

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

CR NOS: 627/25, 1033/25

R

v

**S.G.C.
(ISON)**

Hearing: 26 August 2025

Appearances: Ms T Scott for Crown
Ms J Crawford for Defendant

Judgment: 26 August 2025

**ORAL JUDGMENT OF GORDON J
[FITNESS TO PLEAD]**

[1] This Judgment sets out a decision made at callover on 26 August 2025. Although the Judgment contains some procedural matters which might more appropriately be recorded in a Minute, because I make a substantive finding, and also a determination as to the process to be followed in the Cook Islands for fitness to plead and the following steps, I issue this document as a Judgment rather than a Minute.

[2] In his Minute of 25 July 2025, the Chief Justice noted that the defendant's capacity to plead to his charges of burglary and attempted burglary was the subject of a psychological assessment, which had yet to be provided.

[3] The Chief Justice directed that the issue of capacity to plead was to be set down in this, the third week of the current session.

[4] A report of a registered psychologist, Katie-Marie Jervis, dated 28 July 2025, is now available. In short, Mrs Jervis is of the view that "... the evidence strongly

supports the conclusion that Mr [C] has a mental impairment and does not meet the functional threshold required to be considered fit to stand trial.”. Mrs Jervis recognises that while that is her opinion, the decision on this issue rests with the Court.

[5] Mrs Jervis’ qualifications and experience indicate she is properly qualified to provide a report on this issue¹.

[6] I am accordingly in a position to make a determination today on fitness to plead.

[7] I thank Crown counsel, Ms Scott, and Defence counsel, Ms Crawford, for their joint memorandum dated 14 August 2025. Neither the Crown nor Defence take issue with the findings or recommendations made in Mrs Jervis’ report.

Framework for procedure

[8] Counsel submit that given the lack of any explicit legal framework, or relevant case law, governing criminal procedure in the Cook Islands for defendants with cognitive impairments or mental health disorders, the provisions of the New Zealand Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP), can be applied so far as they are not in conflict with Cook Islands law².

[9] I agree that the CPMIP framework should be applied and, as already indicated, the Court is in a position today to take the first step, namely to determine fitness to plead.

[10] After I have made my determination on this issue I will refer to the legal framework for the next two steps, as submitted by counsel in the joint memorandum.

Fitness to plead

[11] The first issue I mention is that there is only one health assessor’s report

¹ The definition of ‘health assessor’ in the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP) NZ, includes a psychologist.

² Judicature Act 1980–81, s 8; and Criminal Procedure Act 1980–81, s 3.

provided to the Court. Section 8A(1) of the CPMIP Act provides that when determining if a defendant is unfit to stand trial the Court must receive the evidence of two health assessors as to whether the defendant is mentally impaired.

[12] If the Court is satisfied that the defendant is mentally impaired, the Court must record a finding to that effect; and after giving each party an opportunity to be heard and present evidence, make a finding on the balance of probabilities whether or not the defendant is unfit to stand trial.³

[13] I accept there are likely to be real difficulties in obtaining a second report in this relatively small community. But in any event, there are two earlier health assessors' reports dated 9 and 11 April 2021, prepared for a New Zealand Court on precisely this issue. The writer of the 9 April 2021 report was of the opinion that Mr [C] was suffering from a mental impairment in terms of the CPMIP Act, which would prevent him from meaningfully taking part in a criminal trial. In the writer's view the Court would be likely to find him unfit to stand trial, but he acknowledged that the ultimate decision rested with the Court.

[14] The writer of the 11 April 2021 report was "confidently" of the view that Mr C suffers from an intellectual disability in the moderate to severe range. The writer goes on to say the Court would normally consider Mr C's level of intellectual disability to be a "mental impairment". The writer was of the opinion that the Court would likely make a finding that Mr C was unfit to stand trial.

[15] The lack of fitness in all three reports is based on Mr C having an intellectual disability. I note that Mrs Jervis considers that the two previous assessments are still a valid representation of Mr C's cognitive abilities and adaptive functioning, and that there are no current indications that there has been significant improvement in his overall functioning.

[16] Accordingly, even though I would have been prepared to proceed on the basis of just Mrs Jervis' report, the Court has the added benefit of the two reports from April 2021 prepared for the New Zealand Court.

³ CPMIP Act, s 8A(2) and (3).

[17] By way of background I note that Mr C is a Cook Islander who is normally resident in New Zealand. He arrived in Rarotonga from New Zealand in February 2025 for a planned three-week holiday. However, following the laying of the two charges in March 2025, he has remained in Rarotonga under bail conditions that prohibit him from leaving the Cook Islands without prior approval from the High Court.

[18] Mr C is living in Rarotonga with his aunt, who serves as his primary support person both here and in New Zealand.

[19] Turning to the substance of Mrs Jervis' assessment, first, as to the issue of mental impairment, Mrs Jervis reports as follows:

Mr [C] presented with observable cognitive deficits consistent with his confirmed diagnosis of Intellectual Disability. These include significant limitations in both intellectual functioning (e.g., reasoning, problem solving, and abstract thinking) and adaptive behaviour (e.g. communication, social participation, and independent living skills), with onset during the developmental period. During the current assessment, Mr [C] was orientated to person and place. He demonstrated limited functional literacy and required prompting for basic orientation tasks such as identifying the day and time. His aunt confirmed that he is unable to read, write, or tell time. These deficits are consistent with longstanding developmental impairments and support the diagnosis of Intellectual Disability. Mr [C]'s cognitive limitations were evident throughout the interview and contributed to his reduced capacity to engage meaningfully with the assessment process.

[20] I am satisfied that the evidence establishes that Mr C is "mentally impaired".

[21] On the issue of fitness to stand trial, Mrs Jervis concludes:

Mr [C] was assessed with reference to the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the Presser criteria, which together guide determinations of fitness to stand trial in the absence of equivalent legislation in the Cook Islands. Findings from structured clinical interviews, collateral information, and psychometric data all indicate that Mr [C] presents with profound cognitive and adaptive impairments. These impairments substantially affect his capacity to comprehend legal proceedings, consult meaningfully with legal counsel, and participate in any aspect of a

criminal trial in a sustained or effective manner. Taken collectively, the evidence strongly supports the conclusion that Mr [C] has a mental impairment and does not meet the functional threshold required to be considered fit to stand trial. In the writer's opinion, Mr [C] would likely be found unfit to stand trial. Ultimately, however, the decision of fitness to stand trial rests with the Court.

[22] I consider there is a sound evidential basis in Mrs Jervis' report for her conclusion in terms of the *Presser* criteria⁴ as follows. She says (with examples provided for each criterion):

- (a) that Mr C was unable to understand the nature of the charges laid against him;
- (b) he demonstrated a limited and often incorrect understanding of the implications of entering a plea, and was unable to appreciate the significance of a plea in the legal process, nor the consequences that follow from such a decision;
- (c) he displayed a limited understanding of the Courtroom environment and the roles of the key participants, which indicated to Mrs Jervis that he lacked the necessary comprehension and presence of mind to identify and appropriately challenge potential jurors;
- (d) he demonstrated significant gaps in his understanding of fundamental legal concepts and procedures;
- (e) he lacks the cognitive and attentional capacity required to follow the course of legal proceedings;
- (f) his impaired abstract thinking and limited conceptual understanding make it impossible for him to appreciate how evidence may be used to prove guilt or innocence, and what its implications would be for his own situation; and

⁴ *R v Presser* [1958] VR 45 which sets out eight core competencies a defendant must possess to be deemed fit to stand trial.

- (g) his understanding of the role of legal counsel was superficial and inconsistent, which suggested to Mrs Jervis a limited capacity to meaningfully instruct a lawyer in his defence.

[23] I am satisfied on the balance of probabilities that Mr C is unfit to stand trial.

Where to from here?

[24] I return to the joint memorandum of counsel.

[25] Under the CPMIP framework the next step in the process is, if prior to trial, the defendant is found unfit to stand trial, as is the case here, the Court must proceed under s 10 of the CPMIP Act to determine involvement.

Involvement hearing

[26] The Court must decide whether it is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged⁵.

[27] In making a determination as to involvement the Court may consider: formal statements filed; any oral evidence that has been taken in accordance with an oral evidence order; and any other evidence submitted by the prosecutor or the defendant⁶.

[28] In this case the Crown has yet to file sworn depositions. Draft depositions and exhibits, along with Police job sheets, were filed electronically yesterday. Counsel jointly submit that involvement can be determined on the basis of the signed depositions once they are filed.

[29] That will be for another Judge in a future session. The Registrar, in conjunction with the Chief Justice, will allocate a time for a Judge to consider that evidence. It will be for that Judge to determine whether, in fact, a determination as to involvement

⁵ CPMIP Act s 10(2).

⁶ Section 10(3).

can be made on the papers as counsel submit, or if the Judge wishes any oral evidence to be called.

Disposition

[30] The Court is then required to record its finding on the defendant's involvement in the offences.⁷ If the Court is not satisfied as to involvement it must dismiss the charge⁸ or if satisfied, determine the most suitable method of dealing with the person.⁹

[31] On this issue (and assuming the Court is satisfied as to involvement), both counsel submit that the inquiries and recommendations as outlined in Mrs Jervis' report are sufficient to inform the Court as to the most suitable method of dealing with the defendant. On this issue Mrs Jervis says:

Should the Court find Mr [C] unfit to stand trial, it will be necessary to determine the most appropriate disposition in accordance with his clinical profile and personal circumstances. Mr [C] and his aunt have expressed a clear preference to return to his community in New Zealand and resume living as a civil client under the care of IDEA Services, with whom he has a longstanding and supportive relationship. IDEA Services is well placed to provide the specialised support and supervision required. It is therefore recommended that a coordinated plan be developed between IDEA Services in New Zealand and the Ministry of Justice Cook Islands, to ensure community safety and ongoing therapeutic support.

[32] Counsel agree that the defendant should be able to return to New Zealand and to his supported living accommodation under IDEA Services.

[33] This will be a matter for the Judge who considers involvement, if that Judge finds Mr C was involved. However, I do register a concern about a Court in the Cook Islands being asked to direct a New Zealand agency to provide specialised support and supervision. Notwithstanding that Mr C is said to have had "a longstanding and supportive relationship" with IDEA Services, I would have thought it would be desirable for at least confirmation from that agency that it would be able to resume

⁷ Section 13(1).

⁸ Section 13(2).

⁹ Section 23(1).

oversight of Mr C.

[34] However, that is all in the future for another Judge. I do note, however, that Ms Crawford, appearing this morning for Mr C, has said she is willing to facilitate a report from IDEA Services. Ms Crawford says she has ongoing contact with that organisation, and reports to them after each Court appearance.


Result

[35] I find on the balance of probabilities that Mr C is unfit to stand trial.

Next steps

[36] I remand Mr C to call over at 10:00 am on 24 October 2025, for the allocation of a date for the involvement hearing. It may be that a date for the involvement hearing can be allocated without the need for an appearance at call over on 24 October 2025. However, I will leave that to the Chief Justice and the Registrar.

[37] In the meantime, I direct that the Crown file and serve signed depositions and any remaining exhibits within three weeks of today's date, 16 September 2025.



Gordon J