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

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IN THE FAMILY COURT
AT DUNEDIN

I TE KŌTI WHĀNAU
KI ŌTEPOTI

FAM-2022-012-000189
[2023] NZFC 7258

IN THE MATTER OF	INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003
BETWEEN	FORENSIC COORDINATION SERVICE (INTELLECTUAL DISABILITY) Applicant
AND	[COLLIN BRONSON] Care Recipient

Hearing:	30 May 2023
Appearances:	S Berrill for the Applicant J Farrow and Ms K Thompson for the Care Recipient
Judgment:	7 July 2023

RESERVED DECISION OF JUDGE E. SMITH
[AS TO EXTENSION OF COMPULSORY CARE ORDER]

Application

[1] This is a defended application pursuant to s 85 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 ("the Act") to extend a compulsory supervised care order of the care recipient, Mr [Bronson].

[2] On 13 December 2021, as a result of three offences – two charges of indecent assault of a female aged between 12 and 16[1] and one charge of impeding breath/blood circulation (otherwise known as strangulation/suffocation)[2] ("the index offending") – the District Court at Invercargill ordered, pursuant to s 25(1)(b) of the Act, that Mr [Bronson] was to be a care recipient at the supervised level until 13 December 2022 (i.e. a one-year term) ("the first order").

[3] In May 2022, Mr Paul Carlyon completed Mr [Bronson]'s first statutorily required specialist assessor's review. Mr Carlyon's recommendation was that Mr [Bronson] continue to be cared for as a care recipient on the basis that Mr [Bronson], at that time, agreed that he had undertaken an insufficient amount of specific offences treatment, and accepted that the order should continue until December 2022 (i.e. the anticipated expiration date for the first order) so that he could, in particular, engage in the STOP programme.

[4] By way of a report dated 30 November 2022, Dr Duncan Thomson completed Mr [Bronson]'s second statutory review. Dr Thompson recommended an extension of the first order (together with other recommendations) until 13 September 2023. The basis for this recommendation was that Mr [Bronson] had not started the STOP programme and, given that the recommended duration for that programme was 40 sessions at minimum, an extension of the compulsory care order until September 2023 was required.

[5] Accordingly, on 5 December 2022, the applicant, pursuant to s 85 of the Act, sought an extension of the compulsory care order for a nine-month period (i.e. until 13 September 2023). Further, given the impending expiry of the first order on

[1] Crimes Act 1961, s134(1).
[2] Crimes Act, s 189A(a)

13 December 2022, the applicant also sought deferral of that expiry on 13 December 2022, pursuant to s 87 of the Act. That deferral was granted by the Court, in essence, until disposition of the application for extension.[3]

[6] However, given Mr [Bronson] did not start the STOP Programme until March 2023 (not due to any fault of Mr [Bronson]), the applicant now seeks the extension until December 2023 to complete the 40 sessions of STOP recommended.

[7] Mr [Bronson] opposes any extension of the care order arguing that his liberty interests outweigh the community protection interest. Alternatively, if the Court is to extend the order, seeks it for the least possible time. In support of his position, however, he argues that if the order is to expire now, he would nevertheless voluntarily continue to attend the STOP Programme, weekly, through facilities and funding available provided through the Community Care Trust (CCT).

The Law

[8] Section 85 of the Act provides:

> **85 Extension of compulsory care order**
>
> (1) The Family Court may, on the application of the co-ordinator, extend the term of a care recipient's compulsory care order.
>
> (2) If the court extends a compulsory care order for a care recipient no longer subject to the criminal justice system, the court must consider and determine whether the care recipient must receive supervised care or secure care.
>
> (3) The court may order that a care recipient no longer subject to the criminal justice system receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or of others.

[9] During a compulsory care order the care recipient must be assessed and reviewed every six months by a specialist assessor who must issue a certificate as to whether the recipient's status needs to be changed (as between secure or supervised), continued, or cancelled.[4]

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[3] See order of Judge Flatley of 7 December 2022; and order of Judge Cook of 15 March 2023, at [4].

[4] Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, ss 77 and 79 (n.b. such reports must include full reasons).

[10] If, following receipt of the last review prior to the order expiring, the specialist assessor's opinion is that the care recipient still needs care, then the care-coordinator may apply for an extension of the order.[5] If such an application is made, the Court may defer the expiry of the order to a date which is sufficient for the application to be heard and determined.[6] Conversely, if the specialist assessor certifies that the care recipient no longer needs compulsory care, a care-coordinator should apply to the Family Court to cancel the order at any time during the currency of the compulsory care order.[7]

[11] In deciding whether to grant an application to extend or cancel the order, the Court must have regard to the most recent review by the specialist assessor and may also obtain a second opinion from another specialist assessor.[8]

[12] The leading case in respect of extending compulsory care orders is *RIDCA Central v VM* where the Court of Appeal's task was to determine the criteria that should be applied in deciding whether to extend a compulsory care order.[9] The Court ultimately held that the decision to renew an order involved consideration of a broader range of factors than simply risk. The decision is to be a nuanced evaluation of all the information, meaning that the court has to balance the community protection interest against the care recipient's liberty interests. The Court stated:[10]

> [91] … the longer a care recipient has been subject to a compulsory care order, extension decisions will require ongoing and sometimes increasing justification, because the community protection interest will need to be greater to outweigh the increased weight given to the liberty interest of the care recipient.
>
> **Our approach**
>
> [92] Drawing the threads together we summarise our conclusions as follows:
>
> (a) Sections 3 and 11 set out the guiding principles in relation to extension decisions. Unless the community protection interest outweighs the liberty interest of the care recipient, an extension of a compulsory care order should be refused.

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[5] Section 85(2).
[6] Section 87(1).
[7] Section 88.
[8] Section 88(2).
[9] *RIDCA Central v VM* [2011] NZCA 659, [2012] 1 NZLR 641.
[10] *RIDCA Central*, above n 8, at [91]-[93].

Given the objective of the IDCCR of protecting the rights of intellectually disabled people and the high value New Zealand society gives to individual liberty, the Judge determining an extension application must be satisfied that the community protection interest cannot be met other than by a compulsory care order. To put it another way, the compulsory care order must be the least coercive and restrictive option available.

(b) It is not sufficient reason to extend a supervision order that the care recipient would benefit from supervised care and treatment and the opportunities for rehabilitation that would be provided under a compulsory care order. If the care recipient no longer constitutes a risk of sufficient seriousness to justify the continuation of the order, the extension should be refused. However, rehabilitation is an important objective of the IDCCR Act. The Judge making an extension decision should be informed of the rehabilitation efforts that have been made and the outcome of them and advised of the prospects of future rehabilitation. If the risk posed by the care recipient is unlikely to be reduced through rehabilitative efforts, the Judge may take that into account in determining whether the community protection interest continues to be outweighed by the liberty interest of the care recipient.

(c) The weight to be given to the liberty interest is not necessarily static. After the care recipient has been subject to a compulsory care order for a substantial period, the Judge may determine that greater weight needs to be given to the liberty interest.

(d) The nature of the original offending is relevant to an extension decision in that it may provide the Judge with an indicator of the level of risk posed by the care recipient. This can be taken into account with the clinical assessments of the health assessors in determining the weight to be given to the community protection interest. In a finely balanced case, the fact that an extension would make the period of compulsory care disproportionate to the offending of the care recipient may also be taken into account. However, in a case where a Judge is satisfied that the community protection interest outweighs the liberty interest of the care recipient, the fact that the period during which the care recipient will remain subject to a care order would exceed the sentence to which he or she would have been subject if he or she was not intellectually disabled should not lead to the refusal of an extension.

[93] In short, we do not see the term "undue risk" as an appropriate test. Rather, we believe that the guiding principle is that set out in s 11, and it is that principle which must be applied in the light of the purposes of the IDCCR Act set out in s 3. That does not create a bright line test of "undue risk", but rather requires a nuanced evaluation of all of the information available to the Judge so that he or she can balance the community protection interest in relation to the care recipient against the liberty interest of the care recipient.

[13] Those principles were helpfully summarised by Judge Somerville in the subsequent decision of *SNRB v WLH* to include:[11]

> (a) The extension of an order under s 85 involves extra factors that would not necessarily be involved when the initial order was made;
>
> (b) A compulsory care order is a form of detention and involves the use, by the State, of its coercive powers;
>
> (c) The Court must be satisfied that the care recipient continues to pose the level of risk that merits ongoing coercive powers;
>
> (d) It is not enough that, objectively, it would be good for the person to remain subject to a care order;
>
> (e) The determination of the level of care required involves an assessment of the level of risk that the care recipient poses, either to themselves or others;
>
> (f) A care recipient cannot be subject to repeated extensions simply because their risk level remains static;
>
> (g) Although there should not be any specific focus on the maximum penalty for the original offence, which initially provided the Court with jurisdiction for confinement, there should be a broad sense of proportionality with more serious offending warranting longer periods of detention; and
>
> (h) There should also be a sense of direction in the care programme.

[14] In that regard, Mr Farrow, for Mr [Bronson], emphasised the Court of Appeal's comments which suggested that, when assessing the care recipient's liberty interests, the need for justification for a care order increases the longer a person has been subject to compulsory care order. Further, Mr Farrow emphasised the Court's statement that the liberty interest is not static and that, once a care recipient has been subject to a compulsory care order for a substantial period, the Court may determine that greater weight needs to be given to the care recipient's liberty interests. In that regard, I consider Mallon J's comments in *L v RIDCA Central* as apposite. In *L v RIDCA Central*, her Honour said:[12]

> … the longer the period the person is compelled to be in care for, the greater the risk of harm to the person or to others there must be to justify the compulsion order. Further, if an intellectually disabled person is to be kept under compulsory care for a period longer than any form of detention (or

[11] *SNRB v WLH* [2012] NZFC 168, at [8].
[12] *L v RIDCA Central* [2013] NZFLR 497, at [19] (following the decision in *RIDCA Central v VM*, above n 10).

> restrictions upon liberty) imposed on a person without that disability but with the comparable risk of harm to themselves or to others, there would need to be a very good reason to justify that.

Eligibility

[15] There is no contest that Mr [Bronson] meets the accepted eligibility criteria that are found in s 7 of the Act.[13]

Background

[16] Mr [Bronson] grew up with his mother, father, older brother ([name deleted]), and older half-brother. His mother reports a normal pregnancy, and that her son met the expected normal developmental milestones except perhaps some speech delay.

[17] Although Mr [Bronson] is described as being a somewhat clumsy child, his childhood appears to have lacked any significant issues. He liked spending time with his friends, helping his father with chores, and playing sport at primary school. However, his health may have been impaired by a [details deleted].

[18] Mr [Bronson] was provided with additional assistance throughout his education beginning in kindergarten, and thereafter received ORS funding throughout his schooling upon his learning difficulties being discovered. It appears, in all regards, that Mr [Bronson] was well supported throughout his education with an individual plan and teacher aide support. Mr [Bronson] remained in schooling until the end of [year deleted]. [Details deleted]. Mr [Bronson] reported that he did find college difficult at times as other students gave him difficulties relating to several allegations of sexual misconduct throughout that time.

[19] In early 2017, Mr [Bronson] started a [course] at [school name deleted]. He completed the year, finishing before Christmas.

[13] See page 6 and 7 of Dr Thomson's review, November 2022.

Offending History

2014 – unlawful sexual connection with a 9-year-old

[20] Following an incident in 2014, when Mr [Bronson] was approximately 16, he was charged with having sexual connection with a child under 12. The facts were that he performed oral-genital contact on a girl, aged nine, who was unrelated to him. The factual matrix also included a suggestion that Mr [Bronson] asked the victim if he could anally penetrate her, but the victim was able to escape Mr [Bronson] at that time. Mr [Bronson] was found unfit to stand trial and discharged under s 25(1)(d) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 ("the CP(MIP) A 2003").

[21] However, because of that incident, Mr [Bronson] began attending STOP to address factors relating to that sexually harmful behaviour.

2016 – three charges of an indecent assault of a female between 12 – 16

[22] In 2016, Mr [Bronson] was charged with three counts of indecent assault of a female aged between 12 and 16. The alleged facts were that the female was a [detail deleted] and that Mr [Bronson] touched her on the breast, poked her in the bottom with a pencil, and sat on her while placing his hands on her breasts between her blouse and blazer. Again, Mr [Bronson] was found unfit to stand trial pursuant to the then s 14 of the CP(MIP)A 2003 and, although eligible to become a care recipient, the Court chose not to make him a care recipient and he was instead again discharged pursuant to s 25(1)(d) of the CP(MIP)A 2003. It is suggested that the Deputy Principal at Mr [Bronson]'s school advocated for the charges to be brought against Mr [Bronson], and it is understood this may have contributed to the subsequent charges of arson (see paragraph [24] below).

2017 - shoplifting

[23] Mr [Bronson] was convicted of shoplifting in relation to events on 21 December 2017. He was sentenced on 15 March 2018, that sentence comprising of reparation and a six-month deferred sentence.

2019 – two charges of arson and one of burglary

[24] In 2019, Mr [Bronson] was found unfit to stand trial pursuant to s 14 of the CP(MIP)A 2003 with respect to two charges: one of arson, and one of burglary (estimated value $5). The allegations were that Mr [Bronson] and an associate went to the grounds of a local college and started fires in rubbish bins with the intent of burning down parts of the school. At the time, it was suggested that Mr [Bronson] was receiving a benefit, was unoccupied, and frequently associating with his co-offender. He admitted that he had been experimenting with cannabis around this time as well. Mr [Bronson] was, again, considered for his eligibility and suitability to be made a care recipient. The then-specialist assessor, Dr Thomson, opined that there was little therapeutic imperative to recommend an order pursuant to the Act and, accordingly, Mr [Bronson] was discharged.

2021 – index offending: two charges of indecently assaulting a female between the ages of 12 and 16, and one charge of strangulation

[25] Then, in 2021, Mr [Bronson] was found unfit to stand trial with respect to the index offending of two charges of indecently assaulting a female between the ages of 12 and 16, and one charge of strangulation. The victim was aged 14. The context of that offending was that the victim had knocked Mr [Bronson]'s hat from his head. Mr [Bronson] responded by forcing the victim to the ground and placing his knee on her chest with sufficient force that she struggled to breathe. He then placed his forearm across her neck, further impeding her breathing. The victim escaped but Mr [Bronson] followed her, forced her to the ground again, and verbally abusing her before grabbing the victim's breast such that it caused her pain. Mr [Bronson]'s position is that he squeezed her breast as a means of hurting her and denied any sexual motivation or arousal. The specialist assessor, Mr Carlyon did not consider his denial of sexual motivation to be plausible.[14]

[26] It is these charges for which Mr [Bronson] was ordered to be a care recipient, at supervised level, for a one-year term beginning 13 December 2021 pursuant to s 25(1)(b) of the Act.

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[14] See Mr Carlyon's report of May 2022, page 4.

Likely admitted, but not charged, offending

[27] Mr [Bronson] acknowledged to Dr Thomson that he had been in a sexual relationship with a girl aged 14. This relationship lasted two months. He has not been charged with any offence in relation to this matter.

Supervised Care and Interventions

[28] It is helpful to recall the purpose for which it was recommended that Mr [Bronson] be made subject to a care order. Ostensibly, that was to:[15]

> Allow Mr [Bronson] sufficient time to undergo offence-focussed treatment using a relapse prevention model to address his capacity to improve his respect for the rights of others and to address his risk of general and sexual offending.

[29] As a result of the supervised care order, Mr [Bronson] was cared for by CCT in Dunedin. Initially, he was accommodated in a residence in [detail deleted] in Dunedin. However, he was subjected to threats of assault by a peer, and he found his co-residents uncleanliness to be intolerable. These factors, as well as safety and wellbeing concerns (which were not of his making), meant that Mr [Bronson] was relocated to his continuing and current address: [address deleted]. At that address, he has access to support staff who are present at all times. Overall, he is said to have settled into that accommodation.

[30] In terms of daily routines, Mr [Bronson] takes responsibility for some of the household chores and prepares his own meals. He has maintained contact with his family in [town A - name deleted] including independent time away from the CCT staff while he is in the company of his parents who are able to adequately supervise him. He is said to sleep well and denies any experience of psychological distress other than missing his [town A]-based parents.

[31] There have been attempts to ensure that Mr [Bronson] has opportunities to access the wider community, albeit with close proximity of staff, with Mr [Bronson]'s favourite activity being his involvement in a local [sports] team.

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[15] See Mr Berry's Specialist Assessor Eligibility Report (8 December 2021) on which the Court relied in making Mr [Bronson] a care recipient with a suggested period of supervised care order for 12 months.

Psychological Assessment

[32] Mr [Bronson] completed a four-session psychological assessment with Ms Old (Clinical Psychologist, Southern District Health Board, Intellectual Disability Service). The intention of that assessment was to identify specific recommendations for treatment. Mr [Bronson]'s understanding of the assessment was that it was necessary was so that "I don't get into trouble and I'm not someone that hurts others".

[33] Ms Old's report stated that although Mr [Bronson] had attended STOP as an adolescent, "… his only recollection was that it was boring and that he cannot remember anything about the sessions". Ms Old expressed concern about Mr [Bronson]'s risk of offending profile and highlighted his attitudes and beliefs that she assesses as being offence permissive. She noted that Mr [Bronson] tended to present as compliant and cheerful, but that his disclosures in respect to sexual matters, including his various sexual offences, were superficial. Ms Old noted that Mr [Bronson]'s attitudes had a strong theme of sexual inequality and a disregard for social norms. Ms Old also noted that Mr [Bronson] believed that he could escape scrutiny by geographically relocating, and that living in an isolated location would stop him offending. On that basis, Ms Old's conclusion was that she would not offer treatment as, on her assessment, Mr [Bronson] ought to be referred to and attend a specialist sexual offender programme (e.g. the STOP programme) as STOP and a violence prevention programme would provide greater benefit.

Specialist Assessor Review Report – Mr Paul Carlyon, Clinical Psychologist/Specialist Assessor, dated 23 May 2022.

[34] In accordance with the statutory obligation pursuant to s 77 of the Act to review the care order in six months, Mr Paul Carlyon (Clinical Psychologist/Specialist Assessor) was appointed by the Forensic Coordination Service to complete that review.

[35] I refer to Mr Carlyon's report of 23 May 2022 in its entirety. However, in broad terms, after considering the above background, the matters which Mr Carlyon considered material and relevant at the time were (my summary):

(a) The primary purpose of his review was to evaluate Mr [Bronson]'s progress and engagement over the first approximate six months of his care order and to consider whether ongoing compulsory was required, and which rehabilitative efforts were necessary.

(b) During his interview with Mr [Bronson], Mr [Bronson] accepted that he was responsible for the index offending that led to the imposition of the care order.

(c) He highlighted that Mr [Bronson] had only just completed his four-session psychological assessment with Ms Old, and that Ms Old had concluded, by way of care outcome from her assessment, that Mr [Bronson] needed to be a referred to a specialist sexual offender programme such as the community-based STOP Programme (particularly given her concerns about Mr [Bronson]'s risk of offending profile and his offence-permissive attitudes and beliefs).

(d) On considering Mr Berry's previous risk of offending assessment of December 2021, Mr Carlyon did not believe an update was needed and agreed with Mr Berry's findings that Mr [Bronson] was in the medium risk category of committing further general offending of any kind and, in respect to sexual offending, likely having an above-average risk of perpetrating further sexual offences. More particularly, Mr Carlyon noted:

> While it is positive that Mr [Bronson] acknowledges responsibility for various sexually harmful behaviours, his insight into their precipitants was poor which is especially salient given there is a degree of repetition to his sexual offending

(e) Mr Carlyon specifically noted the recommendations for offence-specific intervention from Ms Old and that they should be expedited including, explicitly, particularly, and with pace, a referral to STOP. Mr Carlyon also noted that Mr [Bronson] has been accepted for and is due to be assessed for STOP.

[36] Ultimately, Mr Carlyon did not believe Mr [Bronson] had, at that time, developed sufficient self-management and insight to cope with any high-risk situation that arose and that he should remain a care recipient subject to a supervised level of care.

[37] More particularly and for completeness, Mr Carlyon's recommendations and conclusions were that (again, my summary):[16]

(a) Mr [Bronson] has a well-established intellectual disability and remains eligible for compulsory care.

(b) the recommendations for offence-specific intervention arising from Ms Old's recently completed assessment should be expedited.

(c) amongst those recommendations, and noting that a referral to STOP was in progress, the explicit recommendation to refer Mr [Bronson] to the STOP programme should be followed

(d) he felt that caution should be applied to any expectation that Mr [Bronson]'s sexual offending risk and needs would be comprehensively addressed in the short period between now/then and his care order expiring in December 2022.

(e) the final review, to be conducted on or about November 2022, should consider whether an extension to the care order is necessary to best ensure Mr [Bronson]'s involvement in rehabilitative efforts and to support Mr [Bronson] to rehearse and apply any gains made in treatment.

(f) Mr [Bronson] should be supported in developing a comprehensive transition plan that considers the provision of necessary supports given the presence of his intellectual disability, and that is also pro-social and that might mitigate his risk of engage in further sexual offending.

[16] Mr Carlyon's report of May 2022, pp 7 – 8.

(g) subject to CCT conducting assessing the safety and appropriateness of such opportunities, it might be that Mr [Bronson] could be given opportunities to access the wider community without such close staff supervision. It was further recommended that those opportunities be developed in a manner that would make it improbable that he would be proximate to young females (i.e. those under 16) given the view that Mr [Bronson] had not developed the self-management and insight needed for him to cope with any high-risk situation that arose.

(h) in conclusion, Mr [Bronson] should remain a care recipient subject to the supervised level of care.

[38] As recorded above Mr [Bronson], cognitive of the further interventions required, particularly that of STOP (which he was prepared to attend), was not opposed to the care order continuing.

STOP Referral and Assessment

[39] On any view, Mr Carlyon, in his report of May 2022, advocated expediency in the referral, assessment, and completion of a STOP Programme, especially given that Ms Old had already recommended it.

[40] On 26 May 2022, the referral to Stop was first made. However, due to resourcing and staff shortages, Mr [Bronson]'s assessment was not completed until 22 November 2022. That is, of course, three weeks until the end of his care order on 13 December 2022.

[41] I consider Mr [Bronson]'s assessment report for the STOP Programme, authored by Ms Diane Willets, to be instructive. In particular, Ms Willets noted that:

(a) the proximity of the November 2022 assessment to the scheduled end of the first order in December 2022;

(b) in relation to the index offences, for Mr [Bronson]'s part, he admitted that he was angry but stated that there was no sexual element to his behaviour;

(c) Mr [Bronson] expressed a view that men are better than women, asserting that women cannot lift heavy weights or handle their drinks, and that they are "controlling freaks";

(d) during some of the assessments, Mr [Bronson]'s mother would tend towards externalising the blame for the index offence. She also argued that Mr [Bronson] was not in New Zealand at the time of the historical offending against a girl aged nine (which is in complete contrast to Mr [Bronson] acknowledging the offending);

(e) consistent with previous assessments, Mr [Bronson]'s risk of re-offending is said to be in the level III Average Risk category; and

(f) Ms Willets identified seven relevant risk factors, including: cognitive distortion; interpersonal aggression; emotional control; insight; release into a high-risk situation; a sexual offending cycle; and intimacy deficits. In terms of intensity, by further explanation it was noted that Mr [Bronson] was likely in the pre-contemplation stage in relation to these relevant risk factors and should Mr [Bronson] engage in further harmful sexual behaviour it is most likely towards someone he knows and someone who had angered him in some way.

[42] Ms Willets' ultimate recommendation was that Mr [Bronson] complete a high-intensity programme consisting of 40 sessions at minimum focused on helping Mr [Bronson] challenge his attitudes towards women, consolidate his ability to manage his aggression and general emotion, develop his capacity for empathy, and to assist him in understanding relationships and intimacy skills. Ms Willets also cautioned against the effectiveness of intervention, noting that he had difficulty remembering any details of his prior treatment (although this was when he was an adolescent).

Stopping Violence Programme

[43] Commensurate with the recommendation of Mr Berry and Mr Carlyon, Mr [Bronson] began a Stopping Violence course.

[44] That course consisted of a series of treatment sessions on a one-on-one basis with Mr Peppercorn.

[45] Although Mr [Bronson] did complete that course, Mr Peppercorn's professional view – speaking in response to Dr Thomson's enquiries for his November 2022 report – contained some reservations as a result of the work that Mr [Bronson] was doing with him (Mr Peppercorn).[17] In particular, Mr Peppercorn said that, at least at that time, Mr [Bronson] accepted that he continued to present a risk of re-offending but also showed limited insight into his behaviour and an inconsistent pattern of remembering the offending that Mr Peppercorn suggested was a means of not having to deal with it. He further noted Mr [Bronson] carried a sense of having "got away with" previous offending, and that he seemed to underestimate the danger to him of his reputation in the small community of [town A] of being a paedophile (again, an indication of poor insight). That said, Mr Peppercorn was of the view Mr [Bronson] had a good factual understanding of consent as he said he would never continue with sex if consent was withdrawn.

[46] In addition, a matter that, in my view, is relevant is that Mr Peppercorn formed the view Mr [Bronson] had, at least at the time, a surfeit of spare time while he was a care recipient, and he was of the view that an important component of his rehabilitation would be to involve him in vocational tasks.

[47] By the time of hearing, Mr [Bronson] had completed the Stopping Violence treatment sessions with overall positive reports.

Specialist Assessor Review Report, November 2022 – Dr Thomson

[48] In accordance with the statutory obligation, Dr Thomson completed a second specialist assessor review report on 30 November 2022.

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[17] See Dr Thomson's report of November 2022, p 8.

[49] By the time of Dr Thomson's review in November 2022, Mr [Bronson]'s general safety and behaviour under the supervision care order had been very good. He had persisted with educational sessions at Literacy Aotearoa, even though he disliked them, finishing that intervention in September 2022. Mr [Bronson]'s support workers had introduced him to a local [sports] team, and he completed the season without any adverse incidents or obvious antisocial behaviour. Mr [Bronson] was compliant and worked with his supervisor. There had been some very limited adverse behavioural reports during the supervised care order. However, and most importantly, there were no reports of inappropriate sexual behaviour in any way and only the small incidents of aggression and hostility and some adverse remarks regarding women. He had continued with his leave in the care of his parents without incident. He had exhibited no adverse behaviour during his use of dating apps.

[50] Mr [Bronson] and others had also made some limited attempts to find work. One notable opportunity had been at [factory], but Mr [Bronson] thought this was boring and, in any event, it was distinctly difficult for him to have a job outside of Dunedin at that stage of the intervention and treatment programme. Mr [Bronson]'s plan (which remained the same at hearing) was to live with his parents in [town A] and to work with his father (who was a self-employed [profession deleted]) before going on to find another job on a [details deleted] while completing the STOP Programme.

Risk Formulation

[51] After applying the STABLE–2007 and the STATIC–99 [risk diagnostic tools / risk assessment tools], the combined measurements provided an overall risk estimate. Mr [Bronson] presented with an overall profile which suggested that his risk of re-offending is at the level IVb. This means that his risk of re-offending is well above average. Individuals in that group exhibit a five-year sexual recidivism rate of 26 percent and an "any crime" recidivism rate of 54 percent.

[52] Dr Thomson remarked that – in terms of risk assessment – Mr [Bronson]'s sexual offences have been varied in terms of seriousness and apparent motive, which, for his part, made it difficult to distil the risk that he presents in any one specific

scenario. Furthermore, Mr [Bronson]'s difficulties in relationships and his mild intellectual disability mean that there is a risk that he engages in a consensual sex with someone that is below the age of consent. In particular, the confluence of anger and attempting to inflict pain on an adolescent girl by pinching her breast gives cause for concern about sexual violence if he ever becomes angry with a partner. That said, Dr Thomson noted that there did not seem to be an escalating pattern of seriousness in Mr [Bronson]'s offending (although the basic risk that Mr [Bronson] poses to a child who he might find himself in a trusting relationship with is difficult to estimate).

[53] Mr [Bronson]'s index offending was a third "sentencing occasion" for sexual offences. This contributed to Mr [Bronson]'s risk profile being one of increasing concern, but particularly so in regard to his additional antisocial behaviour, most notably the two arsons at his school which were supposedly retribution against a previous teacher who facilitated charges being laid against him.

[54] I summarise Dr Thomson's ultimate conclusions, as stated in his report and oral evidence, as such:

(i) The length of the order (12 months) was to allow offence-specific intervention, through no fault of Mr [Bronson]'s, that had not eventuated by the intended end of the order in December 2022.

(ii) While there are some concerns overall, Mr [Bronson] engaged well with Mr Peppercorn in doing the anger management course and in relation to sexual consent and healthy relationships, and it is notable that he happily went and completed the course without opposition.

(iii) That said, there appeared to be limited opportunities for Mr [Bronson] to practice skills that might have been developed with Mr Peppercorn noting that Mr [Bronson] is not normally dysregulated and prone to aggression.

(iv) Expanding on that, Mr [Bronson]'s incidents of aggression seem to be linked with situations where he feels teased (particularly by women) which may well be understood as an exaggerated response to compensate for his earlier life experiences of bullying.

(v) Mr [Bronson] had been a particularly compliant care recipient and there were no concerns about sexual behaviour and just one small incidence of aggression or hostility towards women which did not signal further concern.

(vi) Conversely, however, Mr [Bronson] still had unmet treatment needs. In particular, his repeated sexual offending, general offending, and the use of violence in the index offences puts him in the well above average risk category.

(vii) Group sampling suggests that a person with this risk profile is twice as likely to continue to commit sexual offences than the average convicted sexual offender.

(viii) Noting that, although Mr [Bronson] has been compliant with supervision to date, when he has been given opportunities to discuss his offending he often reports memory difficulties in a way that serves to help him avoid reflecting on his previous behaviour.

(ix) It is important not to ignore the recommendation by the STOP clinician to finish the 40 sessions of intensive treatment targeted at appropriate treatment needs.

(x) Overall, Mr [Bronson] has numerous treatment needs which arguably should be addressed given the persistence and variety of his offending. This impression persists despite his risk profile

not indicating that he poses an imminent risk of serious sexual offending.

(xi) Given Mr [Bronson]'s risk profile, treatment needs, and high liberty interests, this matter was finely balanced. However, the circumstances are such that it is appropriate for the Court to make the determination.

[55] By way of amplification and emphasis to the above matter, I provide some further detail.

[56] First, during cross-examination, Dr Thomson had a proposition put to him which questioned whether – given that Mr [Bronson]'s earlier offences that were relied on were committed when he was 14 and 16, and that he is now 25 – Mr [Bronson]'s now-increased age and/or maturity flowed to a reduction in terms of the risk of further sexual offending. Dr Thomson's view was that this was not necessarily the case, and that the response is not linear. His expert opinion was that risk reduction over time largely depends on the individual and, while broadly one might expect a reduction in impulsivity with maturation, and noting Mr [Bronson]'s index offence seemed to reflect impulsivity and aggression, his sexual response in that index offence was a response to quite a minor provocation and so the more important question, or the more important aspect of the risk evaluation, was not the actual increase in maturity, but whether or not those particular risk factors that are known to increase Mr [Bronson]'s risk of similar offending have been addressed with him. The inquiry should not be permitted to drift into an assessment of the larger group of offenders and their comparative risk levels. Dr Thomson also noted that, in particular, Mr [Bronson] appeared motivated by becoming angry at a victim's behaviour.

[57] Following that proposition, Dr Thomson was further cross-examined on the proposition that, therefore, if Mr [Bronson] can address his anger does that not mean that it is then less likely that sexual offending will reoccur? This being because his past profile suggested that his sexual offending occurred in response to him being angry. Dr Thomson agreed but only to a qualified extent. In particular, while anger reduction in risk management was an important component in mitigating his risk, Dr

Thomson's opinion was that it was also important to recognise the ongoing concern surrounding Mr [Bronson]'s potential views of women and, in particular, their supposed inferiority, as these may well make it more likely that he will behave in an inappropriate, even aggressive, sexual manner, which was one of the particular focuses for his work with the STOP Programme as well. That said, Dr Thomson conceded that the more Mr [Bronson] can understand, control, and regulate his impulsive and aggressive responses to his external world, the more that should mitigate the risk of his profile of offending. But, having said that, it was also important to note that the types of sexual offending have been quite varied and that in itself was a concern which added to his risk profile.

[58] Dr Thomson was also cross-examined as to whether or not the risk can be said to be limited or confined to certain circumstances, given that the offending could be characterised as being clumsy or opportunistic (albeit with a confluence of anger against his adolescent peers).

[59] Again, Dr Thomson was unable to fully agree. His opinion was that the concern as to Mr [Bronson]'s risk was that, although the apparent profile of each of his offences is quite different, the fact that the offences continue to occur is the primary concern and risk factor. This is further so given that, despite the detection of sexual offending (and on each occasion there was good social supports around Mr [Bronson]), there was a relatively limited assertive response to those offences, and he nevertheless continued to offend, albeit with a different profile of offending each time. Further, Dr Thomson opined that one of the difficulties was to assess whether or how the risk of reoffending might change upon the reduction of structural oversight and the realisation of the prospect of him returning to a less structured environment.

[60] In order to emphasise the complexity of the current risk assessment, and to explain why the current assessment is not necessarily a straightforward one in which the risk reduces with time, I note that it is significant that Mr [Bronson]'s original sexual offending was against a child and that, although the form of offending did not increase or perpetuate, his next sexual offence took a different form, and perhaps a more aggressive one, albeit without the severity of the act itself increasing.

[61] I did consider Dr Thomson's firm opinion that it is important to appreciate that the best risk mitigation would require Mr [Bronson] to finish the specified treatment (that being the STOP programme). The programme has a comprehensive and designed treatment approach, and completion of the suggested 40 sessions would be an important part of reducing the assessed risks. This might also be critical in assessing whether there is a likelihood that this risk reduction will endure, particularly if attending that technique specific programme on a voluntary basis.

[62] For that reason, and having regard to the other risk matters, Dr Thomson did not resile from his opinion that an extension is warranted for the purpose of completing the 40 STOP sessions.

STOP Programme Begins

[63] Although Mr [Bronson]'s referral to STOP was made on 26 May 2022, the assessment was not completed until 22 November 2022.

[64] The recommendation was for Mr [Bronson] to attend a high intensity programme comprising 40 sessions at minimum.

[65] For reasons unknown, but may well be resourcing, the STOP programme for Mr [Bronson] did not begin until March 2023. As at the time of the hearing (30 May 2023), Mr [Bronson] had completed around 10 sessions. If he were to complete one session per week and complete the minimum of 40 sessions, then he would not finish the STOP programme until approximately December 2023.

[66] In terms of engagement, Mr [Bronson] is doing well and engaging in the weekly STOP sessions.

Mr [Bronson]'s proposal

[67] Mr [Bronson]'s position is that while he was prepared to agree to the care order continuing on the basis of Dr Carlyon's report of May 2022 and at the time of that assessment. Mr [Bronson] notes extreme disappointment that the referral to STOP was not made until May 2022 and in fact his assessment not until between September 2022

and the final report of November 2022. He believes he is being penalised as that delay was simply not his fault.

[68] Mr [Bronson]'s wish is to urgently return home to [town A]. He has engaged happily with the literacy course, the Stopping Violence course, and now begun the STOP programme. However, he has been unable to find particular employment in Dunedin and there has been no advance in his skills in that regard. He finds his days in Dunedin are, at times, underutilised and aimless and he finds he has a significant amount of spare time.

[69] His determined preference is to immediately return to his mother and father's home in [town A]. He enjoys his family's company very much. Also, his father, who is self-employed, can give him work while he looks for [details deleted] job opportunities which is his real hope.

[70] Mr [Bronson] has indicated that he is prepared to continue the STOP programme, on a weekly, but voluntary, basis. He has made enquiries with CCT who are able to support him in travelling, on a fortnightly basis, by vehicle in one week from [town A] to Dunedin to attend the STOP programme and, in the alternate week, provide appropriate, secure, and private computer and internet attendances from Invercargill.

[71] In short, Mr [Bronson] believes he has been in compulsory care for far too long.

CCT commitment to non-mandated STOP Programme

[72] CCT have confirmed that they are willing and able to provide the weekly transport support needed to enable Mr [Bronson] to continue to attend the non-mandated client programme.

[73] Further, STOP have indicated that they would be committed to Mr [Bronson] being seen as what is called a non-mandated client at STOP if he was not subject to an order under the Act. This, however, would be dependent on his motivation and ability

to attend sessions. The STOP Programme have no difficulty in a personal attendance on one week and the alternative week by computer.

[74] There is no evidence to suggest that either CCT or the STOP Programme providers would do anything other than continue to provide the support they indicated. That said, STOP has been subject to resourcing difficulties throughout the duration of his care order, and I raise, as a possibility, whether or not there could be a risk of his continued attendance ceasing if Mr [Bronson] is deemed a non-mandated client and the programme suffers resource decline. That possibility was rejected by the Manager Adult Service, Mr Bryan O'Neill, at the hearing, him holding the opinion that it was not a risk.

Decision

[75] In this matter, I have concluded that Mr [Bronson] continues to have unmet treatments needs. This is a result of his participation in the STOP programme still being in its infancy, and a result of him being the subject of a moderately- high risk assessment.

[76] However, that conclusion and Mr [Bronson]'s circumstances must be considered against the fact that his liberty interests are, in my view, high, as he has already been subject to an order for 17 months (which was originally anticipated to be 12 months). If the court extends that order until September 2023, Mr [Bronson] would have then been subject to 20 months of detention. Furthermore, if the court forms the view that compulsion is required to ensure that he completes the minimum recommendation of 40 STOP sessions, then this means the order would need to be extended until December 2023 (assuming he completes one session per week). This would render his detention as being twice as long as its original intended length: 24 months.

[77] This is a matter where the term of the order must not be disproportionate. However, that determination requires an acute understanding of the risk that Mr [Bronson] poses.

[78] On careful consideration, Dr Thomson's expert opinion evidence is clear. Mr [Bronson] presents as well above average.

[79] I accept that Mr [Bronson]'s index offending is relevant to the extension applications, although it is far from being a determinative factor. I consider that Mr [Bronson]'s index offending involved tackling a younger person at a church group as a result of the slight Mr [Bronson] suffered in his hat being knocked off. He knelt on the young woman's chest and throat and grabbed her breasts. That offending in and of itself is unlikely to have resulted in a detention of significant duration and very unlikely to have resulted in a 24-month term. An extension of the order does tend towards suggesting it would be disproportionate to the nature of the offending. However, that is not the sole criteria.

[80] I also take into account the fact that, in addition to completing the intensive STOP programme, a period of detention was critical, and that part of the purpose of the detention was to enable other interventions to reduce Mr [Bronson]'s risk to the community. Those interventions included: developmental work skills (not yet met); revising and rehearsing skills taught by Mr Peppercorn in the Stopping Violence programme (not yet met); an ability for the CCT team to support and embed the learning from STOP (STOP programme is still in its infancy); Mr [Bronson] being supported to develop a comprehensive transition plan (unmet but perhaps due to uncertainty as to the extension of the order).

[81] I perceive Mr [Bronson] and his family to attend a non-mandated STOP programme, assuming that CCT's support is available. There is some risk that this motivation could wane over time, but the extent of that risk is uncertain. That said, a further 30 weeks of attendance at the STOP Programme is a significant commitment which would rely on Mr [Bronson]'s motivation if it was not mandated that he attend. While Mr [Bronson] professes a preparedness to do that at this time, I assess there could well be a reduction in that motivation. Also, the weekly assessments are dependent on any work he obtains providing him with time off work to attend. This can be readily accommodated if he is working for his father but may not be able to be accommodated if he is working for any other employer. This could lead to a decrease in his motivation to attend.

[82] In particular, I have been struck by the assessment of STOP that the requirement to treat Mr [Bronson]'s assessed needs was for an intensive programme of *no less than* 40 weeks. To date, Mr [Bronson] has only attended 10 or so weeks.

[83] Dr Thomson is right to argue, as is Mr [Bronson]'s counsel, that this is a finely balanced matter.

[84] Mr [Bronson]'s significant liberty interests are such that, in other circumstances, they would lead to a need to for the order to expire now, and a need to allow him to attend STOP on a non-mandated basis. However, despite that being the case, I have reached the conclusion that, because his risk profile is so concerning and because the most significant intervention (STOP) is still in its infancy, the order must be extended for a limited time so that the following outcomes can be reached:

(a) Mr [Bronson]'s attendance at STOP becomes further embedded.

(b) The learnings from the STOP programme are further supported and rehearsed by the CCT staff for a greater period, at least.

(c) Clear and acute transition planning can take place with the security of the care order and a defined end date.

[85] In order to achieve an outcome which balances the relevant interest, those being the community's interests in protection and Mr [Bronson]'s liberty interests, I have determined that the care order shall be extended and shall conclude on **31 August 2023.**

[86] I understand that this shall be a great disappointment to Mr [Bronson]. I am also quite conscious that he has been left with a great deal of time on his hands which is underutilised. However, the fact remains that the time to affect the greatest reduction of risk for him is now. This course of action reduces the likelihood that we are placed back in this situation again.

Orders and Directions

[87] Therefore, for the above reasons and under s 85 of the Act, I order an extension of Mr [Bronson]'s supervised care order until 31 August 2023.

[88] I want to extend my thanks to all parties and Counsel for the way they approached the hearing and particularly their submissions.

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Judge E Smith
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 07/07/2023