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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

MI 320 of 2015
MI 322 of 2015
MI 324 to 325 of 2015
MI 357 to 330 of 2015
MI 474 to 475 of 2015
PE 2002 of 2015

THE STATE OF WESTERN AUSTRALIA

and

IK

JUDGE D. REYNOLDS

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 21 AUGUST 2015, AT 11.25 AM

MS C.L. NOONAN represented the State of Western Australia.

MS K. KELLY appeared for Youth Justice Services.

MS H.E. O'HARA appeared for the accused.

JSO: Calling the matter of IK.

HIS HONOUR: Just take a seat on that bench there, IK.
Ms O'Hara.

O'HARA, MS: Yes, your Honour, if it pleases the court, I appear today for IK.

HIS HONOUR: All right. Thank you. Ms Noonan.

NOONAN, MS: Thank you. I appear for the State.

HIS HONOUR: All right. Thank you. Yes, Ms O'Hara.

O'HARA, MS: Yes, your Honour. Just to let your Honour know that it seems that IK's grandparents are in the back of the court, GK and Mr GK. They are also accompanied by a DCP parent support worker, Ms Val Valance, who is now supporting the family. Your Honour, IK is before the court as a very young person. He had minimal contact with the justice system prior to being in court more recently. There were two juvenile justice team referrals that were successfully completed, both being in relation to carried a controlled weapon and being armed.

I now understand from the family and from IK that they really came to be as a result of IK being fearful in his local community about his safety. Not excusing those charges, but that was the background to those matters, your Honour. In regards to his offending behaviour, the majority of the charges date from 24 May from the [suburb] area, those being the trespass, the four burglaries, the damage charges, and there were some stealing-related - associated stealing matters as well.

Your Honour, I am instructed that for most of those matters IK was with three others and he has described to me that during that offending he really wasn't thinking about what he was doing. He wasn't mentally present. He talked about just focusing on what he was doing with his hands rather than having any consideration for the consequences of what he was doing. However, in the immediate aftermath of that - and I understand that, in particular, in regards to the offence at [a business] where there was a significant amount of damage done - I'm instructed by IK that the owners did come across IK and they stayed with him until the police arrived.

Those are IK's instructions and he tells me that he got to see the people who owned the business and he

describes them as elderly people and he told me that he felt sorry for what he had done. So that was quite an immediate response, your Honour, to what he had done. And I know that his grandfather had raised with IK about, if the people were accepting of it, IK perhaps doing some community work there to say sorry for what he had done.

Your Honour, the assault occasioning bodily harm is a charge that occurred at the [suburb] Primary School where IK was attending at that school at that time. And, your Honour, the background of that - and it's certainly not excusing it - was that IK had experienced bullying at that school. The boy that he got into the fight with during the football game and then took it further to result in this charge, IK tells me that boy had previously made quite derogatory comments to him. That wasn't the reason he reacted as he did at that time, but certainly that was the background of that incident.

And IK was having considerable trouble at the school and the regime that had been put in place by - from what IK has told me - his grandparents was one that wasn't really working and IK felt that the punishment was ongoing and there was never really an opportunity - there was never a circuit breaker to have a fresh start and try to start again. And he describes how he went back to school after being disciplined and he thought that he would be able to be back in the general population and resume participating in the normal activities of the school and he was actually told that he had a kind of internal suspension operating and he needed to stay in a separate room. He wasn't allowed to mix with the other children.

And, your Honour, as a result of that, and certainly not excusing it, the incidents occurred in relation to the damage of the two vehicles. So they would be the more recent damages that occurred in [suburb] when IK was 12 years of age, so that would be on 21 July, I understand it, and IK had only turned 12 a couple of weeks prior to that. So, your Honour, certainly he has offended as a very young person in the main as an 11 year old and then two of the offences as a 12 year old.

IK comes before the court in the midst of having some very difficult issues that he's facing in his life. Bullying has been identified as an ongoing problem. I note that - his grandparents have told me that one year at the school he's at now and four years previously at [another suburban] Primary, so there have been significant issues with that. And his grandmother, GK, told me that she recalls IK first coming down as quite a young shy boy from

[country town] and then she said he really was just brutalised in terms of his bullying, including - she recounts to me that at one point he had his head put down the toilet and there was excrement in the toilet, similar situations to that.

The grandparents did try to resolve things. Both of them have had health issues where they have had open heart surgery, both of them, and GK recounted to me she walked up to the school one day and it was a very hot day. She had only recently had open heart surgery. Mr GK couldn't attend because he had similar problems and was at a point where he hadn't healed as much as GK. And she tried to attend the school and work things out and it never really resolved.

She says that she did make contact with Yorgum, an Aboriginal organisation, and organised a meeting there to try and get some assistance with the situation with the bullying. And, again, it seems that nothing was really resolved, your Honour. There has also been the situation where only recently - and your Honour would have seen this play out to some extent - that IK has come in contact again with his biological father and after having been away from him for quite a lengthy period of time and on top of that he has had to take on board the news that his father is very unwell and, in fact, has a terminal illness.

So there is a lot that he is dealing with. Your Honour, so it's the case that he really hasn't had a great deal of assistance in regards to dealing with these issues. I know that - I have heard that there was a referral to a psychologist through the school and there may have been, I think, one or maybe two meetings in that case that didn't really lead on to anything else. Since IK has been before the court there has been the recognition that the school that he's at is not a viable option any more.

I know that Officer Ian McDowall, who works in the local area where IK lives with a youth diversion program, the crime intervention program, he made some inquiries as to another school in the area that does deal with children that can sometimes have behavioural issues. So I think it's the [school]. Whether that ends up being the option or another option I think it's clear from IK's point of view and his family's point of view and the people that are assisting that another school environment needs to be looked into.

And, your Honour, I would suggest there has been really no concerted regime of guidance, health and

assistance in place for IK and his grandparents. What's now in place, your Honour, is that, as I have mentioned, there is a DCP parent support worker who will be able to assist with practical needs like transport and just helping IK's grandmother and grandfather with, obviously, caring for a young boy who will soon be a teenager. And I understand too, through LINKS having some dealings with IK, that it has been identified that, obviously, some psychological counselling may assist.

And I understand that there has been some steps towards IK being further involved in football, with football being really the only thing that IK was really enjoying. And I understand that IK's coach from the [suburb] Football Club recently attended the grandparent's place and informed them that the Dockers have actually invited IK to go and train with them next Thursday. So there are certainly some steps in place giving IK some motivation to stay out of trouble. And I have discussed with IK that if there is this help and opportunities in place for him from his side of it he needs to, obviously, refrain from offending.

Your Honour, I would submit that youth is always to be taken into account when dealing with a young person under the Young Offenders Act and it is the case that weight should be given to IK's very young age. And I would suggest a great deal of weight. He's certainly at the bottom end of the age range of the children that do come before the Children's Court, obviously, the age range being from 10 to 18. IK, for the majority of these offences, was 11 years of age and he really hadn't had the sort of support that - looking back now as to what he was coping with - that should have been in place there for him.

Your Honour, I do submit that the factors of personal and general deterrents could be seen to have been met by the time that IK has now spent in custody. I learned from my friend from Youth Justice, and my calculations were similar, that it is 33 days now. And also, your Honour, what is key in this matter is - and I have already touched on this - is that the intervention has been limited so far. Through no fault of IK's grandparents he really hasn't had the sort of support that it's clear that is needed. And the community, I would suggest, Officer McDowall, DCP, parenting support and, obviously, a new educational environment can really assist with IK.

He is certainly open to that, I would say. He's a very pleasant boy to deal with one on one, so I think that he's certainly open to that option and certainly he's

looking forward to a schooling environment where he's going to feel safe and that he will hopefully find a place for himself within that environment. Your Honour, I would highlight that detention is not the only option for IK.

The reality is that IK could simply accept this sentence and in a couple of more weeks it might be the case that there's a supervised release order, but I have discussed that with IK and, obviously, the downside of that is if there was any breach on that he would go back into custody, whereas with an order, depending on the nature of the breach, potentially there could be some assistance to get back on track. Also if IK can complete an order there's how a conviction would necessarily be recorded, your Honour.

So there are certain benefits to an order and also it would allow IK to go home to his grandparents if he was to get an order. I understand he does want to go home. When I spoke to him about why he changed his mind he said to me, "It's the way that they looked at me". And I asked him what he meant and he said that they are obviously very hurt and cared for him very much and that's really what has changed his mind. He is also very keen to spend time with his sister. He is very, very fond of his older sister and he would like to be around her. And he also - he's talking now about another school with some excitement. He is looking forward to that.

Your Honour, so there are certainly a lot of good reasons, I would submit, that an order be made despite the fact that it could be seen as, in one sense, that it just be accepted that the detention sentence run. But I would say there are some very important reasons as to why that is not the case. So, your Honour, I would obviously ask your Honour to take into account the principles under section 7 of the Young Offenders Act and, as I mentioned, IK's very young age. And I would ask your Honour to consider discharging the sentence of the three months' detention from the order from 5 October and substitute that with a YCVO or an IYSO.

And I would ask your Honour to consider the length of that given that he has spent that time in custody and to weigh that up against if he did stay in there and then go out on to a supervised release order - just to take that into account, which are the particular circumstances of this matter, sir. And I would ask for an order for IK in the community given that there are the supports there for him and he has said that he's happy to go home and he's

happy to engage with the help that's going to be offered to him.

HIS HONOUR: All right, thank you for that. Did you have anything to add to all of these reports, Ms Kelly?

KELLY, MS: Nothing further, your Honour.

HIS HONOUR: All right, thank you. Ms Noonan.

NOONAN, MS: Thank you, your Honour. The State's submissions today really come down to two things and I may focus on those two things, sir. As we see it, there are two issues. Number one is the fact that there were a range of sentencing options available to Mr Hogan when he sentenced IK on 5 August and it fell to Magistrate Hogan to exercise his discretion in terms of what would be imposed. The State would accept that the sentence that was imposed could be considered to fall towards the upper end of that sentencing discretion, however, it cannot be said to have fallen outside the appropriate range of sentences available to his Honour.

IK comes before the court for a review under section 40 and, of course, that's a hearing - today is to be a hearing de novo on sentence. However, the State is mindful that in principle your Honour has expressed that, general speaking, your Honour won't amend sentences unless there can be proved to be something incorrect about the sentence. And although the State would accept that maybe this was at the upper end, we would have to make the submission, sir that this was not outside the range of sound discretion available to his Honour bearing in mind the significant amount of damage that happened during that spree of offences.

There were a number of burglaries, not just the one, and the most serious one was 322. That was the aggravated burglary at [a business]. But IK committed some other burglaries of a similar nature, although not as serious, on the same day. So it was a spree and really there were many, many chances that IK had to pull out of what the group was doing, but he kept on going causing a significant amount of damage. So the sentence really needs to be viewed in that light, sir.

Of course, there are mitigatory factors. IK is young. He didn't have a particularly significant criminal history, but the offending was very serious. And that's what stands out to the State in terms of whether or not there was something really wrong with the sentence that Mr

Hogan imposed on 5 August. Your Honour, it seems that - Magistrate Hogan seems to have decided to impose a sentence that was short, but really getting straight to the heart of the behaviour. Because it seems that the idea was to try and nip that sort of behaviour in the bud by showing IK just how seriously the court regards that in terms of the type of sentence imposed, albeit that it was imposed for a relatively short period of time to give him that message.

Your Honour, the second issue is the alternative that could be put in place. And I have listened carefully to what my friend has said about the issues to do with the school and the State accepts quite clearly that the education placement he was in before probably is not viable and there need to be alternatives. And to Youth Justice's credit they have found an alternative education option. The reason I point that out, sir, is that there seemed to have been two reasons why he hasn't wanted to live with his grandparents.

Firstly, there's been the reluctance to return to that school and the State accepts that that's completely understandable from IK's point of view. But we can't ignore the fact that there's another issue that has been stopping him from wanting to go and live with his grandparents. And he has said on a number of occasions to Youth Justice, to LINKS, that he doesn't want to live there because there's rules in place that he doesn't want to have to follow and also there's another family member that lives at the address who orders him around and he doesn't want to be told what to do by that person.

And so the last time he made that comment was to Youth Justice and that was only three days ago on 18 August. So he has said on a number of occasions that he doesn't want to live there and he's not prepared to live there and that he will self-select placement with his father. So the State just wonders whether or not his commitment might be a little bit thin to staying with his grandparents. I accept, your Honour, that there could be some benefits to IK and in terms of his addressing some of his issues if he's placed on an order, but we would anticipate that there might be some issues with him living with his grandparents, although that's far and away the preferred option. That's the best option for him.

There could be a question mark about whether or not he might try and self-select placement. But the bigger issue from our point of view is that, your Honour, we can't say that the sentence that was imposed fell outside the range

of a sound discretion. Those are the State's submissions, sir.

HIS HONOUR: All right, thank you for that. IK, if you go back and live with your granddad and your grandma are you going to stay living with them? Yes. Now, it might be hard talking about this, IK, but I want to talk about it because I think I need to talk about it. I don't think your Dad is here today, is he? No, I can't see him. Okay. But he has been here before. Now, in the past you have told people and it has been mentioned to me that you wanted to go and live with your Dad. Now, sometimes, IK, people in your position - there's something that you would like, like you would like to go and live with your Dad, but for good reasons that's not really good for you at the moment.

Your Dad is really ill. You know that, don't you? Yes. And it's probably a good idea for him to focus entirely on himself in order to deal with his illness rather than have some responsibility to anybody else. Does that make sense to you? So in a way if you stay with your grandma and your granddad that's actually better for your Dad. Do you get where I'm coming from? Does that sound good to you, that if you stayed with your grandma and your granddad - they obviously both love you and want to care for you - so it's good for you, but it's also the best thing that you could do for your Dad, so he can just focus on himself. Does that make sense to you?

Can I put it to you this way, IK, let's just say you have got so much energy in you - if you have got to break it up into bits, put a bit over there and a bit over there and a bit over there, then each bit doesn't get as much as if you give all of the energy to someone. Like, if you give your Dad all of his energy to be used on himself that would be better than him having to give a bit over to you, to someone else and something else, just completely focus on himself. That actually would be better for him, wouldn't it? Yes.

So that's what you need to bear in mind. From time to time you might think, "Oh, I want to go over to be with my Dad". If you do think that make sure you tell somebody. Whoever is next to you at the time you tell them. Okay. If it's your grandma, your granddad or whoever, you tell them "that that's what I'm thinking". And then have a chat about it. And then go back to what I have just said to you today. The fairest thing for your Dad really, the best thing for him and the best thing for you is if you just leave him to put everything he can into himself for the time-being, given that he's pretty crook. Okay.

The other thing I wanted to mention to you, IK, is when you go back to your grandma and your granddad's make sure that you hang around at home after you have been to your education programs and stuff during the day or your footy or whatever. Okay. So make sure that you're at home, you're not out and about getting into trouble. They are comfortable because they know you're at home not getting into trouble and you should feel comfortable knowing that you're not getting into trouble. Now, what's this I hear about you going to Dockers' training next Thursday? That sounds all right, doesn't it?

What, they are pulling you out given their recent loss to the Eagles. Is that what's going on? Hey, need someone else in the team. Well, can I just say to you, IK, if you're given that opportunity that would be fantastic and if you go down there and you see some of those players and there's just some fantastic players and there's some fantastic Aboriginal players there, aren't there? Who are they that you know of? Who are the good players, good Aboriginal players there that you know of?

IK: Michael Walters.

HIS HONOUR: Yes. What number is he, do you know?

IK: Ten.

HIS HONOUR: Yes. Well, I don't barrack for the Dockers, IK, but I can tell you here and now I wish he was on my team. He's a pretty good player, isn't he? Yes. He had me worried on the weekend. I thought he was going to win - come back and win that game off his own boot. He's so good. But the point that I wanted to make to you, IK, is when you go down there, if you do have the fortune to do that, you just have a look at him, have a look at Stephen Hill, have a look at Danyle Pearce, Johnson - and there are others - just look at the effort that they put in on the training track. So they really are focused and just do things really as hard as they can. They put in maximum effort. And that's on the footy field.

And what I want to say to you, IK, is that come off the footy field, put in that effort, try as really hard as you can in everything else you do. Try as hard as you can to do the right thing by your grandma and your granddad and everyone else. Try as hard as you can whenever you go to do some schooling, wherever it is. Try as hard as you can at that. Because what it's all about, IK, is trying as hard as you can at everything you do. So that's how you get good results. Like you wouldn't expect the Dockers to

just go and walk around the oval, not try hard, and then rock up to a game on the weekend and think they could do everything at maximum intensity. You can't do it in the game unless you practise it at training. Does that make sense to you? Yes.

And people like Michael Walters has got where he's got - apart from his natural ability - through a lot of really, really hard work. There's no substitute for really, really hard work. Does that make sense to you, IK? Yes. So you have got the ability. What you have got to do is put in the hard work. And it's up here between your ears, IK. It's what you think. You push yourself mentally. Do you like playing footy? Yes. Do you try hard when you're playing footy? Yes. If the scores were even with about a minute to go would you stop trying hard or would you just keeping as hard as you can?

IK: Keep trying as hard as I can.

HIS HONOUR: Yes. You wouldn't want any of your team mates to think that you have just stopped or slowed down when there's still time to go and a game to be won, would you? No. Well, just have that attitude, that thinking in everything else you do. Be really determined and be determined to do the right thing, to end up having a good result. Does that all make sense to you? Now, I won't go through all of the factual details here, IK. They are already on the record. But I will just mention that these offences include aggravated burglaries on some places, damage, trespass and then there's that serious assault occasioning bodily harm to that other young person and that was a very serious offence.

And in response to all of that offending and after listening to what people had to say and what reports were provided to him, his Honour decided that the appropriate sentence was three months immediate detention on seven of the offences, the first seven in the list, and then one month's immediate detention on the other four in the list and ordered that they all be served concurrently, which resulted in three months immediate detention.

Now, my view is that notwithstanding the seriousness of the nature and also the number of offences, including the amount of damage that was done and also bearing in mind that serious offence of personal violence, significant weight still needed to be given to rehabilitation relative to protection of the community and punishment and an overall consideration of everything relevant to sentence.

Of course, protection of the community and punishment needed to be factored in and given significant weight given the number and nature of the offences.

His Honour was, no doubt, mindful of the extent of the damage. But my view is that when one has regard to - you have pleaded guilty, IK, so you put your hand up and owned up to what you did, so that's really good. You did that early, so you should have been given a maximum discount for that. Your age - you're now only 12 years and about one month of age, aren't you? So you had your birthday in July, 14 July. That's when you turned 12. So in May when you committed those offences you were just short of being 12, so you were 11 years and just over 10 months, 11 years and 10 months of age and 11 years and 11 months of age in June.

And then in July you had only been 12 for just over a week, so very, very young, extremely young. So given those two things in combination with your record, your record prior to this offending was very limited. In fact, there's nothing of the same sort on your record, so there was significant weight in your favour there. Your personal circumstances, well, there's been difficulties. I'm glad that your gran and granddad are on the scene to provide you with some support, so that as well, but particularly those first three things I have mentioned, your pleas of guilty, your very, very young age and your prior good record.

Although there's been something committed that required you to be dealt with, but your record was very short. So those three things alone in combination when weighed against the number and nature of the offences - my view is it warrants a court order, not immediate detention. There doesn't need to be an error by the magistrate before I review a sentence and substitute it with another, but it's my view that that option of detention for someone with those mitigating circumstances that I have mentioned was outside the range of a sound sentencing discretion.

So I have reached the view, IK, that the appropriate sentence should be an intensive youth supervision order. That is a community order. And I am bearing in mind that you have spent 33 days in custody already and then also bearing in mind the number and nature of the offences and then all of those personal factors that I have mentioned before about your pleas of guilty, your age, your limited record and your personal circumstances. Putting it all together I think that the appropriate length of the order is five months and that's to commence from today.

So there are a number of conditions, IK, that you be supervised, that you engage in educational programs as directed, that you engage in substance misuse programs as directed and then with the assistance and support that you have been getting from LINKS that you engage in any program that LINKS link you into so far as mental health and psychological issues are concerned. You follow all of that? I'm not going to require that you do any unpaid work, IK, given that you have been in custody for 33 days, in combination, of course, with all of those other mitigating factors, that means favourable things that I have spoken about that operate in your case.

So what that means, IK, is that you can leave the court today, go back to your gran and granddad's place out in [suburb]. You will be receiving supports. There will be an educational program for you to go to and it's very important that you stick to all of those conditions that I have spoken about on this order, this five month intensive youth supervision order. You understand all of that, IK? Make sure you do the right thing. Now, what often happens - sometimes, IK, is when you get a sentence that's not saying go back to Banksia you feel, "Oh, that's good". And then you go back to gran and granddad's and before you know it you're feeling so good that you didn't get detention that you just go off and wander off and stray and get into trouble pretty quick.

So don't fall for that trap. Make sure that you go home with your gran and granddad and you stay home tonight and the next night and the next night and so on. Resist the temptation to go walking off. Okay. And in the short term just remember next Thursday if you have got a chance to go and train with the Dockers - not many young people would want that - not want it - would have the opportunity, but would want it - do you get where I'm coming from?

You make sure that you're at the training track with them. Okay. And not being picked up and taken to Banksia. And just have a first-hand experience of the effort that they put in to get to where they have got through hard work, as well as a bit of skill. Does that all make sense to you, IK? All right, thank you for that. I will adjourn.

AT 12.02 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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