In the care and protection setting she had been involved in several assaults on staff and peers and to the police.
  
- (g) A major incident occurred in September 2021 when [KG] was living at [the care and protection residence]. She assaulted a staff member and attempted self-harm. It was considered that she was suicidal. Assaults on staff, self-harm attempts and unmanaged behaviour continued. She was eventually admitted to the [unit] for young people with mental health difficulties. She was placed under an inpatient compulsory treatment order under the Mental Health Act. Between November 2021 and January 2022 there were several incidents at [a youth inpatient mental health service], including self-harm and harm of others. There have been incidents of punching, kicking, spitting, biting and verbal threats to staff. Some incidents have led to police complaints.

[25] [Doctor 1] confirmed that [KG] had become more settled in the last month. She had been able to manage her behaviour in a more regulated way. She is able to work with set goals which includes more independence and self-control.

[26] The psychologist reported that [KG]'s risk of re-offending is in the high range. That is because of the frequency of the violence, including assaults on staff over the last 12 months, and her difficulty with emotional self-regulation.

[27] On a positive note, [KG] has many strengths. She has a good relationship with her mother and other family members. They present strong pro-social values and support her. She does not have anti-social friends or gang associates, although she does not have strong friendships either. She does not have a history of alcohol or drug



problems. [KG] has strong personal interests and is good at sports. She also has pro-social goals such as employment.

[28] There has been a recent change to [KG]'s medication which has had a significant and positive effect on her behaviour.

### **[KG]'s views and wishes**

[29] [KG] has engaged well with all the inquiries, assessments and reports. She has undertaken testing and assessments. She has shown the ability to be co-operative with these processes which is to her credit.

[30] [KG]'s current goal is to live in her own home in [location A] and be independent. She understands that to achieve her personal goal she will have to take steps towards the goal. She understands that the next step towards the goal would be a placement at [the secure unit]. She is agreeable to a plan that has those steps and those goals.

### **Decision**

[31] It is clear from the reports that [KG] has high and complex needs that can be best met under the framework of the ID(CCR) Act. There are many pro-social aspects to [KG], herself, and her family and her upbringing since her adoption. She is well supported by her mother and she wants to return to [location A] when she is able.

[32] [KG]'s cultural background is important. [KG] is interested in knowing more about her [European] ancestry and her own personal history. One of the recommendations in the specialist assessor's report is that [KG] should have cultural support to explore her heritage.

[33] Given [KG]'s history of assaults and self-harm, I accept the current estimate that [KG] is at a high risk of re-offending. However, she has responded well to her current medication regime. She is also responding well to the plan and the goal that has been set. With the help of skilled intervention at [the secure unit], her risk of re-offending will likely reduce.

[34] I have considered the level of care recommended as secure level care. I accept that that is necessary for [KG]. She has a history of absconding and when her emotions are not regulated, she would be likely to abscond if she was not in secure care. She has responded well to leave recently which indicates that she can do well with goals and structure.

[35] The period that is recommended is two years. That is a long time in [KG]'s mind, which is understandable. I explained to [KG] that this is the total period that the order could last for, but not the total time that she will spend in [the secure unit]. I explained that the first step is a placement in [the secure unit] which will be reviewed in six months. From [KG]'s perspective, goal setting and planning for transition to the community with wrap-around support is likely to best meet her needs and reduce the risk of offending.

#### **Care review and oversight**

[36] With the orders made today, the Youth Court proceedings will be concluded. 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. Keeping that plan under review will provide regular opportunity for oversight of [KG]'s progress.

[37] In the care and protection proceedings, Ms Baker will be appointed to represent [KG]'s interests. That will provide continuity.

[38] The secure care order will be reviewed in the Family Court under the ID(CCR) Act within six months. Ms Baker will be appointed as counsel for [KG] in the ID(CCR) Act review for the sake of continuity.

[39] [KG]'s needs are such that she requires a communication assistant. [The communications assistant]'s assistance for [KG] throughout the process in the Youth Court has been invaluable. It is important that [KG] has the benefit of a communication assistant for the future proceedings in the Family Court.

## Result

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

- (a) [KG] is made a care recipient under the ID(CCR) Act under a secure care order for a period of two years.
- (b) The facility that the young person will reside at under the secure care order is [the secure unit], care of the National Intellectual Disability Forensic Service.
- (c) A copy of this decision is to be released to Ms Baker, [KG]'s youth advocate, the Police Youth Aid, Oranga Tamariki, Forensic Services and those involved in her treating team, and [KG]'s mother on condition that it is kept under conditions of confidentiality.

[41] A copy of this decision is to be placed on the Family Court file.

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Judge M O'Dwyer

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 24/02/2022