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**IN THE YOUTH COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIOHI
KI ŌTAUTAHI**

**CRI-2021-209-000185
CRI-2021-209-000065
[2021] NZYC 503**

**NEW ZEALAND POLICE
Prosecutor**

v

**[GA]
Young Person**

Hearing: 9 November 2021
Appearances: Sergeant G Malzard for the Prosecutor
A James for the Young Person
Judgment: 17 November 2021

RESERVED JUDGMENT OF JUDGE S M R LINDSAY

[1] [GA] is charged with offending arising from [date 1 in January] 2021; namely, unlawfully getting into a [motor car], unlawfully entering a building and burglary of a dwelling on [street 1]. [GA] also faces charges for alleged offending on [date 3 in February] 2021; namely, two charges of burglary relating to properties in [street 2] and [street 3].

[2] A charge of wounding [name deleted - the victim] with reckless disregard has already been withdrawn.

[3] An application is made for the charges to be dismissed pursuant to s 322 of the Children Young Persons and Their Families Act 1989 (the “Act”). It is submitted the time that has elapsed between the date of the commission of the alleged offences and the hearing has been unnecessarily or unduly protracted.

[4] Section 322 of the Act provides:

322 Time for instituting proceedings

A Youth Court Judge may dismiss any charge charging a young person with the commission of an offence if the Judge is satisfied that the time that has elapsed between the date of the commission of the alleged offence and the hearing has been unnecessarily or unduly protracted.

[5] In January 2021 [GA] was 16 years of age. [GA] is now 17 years old ([date of birth deleted] 2004).

[6] Details as to [GA]’s alleged involvement in the offending on [date 1] 2021 came to light following a Police Ten 7 Television NZ programme. [Constable A] received information as to [GA]’s involvement on 20 February 2021. [GA] was interviewed at the Rolleston Police Station by [Constable A] on 11 March 2021 and his mother was present at the interview as the nominated adult. The alleged offending in February 2021 came to light as a result of offending in April 2021. It appears NZ Police, over time, formed a picture of [GA]’s involvement along with other young people in burglaries in a rural area.

[7] There was delay before other young people involved in the first set of offences were interviewed. The delays were caused by the investigative process and, in

particular, identifying and linking a number of young people thought to be involved in the burglaries. The delays in drawing out the involvement of other young offenders appears to be over a reasonable timeframe. The delay occurred from June 2021 to August 2021. The file was inadvertently forwarded to the Police Crime Unit rather than Youth Aid. On 29 July 2021, the Christchurch South Police Station received the investigation file for follow-up. Sergeant Malzard referred the file on 2 August 2021 to a Youth Aid Officer and action was then commenced.

[8] Mr James conceded at hearing that the timeframes around the offending in March 2021 do not reach the threshold to be unduly protracted. [GA] has made admissions and has not denied these two charges.

[9] Mr James submits that a delay from the alleged date of offending in January 2021 until first Court appearance on 5 October 2021 has been protracted and is longer than would reasonably be expected in a case of this nature. The reason for delay can be for more than one reason. Or delay may have occurred at one discrete stage during an investigation over the period police investigated the burglary on [date 1] 2021. The delay arose from 2 June 2021 to 29 July 2021. This time period and reasons are conceded by Sergeant Malzard. Otherwise, the timeframe delays of this police investigation are understandable or reasonable given an ongoing investigation and once the file was received by Sergeant Malzard time was ‘made up’ with the prompt referral to Youth Aid for action.

[10] The slippage between the file leaving the investigating officer on 2 June 2021 and being minuted to the wrong section was an easy oversight. Regardless, it created a delay.

[11] Is this delay no more than could be reasonably avoided?¹ Although there was slippage with the file being sent to the wrong unit, arguably it was delay caused by default.

[12] Has that delay been more than trivial? It is accepted it would not be appropriate to impose upon the police or the Court system a standard of perfection. There needs

¹ *Attorney General v Youth Court at Manukau* [2007] NZFLR 103.

to be a balance between a “standard of perfection” and a delay that amounts to an abuse of process giving rise to prejudice.

[13] [GA] is well along the family group conference and Youth Court process of reaching his obligation and responsibilities arising from his April 2021 offending. With his admissions to the February 2021 offending he has been directed to attend a family group conference. Mr James submits that there has been an unfairness to [GA] in that given the delay of his alleged early 2021 offending the process has, in effect, been “held up”.

[14] When exercising my discretion under s 322 the Court should take into account the purposes of the Oranga Tamariki Act 1989:

4 Purposes

(1) The purposes of this Act are to promote the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups by—

.....

(i) responding to alleged offending and offending by children and young persons in a way that—

(i) promotes their rights and best interests and acknowledges their needs; and

(ii) prevents or reduces offending or future offending; and

(iii) recognises the rights and interests of victims; and

(iv) holds the children and young persons accountable and encourages them to accept responsibility for their behaviour:

.....

[15] The Act also provides for the general principle that decisions made in relation to young people should be implemented promptly and in a timeframe appropriate to the age and development of the child or young person.²

² Section 5(1)(v) Oranga Tamariki Act 1989.

Chronology

[16] The best form of a chronology in these proceedings is found in the submissions of Sergeant Malzard:³

- (a) [Date 1] 2021 - sometime between 7 pm and 8 pm, [GA] and three associates were in the [suburb deleted] area in a [motor vehicle]. [GA] was a passenger in the vehicle, seated in the rear. At approximately 9.20 pm the vehicle was driven onto a rural property in [street 1] and [GA] and some of his associates entered a shed on the property and a plastic jerry can of fuel was stolen.

The owner of the property confronted the group. [GA] and his associates fled on foot.

- (b) [Date 1] 2021 - [Constable A] attended the scene of the burglary at [street 1] and commenced an investigation.
- (c) [Date 2 in February] 2021 - the case aired on the television show Police Ten 7 as those responsible were unknown at the time.
- (d) 19 February 2021 - [Constable A] received information [GA] was responsible for the burglary.
- (e) 20 February 2021 - [Constable A] contacted [GA]'s mother and made arrangements to interview [GA] about the burglary.
- (f) 11 March 2021 - [GA] presented himself for interview at the Rolleston Police Station. His mother was present as his nominated person.

[GA] admitted being a passenger in the [motor vehicle] and going onto the property at [street 1]. He acknowledged the group had been confronted by the victim and nominated an associate as the person

³ Paragraphs [4] to [35] submissions dated 8 November 2021.

responsible for an assault. [GA] was released without charge following the interview and advised further enquiries would be made.

[Constable A] forwarded details of the associate [GA] had nominated as being responsible for assaulting the victim to the Police Youth Crime Unit, requesting a suspect be interviewed about an alleged assault before deciding whether [GA] be referred to Youth Aid for follow-up.

- (g) The associate was subsequently interviewed by police but made no admissions about the offending.
- (h) 9 June 2021 - [Constable A] forwarded [GA]'s police file to Youth Aid for follow-up. However, the police file was inadvertently minuted to the Police Youth Crime Unit and not received by Youth Aid.
- (i) 29 July 2021 – the Youth Aid section at Christchurch South Police Station received [GA]'s file. That day the file was forwarded to the Hornby Youth Aid and received by [Senior Constable B], a Youth Aid officer assigned to work with [GA] (2 August 2021) and Youth Aid action was commenced.
- (j) 17 August 2021 – [Senior Constable B] consulted with the Youth Justice Co-ordinator and requested an intention to charge FGC regarding the burglary.

Later that same day, New Zealand went into level 4 lockdown due to COVID-19.

- (k) 27 August 2021 – [Constable B] received burglary files from the burglary on [date 4 and the day after] 2021.
- (l) 29 September 2021 – an FGC was convened for [GA]. No pleas were taken and [GA] was subsequently summonsed to appear on all matters on 5 October 2021.

- (m) 5 October 2021 – [GA] made a first appearance at the Youth Court at Christchurch. No pleas were taken and the Youth Advocate advised the Court he would be filing submissions for all matters to be dismissed pursuant to s 322 of the Act.

[17] The test for undue delay is found in *Martin v District Court at Tauranga*.⁴ The Court of Appeal specified four factors for consideration when assessing whether there has been undue delay. In *Police v Turner* Wild J noted these four factors can be applied in cases where an application pursuant to s 322 is being considered by the Court. The factors being:⁵

- i. The length of the delay.
- ii. Waiver of time periods.
- iii. Reasons for the delay.
- iv. Prejudice to the accused.

[18] It is accepted Parliament did not prescribe a limitation period opening up. It anticipated a “more broadly based assessment of whether the time elapsed is “unduly protracted”.”⁶

[19] In [GA]’s case, following the offending, there was no forensic information to identify the offender. It was only with information coming to light on 19 February 2021 the police were able to pursue a line of enquiry as to [GA]’s involvement. [GA] was interviewed promptly (11 March 2021) by [Constable A]. This provided further information regarding the involvement of others and this was passed on to Youth Crime for investigation.

⁴ *Martin v District Court at Tauranga* [1995] 3NZLR 419.

⁵ *Police v Turner* (HC Palmerston North, CRI-2005-454-62, 3 May 2006).

⁶ *P v Turner* (HC Palmerston North, CRI-2005-454-62, 3 May 2006) Wild J, para [18].

[20] It is submitted by the informant that other investigative steps were required, including search warrants to be conducted on cellphones and information from other alleged offenders. There was no delay and the investigation reasonably proceeded.

[21] It is now clear that [GA] went on to offend in February and April 2021. What became better understood or observed was a pattern of offending, including taking keys from inside houses and stealing the vehicles from the property.

[22] It is fair observation that the delay that is complained of was not due to one particular stage in the investigation. In fairness, it is difficult to criticise the police for the first month period in which [GA]'s alleged involvement could not be forensically proven. Moreover, the unfolding picture of [GA] and other young people's offending became more apparent with subsequent burglaries. It was only from 19 February 2021 that [GA] was identified as a suspect and the period that followed until first appearance is eight months. [GA] was interviewed on 11 March 2021 and made admissions to his offending on [date 1] 2021. A period of seven months from his admission to his first appearance in the Youth Court. The period of inaction on the file is six weeks but, overall, this has not been unnecessarily or unduly protracted.

[23] As it stands, [GA] is before the Youth Court in relation to the February charges and there is no prejudice to him should the alleged January offending be included as, at this point, it can be captured within the family group conference process.

[24] On balance, I am not satisfied the delay amounts to unnecessary or unduly protracted. I accept what transpired came about through a simple oversight.

[25] I dismiss the application pursuant to s 322 and direct the charges remain before the Youth Court.

S M R Lindsay
Youth Court Judge