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IN THE YOUTH COURT
AT ROTORUA

CRI-2017-263-000109
[2017] NZYC 743

THE QUEEN

v

[B L]
Young Person

Hearing	9 October 2017
Appearances:	A Gordon for the Crown H Edward for the Young Person
Judgment:	9 October 2017

NOTES OF JUDGE A C WILLS ON SENTENCING

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[1] Today [BL]is for sentence in relation to four matters. There are charges arising from the [Court location and date deleted] 2017, theft of a phone; on [date deleted] 2017, burglary of [school name deleted]; and on [date deleted] 2017 a charge of assault with intent to injure [EG].

[2] Those charges were all not denied and a family group conference was held on 3 April and then again on 15 May 2017. At that family group conference in May, the victim, [HP], and his partner were present and there were submissions provided by the other victims.

[3] The family group conference reached an agreement with the recommendation that [BL] be subject to a supervision with activity order.

[4] [BL], at that time, was in the custody of the Chief Executive, Oranga Tamariki, pursuant to s 238(1)(c).

[5] The aggravated robbery charge which arises from the Rotorua Court took place on [date deleted] 2017. That, of course, is the most serious of the charges which [BL] faces and is the reason why the Crown seeks a transfer of these proceedings into the District Court for sentence.

[6] The facts of the aggravated robbery are concerning. [BL], together with another young person, [GG], were at a home in [location deleted]. They had both been drinking. They left that home and [GG] had with him a hammer and [BL], a screwdriver.

[7] At the liquor shop nearby they ran into the store and demanded money. [GG] punched the victim to both sides of the face and after the victim fell, hit him in the back of the head with the hammer. The victim had a wound to the back of his head which required stitches. [BL] began grabbing alcohol and also took the victim's cellphone. Both [GG] and [BL] were found shortly afterwards by police, with money that had been taken and alcohol, the hammer and the screwdriver.

[8] [BL] admitted the facts that I have just described immediately.

[9] The Crown have sought to transfer the sentencing to the District Court largely because of the seriousness of the offending. There has been a spate of aggravated robberies of this nature, not only in the Bay of Plenty area but throughout the country. The Crown are also concerned about [BL]'s attitude towards his victims and the fact that he was subject to Youth Court involvement when this offending took place.

[10] Ms Gordon has filed very helpful submissions in which she details the reasons why the transfer is sought. She has addressed issues around the likely starting point if the matter was transferred to the District Court because of the seriousness of the offending, and recognises that [BL] would likely be sentenced to imprisonment for in excess of two years.

[11] Mr Edward, counsel for [BL], does not disagree with that likely approach in the event of transfer.

[12] Section 283(o) Children, Young Persons and Their Families Act 1989 as it then was, allows the Court to transfer the sentencing of [BL] in a case such as this to the District Court. [BL] is 16 years old. The criteria are met. If he is transferred, the provisions of the Sentencing Act 2002 will apply and as I say, the likely start point for sentencing is four and a half to five years' imprisonment, with possible discounts for his youth and guilty plea of up to 50 percent.

[13] Before a transfer can be contemplated, there are a number of factors which must be considered. Those are set out in s 284(1) of the Act. I am going to deal with each of these in turn.

[14] The first is the nature of the events. The aggravated robbery is serious violent offending and although [BL] did not himself use physical violence against the victim, he had the screwdriver and knew that [GG] had a hammer. He is just as responsible for what took place, as [GG] is. There was a degree of premeditation although I accept that it was of a very rudimentary nature and, of course, the two young people were quickly located following the offending.

[15] It is also necessary to look at the effect of this discretion on sentencing options that are available for [BL]. In the District Court, the likelihood, as I have said, is imprisonment with a parole period. That contrasts with what is available in the Youth Court, being supervision with residence followed by supervision with conditions relating to placement, to curfew, to counselling, to courses. The focus is therefore very different in the Youth Court.

[16] In the event of transfer, the Sentencing Act 2002 applies and although there is scope for rehabilitative options within the Sentencing Act in the District Court, it certainly does not have the same rehabilitative focus that Youth Court sentencing achieves.

[17] The next factor is the principle that [BL] should be held accountable and accept responsibility. I have turned my mind to this issue particularly because there was conflicting evidence about [BL]'s attitude towards both the victims and the offending itself. As a result, I have asked [WT] to be present at Court today to answer questions. The information in the social work report does contrast somewhat with the information in the lay advocate report, and I wanted to know whether that was a matter of timing or more observation time.

[18] [WT] today has said that her inquiry of [BL] was much earlier and that she has noticed a significant change in [BL]'s attitude and in his behaviour since the time that he has spent in residence. It is important to recognise that [BL] has in fact been in residence now for almost five months. [WT] had also in her report talked about [BL]'s admissions to secure care. He has had four of those in total while he has been on remand. Once again, the timing of that is important and I have obtained from [WT] the information that those secure care admissions were prior to 1 August.

[19] That demonstrates capacity for change. [BL], I am advised by Te Maioha staff, has not been in secure care since those four admissions.

[20] [BL]'s ability to be accountable and accept responsibility has been affected by his upbringing and background. What I am clear about from the social work report and from the information that is available in terms of the family violence records, is

how confusing things must have been for [BL] as he grew up. He has a mother who seeks to protect him. He has two parents who have very, very different views about discipline. I can see that when you have a mother who seeks to protect and excuse your behaviour, and a father who seeks to punish you physically for that same behaviour, confusion could be the result. The family violence records show huge numbers of call-outs to [BL]'s home, for him, for his [sibling], for his father. That background reflects how hard it must have been to accept responsibility.

[21] [BL] has provided to me today a letter which apologises to his victims. I am aware that at the family group conferences, apologies have been tendered, but I am also aware that the approach in the Family Group Conference that was taken by [BL] and his father was resented by one of the victims.

[22] The more recent letter that I have from [BL] does reflect the learning that he is undertaking at the moment and a recognition that there are many people who have been badly hurt by his wrong decisions and his mistakes. (It might be worthwhile adding "choices" to that as well).

[23] He recognises that those he needs to apologise to, are his victims, his friends and his family.

[24] Although that written apology is late in coming, in my view it reflects the change in attitude that has been developing in [BL] over this period in remand.

[25] The next issue is the interest of [BL] himself in being dealt with under the rehabilitative provisions of the Act. As I have already said, there is no question that the Youth Court has greater opportunity to offer rehabilitative options. There are programmes specifically and immediately tailored to the issues that [BL] faces, including his drug addiction, (and anybody that uses cannabis daily has an addiction), and unresolved anger issues and how those can be managed. There must also be focus on the acceptance of responsibility and willingness to take the consequences of behaviour.

[26] The next factor is [BL]'s age in relation to that rehabilitative period. This is the area that was of most concern to me because [BL] was 17 on [date deleted], so it was important to consider whether rehabilitation could be achieved in that short timeframe until he is 18.

[27] I know that [BL] is aware that he is at the borderline for this. The reports show that and, in particular, the report from the lay advocate identifies [BL]'s understanding of that position. Balanced against that, of course, is my view that a transfer to the District Court and a sentence of imprisonment would likely consign [BL] to a life of crime and enable the development of relationships which would, in my view, poison the rest of his life.

[28] I must also take account of [BL]'s personal history, his social circumstances and his personal characteristics. I have canvassed [BL]'s personal history but I want to do that a little more.

[29] [BL] has had the involvement of Child, Youth and Family, Oranga Tamariki as it now is, since 2013. He has had a number of placements outside his family but has always returned. He has struggled to manage anger and he and his [sibling] have been engaged in many violent fights.

[30] [BL] has, though, a very short history of Youth Court offending and there has been no formal Youth Court order made against him; no mentoring; no supervision. Charges previously in Court against him have been either withdrawn or he has been subject to a s 282 discharge, so the matters that are before the Court today are effectively first offences in a legal sense, although I recognise that there has been earlier Youth Court offending. I must take that into consideration as well because the opportunity of structured formal sentencing in the Youth Court has not been tried for [BL].

[31] I turn now to [BL]'s attitude. I am satisfied that there has been a change for [BL] and that is extremely important in the decision that I make today, because there has in the past been a clear tolerance in [BL] for the violence that is demonstrated in this offending and the assault with intent to injure.

[32] I also look at the response of the family and the recommendations of the family group conference. In relation to the aggravated robbery, there was no agreement at the family group conference but I am satisfied from the social work report that the [location deleted] Police supported supervision with residence and [WT] as social worker for [BL] also supports supervision with residence.

[33] There is an observable change in [BL]'s family demonstrated by there being no family violence call-outs. The question is whether that is a long-term development which will result in lasting change or not. What is clear and I believe is recognised by both [BL] and his family is that for [BL] to return into his family environment at the conclusion of any sentence may not be in his best interest - that it may be better for him to pursue his life in a structured environment that supports his goals. That is not a matter for today, but it is important to consider in the planning process because things need to be different at home for [BL] to safely return.

[34] The next factor that I take into account is the public interest and I have already touched on this because of the extent to which aggravated robberies of this nature have become prevalent. There are two parts to public interest. The first part is the denunciation of offending like this - something that addresses victims' concerns and ensures that the public and community are protected. When one looks at that interest, and at the interests of the victims and what they seek, they consider that a long sentence of incarceration is the right approach. The second part to public interest is the importance of ensuring that there is no more offending by [BL].

[35] Those two issues directly relate to the difference between District Court incarceration and Youth Court sentencing.

[36] Also important is the issue of parity. [GG] was not transferred for sentence to the District Court. That was in large part because of his particular personal circumstances which I do not need to go into now. [GG] was responsible for the gratuitous violence and, in particular, the hammer blow to the head after the victim had already fallen to the ground. I do not excuse [BL] from that responsibility but he was not personally responsible for the physical violence. The balancing of factors, in my view, places [BL] and [GG] in the same position in terms of culpability.

[37] When I take all of those factors into account and I look particularly at [BL] and the changes that have already been made for him while on remand, I am satisfied that what would effectively be a custodial sentence of 22 months, (that is almost five months on remand, six months' supervision with residence translating into 11 months and therefore probably 22 months' imprisonment), that the public interest in terms of denunciation and deterrence is met. I am satisfied that the Youth Court can properly address the rehabilitative needs for [BL] and meet the other part of the public interest. I therefore decline the application to transfer [BL] to the District Court for sentence and I sentence [BL] to supervision with residence for a period of six months.

[38] There is an early release date identified of Tuesday, 6 February 2018 with the final release date being 8 April 2018.

[39] That sentence is to be followed by supervision for a period of nine months. That period is identified with the hope that [BL] will be able to achieve an early release date. That, of course, is entirely in his hands. In the event that he is able to achieve early release, then there will be approximately nine months before he turns 18 and I intend that he shall have every opportunity with the support of a social worker to carry on a constructive and positive path.

[40] I direct that a supervision plan including placement issues be filed no later than 21 days prior to the early release hearing. That will ensure that the issues around placement are given proper consideration.

[41] The conditions of the supervision with residence order are those set out in the social work plan and, [BL], that requires you to engage and participate in all programmes provided by the Youth Justice Residence and you must act in a way that will enable you to stay in those programmes. If you are successful, you will engage in the Another Generation programme and I believe from the report that that is something that will be available to you.

[42] You will also engage and participate with the alcohol and drug counsellor to complete assessments and recommendations as needed.

[43] You are also required, of course, to comply with all of the conditions and the rules that are in place in Te Maioha.

[44] A copy of this decision and of the supervision with residence order with the supervision order will be available to you today.

[45] The date for the early release hearing will be 30 January 2018 which is the earliest available Youth Court date before 6 February.

A C Wills
Youth Court Judge