

**IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI 2018-070-3998  
[2019] NZHC 1642**

**THE QUEEN**

v

**WILLIAM CHURCH**

Hearing: 27 June 2019  
(Heard at Tauranga)

Appearances: R W Jenson for the Crown  
R M Adams and D J Sheely for Mr Church

Judgment: 12 July 2019

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**JUDGMENT OF JAGOSE J  
[Fitness to stand trial]**

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*This judgment is delivered by me on 12 July 2019 at 5.00 pm  
pursuant to r 11.5 of the High Court Rules.*

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*Registrar / Deputy Registrar*

*Solicitors:*  
Pollett Legal Limited, Tauranga  
Adams Hesketh, Tauranga

[1] William Church is charged with the murder of Michael Steven Church on 22 September 2018 at Papamoa. While obtaining psychiatric advice for a prospective defence of insanity, Mr Church's fitness to stand trial was queried. That is for my determination now.<sup>1</sup>

## **Background**

[2] At a hearing convened before me on 27 June 2019 in Tauranga to determine Mr Church's fitness, three health assessors gave evidence in support of their documented assessments Mr Church suffers treatment-resistant schizophrenia. They also gave evidence, in their assessment, he could not effectively participate in any trial, and would in any event be constrained in such participation by intellectual disability.<sup>2</sup>

## **Assessment of intellectual disability?**

[3] Possibly encouraged by the last, at the conclusion of the hearing, Crown counsel, Richard Jenson, sought an order a psychologist assess the extent of any intellectual disability had by Mr Church, to assist me in determining his fitness,<sup>3</sup> and suggested I may wish to appoint a communications assistant to enable him to understand the proceeding.<sup>4</sup> For Mr Church, Rachael Adams responded such assessment or assistance "likely lack[ed] utility", given the gravity of Mr Church's mental impairment.

[4] 'Intellectual disability' has a specific meaning in the present context,<sup>5</sup> as set out in s 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. As indicated by that title, use of the phrase in the Criminal Procedure (Mentally

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<sup>1</sup> Criminal Procedure (Mentally Impaired Persons) Act 2003, s 8A.

<sup>2</sup> The three were psychiatrists David Chaplow (speaking to his assessments of 3 February 2019, 24 March 2019, and 8 June 2019), Justin Barry-Walsh (19 March 2019), and Peter Dean (29 January 2019 and 16 June 2019). All agreed to abide by the code of conduct for expert witnesses contained in Schedule 4 of the High Court Rules. Given counsel's 25 June 2019 joint memorandum's advice "[t]he health assessors agree that the defendant is unfit to stand trial", I directed each psychiatrist's evidence in chief be given in the ordinary way but, at conclusion of the last, the three be convened for the balance of their evidence to be given concurrently: Evidence Act 2006, s 84(1); and *Commerce Commission v Cards NZ Ltd* HC Auckland CIV-2006-485-2353, 27 July 2009.

<sup>3</sup> Criminal Procedure (Mentally Impaired Persons) Act 2003, s 38(1)(a).

<sup>4</sup> Evidence Act 2006, s 80(1)(a).

<sup>5</sup> Criminal Procedure (Mentally Impaired Persons) Act 2003, s 4 (definition of 'intellectual disability').

Impaired Persons) Act 2003 is in connection with disposition rather than fitness.<sup>6</sup> The definition is:

... a permanent impairment that—

- (a) results in significantly sub-average general intelligence; and
- (b) results in significant deficits in adaptive functioning, as measured by tests generally used by clinicians ... ; and
- (c) became apparent during the developmental period of the person.

[5] Despite that definition, section 4 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 expressly defines “unfit to stand trial” with reference to the undefined “mental impairment”:

**unfit to stand trial**, in relation to a defendant,—

- (a) means a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and
- (b) includes a defendant who, due to mental impairment, is unable—
  - (i) to plead:
  - (ii) to adequately understand the nature or purpose or possible consequences of the proceedings:
  - (iii) to communicate adequately with counsel for the purposes of conducting a defence.

[6] In *SR v R*, the Court of Appeal agreed with this Court’s observations “modern academic thinking [on ‘mental impairment’] was moving towards decisional competence judged on context”:<sup>7</sup>

[a] person who is mentally disordered and/or insane and/or intellectually disabled, will be mentally impaired. But it does not follow that mentally impaired should depend upon one of those three diagnoses. In this case the enquiry is directed to examining whether the accused is capable of conducting a defence, or instructing counsel to do so.

The second point to emphasise is that the cause of ‘due to mental impairment’ has to be applied against the task expected of the accused person. The judgment has to be made in the context. It is not satisfied by the accused demonstrating some fundamentals of rationality. So the question is whether or

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<sup>6</sup> Section 25.

<sup>7</sup> *SR v R* [2011] NZCA 409, [2011] 3 NZLR 638 at [157]–[158], citing *R v Roberts* HC Auckland CRI-2005-92-14492, 22 November 2006 at [56]–[57], and *R v SR* HC Wellington CRI-2009-85-8992, 14 April 2011 at [40]–[41].

not [R] is 'unable, due to mental impairment, to conduct a [rational] defence or to instruct counsel to do so', in this case.

...

[A] mental impairment is a disorder or condition affecting the rationality of an accused to an extent that may compromise his or her fitness to stand trial. It needs to have regard not only to an accused person's ability to understand and make a rational decision on a plea, but all subsequent aspects of conducting a defence. It is the first aspect of a two-stage inquiry. There may be recognisable impediments to a person's rationality (ie he or she is mentally impaired) but then, on a second analysis, that impairment can be characterised as not sufficient to render the person unfit to stand trial.

[7] I therefore am not assisted by a psychologist's clinical assessment of any intellectual disability suffered by Mr Church. Rather I am to determine if he is mentally impaired, and then to the requisite extent.

### **Discussion**

[8] I accept treatment-resistant schizophrenia – a syndrome characterised (untreated) by persisting and profound delusions, hallucinations, and disordered thought in people so affected<sup>8</sup> – is a mental impairment. I am satisfied on the psychiatrists' evidence Mr Church more likely than not is mentally impaired.

[9] I also am satisfied, due to that mental impairment, Mr Church more likely than not is unable to conduct a defence or to instruct counsel to do so. He has a child's comprehension and capability, and even if such may be overcome (for example, by appointment of a communication assistant, if able to enable him to understand the proceeding itself), he more likely than not is unable:

- (a) *to plead*: his understanding of what it means to be guilty, not guilty, or not guilty by reason of insanity appears transient, without insight into the impact of his disease, and as much in biddable response as in independent assertion;
- (b) *to adequately understand the nature or purpose or possible consequences of the proceedings*: his grasp on reality is evanescent at

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<sup>8</sup> *R v Brackenridge* [2019] NZHC 1004 at [2].

best, with a tendency to embed delusions and externalities as his own experience, and to “resile into perplexity” on challenge to them; and

- (c) *to communicate adequately with counsel for the purposes of conducting a defence*: he lacks the cognitive ability to process information received by him, has a very short attention span, is resistant to disclosing any information, resiles from or contradicts such as he has disclosed, and withdraws from stressful topics.

I particularly am influenced by the psychiatrists’ (notably, Dr Chaplow, but also Dr Dean, who initially was instructed on a possible insanity defence) gradual shift to that view in the course of their extended dealings with Mr Church, whose initial presentation as fit to stand trial became chimeric.

[10] I therefore record, in terms of s 8A of the Criminal Procedure (Mentally Impaired Persons) Act 2003, Mr Church is unfit to stand trial.

#### **Next steps**

[11] I direct Mr Church’s trial, intended to commence on 7 October 2019, be vacated.

[12] Within ten working days after receipt of this judgment (or such longer period as may be sought and granted), counsel are to file memoranda (desirably joint), proposing steps and timetable for consequent inquiries,<sup>9</sup> and raising any other matter that requires determination.

—Jagose J

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<sup>9</sup> Criminal Procedure (Mentally Impaired Persons) Act 2003, s 10 and 23.