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**IN THE YOUTH COURT
AT AUCKLAND**

**I TE KŌTI TAIOHI
KI TĀMAKI MAKĀURAU**

**CRI-2017-211-000010
[2018] NZYC 702**

NEW ZEALAND POLICE
Prosecutor

v

[CL]
Young Person

Hearing: 17 December 2018

Appearances: J Barry for the Prosecutor
M Winterstein for the Young Person

Judgment: 17 December 2018

RULING OF JUDGE G F HIKAKA

[1] [CL], you were born [date deleted] 2002. There are 23 charges to consider today. The issue before the Court is whether convictions should be entered and you should be transferred to the District Court for sentence or whether you be sentenced in the Youth Court. If in the Youth Court, there is no issue that you should be sentenced to supervision with residence for six months to be followed by supervision.

[2] I to take into account on sentencing the factors found in s 284 Oranga Tamariki Act 1989. I also need to consider the principles in s 208 and. after doing those things, I need to decide whether anything that could be done in the Youth Court would be clearly inadequate, which means it just would not be serious enough.

[3] The first thing I need to do is look at the offences. You admitted all of the charges. I will briefly cover them using what Mr Barry for the police, has written about them.

[4] The first was in [date deleted] 2017 when you were 14. You and two others went to a small retail shop, demanded cash. You grabbed a cash till, as did one of your associates, then you ran off. Later that year, on [date deleted], you turned 15. On [date deleted] you punched and smashed the window of a parked car. A week later, you were driving a stolen car. The next month, you broke into a car and were caught driving it in the far north. You had been told that you were not allowed to drive much earlier than when you were seen driving this time.

[5] Things get more serious in [month deleted]. You and several others were on a train going to [destination deleted]. You approached a victim, pushed him against the wall, and demanded his phone, his passcode and money. You then demanded he turn out his pockets. You took cigarettes and keys and punched him twice in the head. A member of the public intervened and got the property back. You and another of the people you were with, went to another person at the train station, asked for spare change and grabbed the person's phone. There was a struggle, he got the phone back and walked away but you grabbed him by the neck and punched him several times. It says 15 times in the summary. You let his neck go when you tried to cover his mouth because he was calling out for help. He managed to push you away and you ran off.

[6] Next you went to a security guard, found a clipboard at a nearby table and hit the security guard in the face with it. You dropped the clipboard and ran to the escalator. Another security guard attempted to stop you going up the escalator so you punched him in the face and then ran out of the building.

[7] After that was a family group conference. You were granted bail to stay at your mum's. Two days later, you took off. You did not go to Court. A warrant was issued for your arrest and you were next located driving a stolen vehicle on 23 December 2017. Police showed their red and blue lights and siren to get you to stop but you took off. You went very fast in a 50km area, you drove on the wrong side of the road, went around a roundabout the wrong way, lost control of the vehicle and crashed through a gate.

[8] The next time you were in Court, you were given electronically-monitored bail. A week later you left your youth programme, cut off your electronically-monitored bail bracelet, got involved in an altercation in Fort Street, you ran off from police but were caught and arrested. A family group conference in April recommended that you write apology letters and go to an alcohol and drug programme. You were granted bail again and, as everyone agrees, this is when things get even more serious on 3 May 2018.

[9] You have admitted two charges of aggravated robbery, two of kidnapping, two of unlawfully taking a motor vehicle, one of interfering with a motor vehicle and one of aggravated careless use of a motor vehicle causing injury, all on 3 May.

[10] You were with a number of associates in the central city area, trying to break into a car belonging to one of the two victims. They saw what was happening and tried to stop you breaking into the car. An iPhone was taken and smashed. One of the victims was punched. You had possession of a screwdriver which one of your associates took off you and pushed it into one victim's throat, threatening to stab her. A number of threats were made. These two young women were then threatened by your group that they would be stabbed if they called out and you walked with them for what the police estimated was about 90 minutes, looking for cars to steal.

[11] That eventually happened. You found one and forced those two young women into the boot of the car and they were driven around Auckland. There were occasional stops when attempts were made to steal other cars. Your group discussed abandoning that car with the victims in the boot and they, overhearing these comments, were obviously frightened. Updated victim impact statements confirm they actually thought they were going to die because you and some others were threatening to stab them, maybe even go to Gisborne in order to do that.

[12] The car they and you were in was driven dangerously. Your group split into two. You carried on driving the car with the victims in the boot. The police got involved. You crashed the car you were driving through a barrier and over a bank. The time the victims were detained in the boot was around three hours. They both had to go to hospital. One had a dislocated or broken jaw from being punched in the face. The other had a broken collarbone but the impact on them emotionally and psychologically has been profound. They have been deeply upset and disturbed by what you and your group did to them.

[13] You turned 16 on [date deleted] this year. You have remained in custody since your arrest in May and now the time has come for the decision whether you should be sentenced in the District Court or could remain in the Youth Court. There can be no criticism of the police approach to this offending, particularly in May this year. Police submit it has got to the stage where efforts the Youth Court might make in order to get you back on the right track have passed; it has just got far too serious for that. It is the police position and they make that position clear in support of moving things through to the District Court where there will be no restriction on the length of time you could serve by way of a sentence and submissions filed indicated that if you were sentenced in the District Court the starting point of what you could be sentenced to is eight years jail time. The other argument, though, is that you should remain in the Youth Court. The concern about public safety, which is obviously big concern for the police, shared by everybody, is whether the public safety would be better served long-term by you continuing in the Youth Court with all the therapy options that are available to you or spending a lengthy period of time in jail.

[14] Counsel provided me with very helpful submissions. Some of those submissions have referred to not only the principles that need to be considered in the Youth Court but also conventions that New Zealand are party to on the international stage. For example, the United Nations Convention of the Rights of the Child which states that detention or imprisonment should only be used as a measure of last resort and for the shortest appropriate period of time. There is also reference to what has been called the Beijing Rules which basically states the same as what I have already referred to under the United Nations Convention of the Rights of the Child. Some commentary about those international conventions refer to how badly people can be affected in institutional settings but they also note that there seems little or no difference to be found in the success of institutionalisation as compared to non-institutionalisation.

[15] That leads me to consideration of the other factors in s 284. I have already covered the nature of the charges and there is no escaping that they are serious and they got more and more serious right up to May. There are no more charges. You have been remanded in custody since then.

[16] The next factor is your personal history and social circumstances. You have facility with te reo Māori as a result of your kura kaupapa schooling early on but you disengaged from that at around [your early teens] and fell behind. You got involved with a group who behaved badly and took up drug use.

[17] There is a significant period of grief in your family as a result of the passing of your [close family member]. You had had some head injuries as a result of [details deleted] early on in life. You became quite down and attempted significant self-harm on a couple of occasions that led to involvement with Mental Health Services.

[18] [Details deleted].

[19] Your family, who are present today, have been very supportive of you during all of this time and that has not been questioned. What has been significant, though, from all that I have read is that they have seen a change in you for the positive, particularly in recent times.

[20] The next point is your attitude towards the offending and from all the information that has been provided - and there has been a huge amount of it. Psychological reports, ongoing social worker reports, communication assistant reports, a cultural report and information from your lay advocate. It is clear that once all of them are considered, that you have felt genuine remorse and huge disappointment in yourself for getting involved in this offending. It is clear to me that you are remorseful. The fact that you have difficulty expressing how you feel about these things, expressing your remorse, is more linked to some of the other issues including lower than average general intellectual ability that has been referred to in a neuropsychological assessment that was provided to the Court.

[21] The next point is your family's response to the causes underlying the offending. You have been supported by family, particularly by your mum who has always been, from my reading of the record, very clear about not accepting that anything of your bad behaviour is appropriate. She looks to provide no excuses for you. In fact, that led to her having to make that hard choice earlier on to decline to have you back home because she appreciated, as things were at that time, that she was not able to provide you with the care arrangement that would keep you out of trouble. But, as I already referred, your mum and your [sibling] have said to your social worker how much good change they have seen in you lately. Your mum visits you three times a week and has provided a high level of ongoing support to you. There is no indication of a call for reparation.

[22] The next point I need to look at closely is the effect on the victims. I have already outlined the effect. It has been traumatic, particularly to the women who were stuck in the boot in an injured state already but hearing the talk about the intention to kill them. Because of how badly they had been treated, they took that seriously and have suffered on an ongoing basis because of that. They have panic attacks, they have real issues about being outside, one who was already having some difficulties in her personal life, has found the offending against her devastating. One has lost her job because she simply could not keep focused on her work. The one whose car was stolen, had only had it for three days. It was so badly damaged it was written off and she had worked hard to buy that from her own money. She has high levels of anxiety and finds it very difficult to trust people. Those victims, in spite of the high level of

trauma they have suffered say that their biggest wish is for no one to have to go through what they went through and one believes that, I now quote, “The offenders can change their lives around and make better choices,” and the other has expressed feeling safer now that the offenders are not out on the street.

[23] A comment one made reminded me that you were part of an offending group. One of the victims kept referring to a female, wondering about how that person would feel if it had happened to her. Most of the significant trauma experienced by that victim appeared primarily to be as a result of how the female offender treated her. Anyway, the effect on the victims emotionally and psychologically has been profound.

[24] The next point to consider is the previous offences. All your offending in the Youth Court is being dealt with today. So in that respect, it is just a series of offences that we are dealing with today rather than prior offending that has been proved.

[25] Early on, there were family group conference recommendations and plans. Eventually it got to the point where there was no agreement at family group conferences because things had just got so serious.

[26] Underlying causes are something that I need to consider. Within that context I need to look at s 208 of the Act which talks about interventions that should in principle strengthen the family, that should in principle keep you in the community as much as practicable and consistent with the need for keep the public safe, and the principle that your age is an important matter and any sanction should be one that is most likely to maintain and promote your development within the family and be the least restrictive. The principles also refer to trying to address underlying causes of your offending and again, an important principle is to consider the victims’ views and interests and have proper regard to those interests and the impact on them of the offending.

[27] Looking at all of those things, the seriousness is such that, to match the level of seriousness it is understandable why it is thought that you should be convicted of these crimes and sent for sentence to the District Court.

[28] It is important to see how things have been going while you have been in custody.

[29] The public interest is very important. It is not only important to that this sort of offending behaviour is simply not acceptable but it is also important to respond to this sort of behaviour in a way that puts you and others off from doing this sort of thing in the future, in case people might think that there is no real consequence for this sort of really bad behaviour.

[30] The other part of the public interest is to recognise that anything the courts do is limited in time and in time you will be back in the community again so there is a strong public interest in seeing you have the best opportunity to go back into the community a better person than when you left the community.

[31] My calculation of the length of time you have been remanded in custody while these charges have been before the Court is a total of about 400 days which is around a year and one month plus a few days. If you were in the District Court, that would be taken into account in terms of how much time you had spent locked up and it would be taken off your sentence so there has been what would be called a punitive or punishment aspect already by the amount of time you spent in custody. That means you lost your freedom for that period of time - over a year.

[32] As far as an update goes on how things have been going while in custody, I am now looking at your social worker's report on 3 December 2018. Your social worker has commented that following a move between different units while remanded in custody, your classroom participation has improved significantly, you have a real strength in creativity [details deleted] and that you are putting an effort into numeracy skills, basically, maths. Your particular way of learning has been observed and catered for. It has been recognised that you easily get distracted and confused but once you have clear direction on a one-to-one, one person to one person, basis you can get your work done well and done independently. You do not need to be in a group, you actually do well when you are working by yourself. It has also been recognised that you are a skilled artist, an active member of your kapa haka group and that you have a goal of

completing NCEA level 1 and you will be close to achieving that by the end of the year. That is the education side of things.

[33] You have also completed a site safety certificate, you have a fork hoist licence and you are working on your learner driver's licence. All those things would help you get back into the community with some skills that you have learnt and qualifications to see yourself perhaps being employed early on in your reintegration to the community. You have completed dialectical behavioural therapy skills programme, and are keen to do another one. You were going to do another one but you have a physical injury and there were problems with managing the second programme on account of others who were doing it. You are engaged with Regional Youth Forensics. A [location deleted] social worker has been in contact with you, and your social worker is still working out contractual obligations to ensure that continues. Odyssey House have provided input while you have been in residence. There was a comment made that you engaged and answered most of the questions presented to the class - you showed a good level of engagement. You have the injury that I have already referred to. [Details deleted]. You are eligible for a music programme which is available to those who are on level 3 of the behavioural management system which you have been on for some time, but slipped off it for a time but are now close to being back on level 3. Tu Rongo Collective are providing cultural supports and input which you already have some skill in because of your early schooling experience. You have benefited greatly from what I have read, from the Raukura Hauora O Tainui traditional Māori healing. That is an aspect that is not as easily defined in the usual criminal Court processes. It has a more spiritual context, a more emotional and psychological impact and it appears that has been very helpful and healing for you. I understand your mum has also received good support through the same processes. You were sent to secure a couple of times over disputes over what seem reasonably minor things like which movie to watch on TV but there is also an admission that showed how when you get angry there was a particular way that you have managed to deal with it. It's not perfect, but you are learning how to manage feelings of anger and frustration better - even though you found it hard.

[34] Basically, summed up, things have definitely settled. You have improved, you are more positive and residence has been good for you. That has been witnessed by

your family who have been regularly visiting and are very happy with what they have seen. Your lay advocate, Ms Griffiths, has conveyed the very same thing. Particularly with those people you trust, and there are not many, you seem to have been more open about how you are feeling and where you are finding things difficult. That has meant that you are able to receive the help to deal with those things. Part of your problem is not knowing what to expect and frustration that builds when that is the case. At times in the past, when that has built, you just decide that you will stop trying. It seems there has been a move that now you are prepared to try even though you still at times get frustrated and angry.

[35] When it comes to looking at what I need to assess here, six more months in a residential setting through a Youth Court supervision with residence order would see your time in residence to be, in total, over a year and a half.

[36] It would enable the things I have talked about under ss 208 and 284 to continue on the good track that they are on at the moment. As I have said, as far as the public interest goes, the most hope [CL], is for you to carry on the track you are on at the moment and strengthen your commitment to staying on it as you build the skills within yourself so when it does become time for you to go back into the community you will be much better prepared and able to cope with all the challenges that being in the community will present to you.

[37] When I look at those principles and the factors that I have referred to, I think that supervision with residence is clearly not inadequate in the context of all that I said and the great positive steps you have made, particularly more recently.

[38] It is not clearly inadequate and I think it is preferable that you remain in the Youth Court and that you have a supervision with residence order to continue that good work that you have been doing. It is not small thing to say that you have benefited greatly from the high level of skill and expertise of those who have been supporting you on this journey so the application to have you convicted and transferred to the District Court for sentence is declined - respectfully declined because there are very good grounds for having made that order if it was to go down that track but what is happening for you at the moment, [CL], is too good an opportunity to pass over.

[39] I reinforce that by reference to a comment in your lawyer Ms Winterstein's submissions referring to a case of Principle Youth Court Judge Walker in *New Zealand Police v S D* at [40]. His Honour had asked the Department of Corrections what youth-specific interventions would be available if a sentence was to be managed by Corrections either in prison or in the community.¹ I will read the quote that Judge Walker referred to from the response from Corrections. It said;

In the space of youth (17 to 25 years) within the Department of Corrections there are unfortunately limited services available. If sentenced to a custodial term, he may be eligible for the young offender's programme. This is a specific programme/unit targeted to those under 20 in a custodial space. This is offered in Christchurch and Hawke's Bay Prisons. If sentenced to a community-based rehabilitative sentence, there are again limited resources. The only programme available in Auckland is the Mauri Toa Rangatahi (Power of Youth) programme which is offered once per financial year per district. The current programme is running in South Auckland. I apologise, I do not have a forecast roster as of yet. There are multiple agencies in the community in which we can encourage the youth to engage with. However, it has proven difficult once they reconnect with anti-social associates and the like as I am well aware you would know.

[40] The point in reading all that out is that the only youth-directed processes that Corrections could offer are in Christchurch or Hawke's Bay Prisons. That would take you away from the strong support you have had locally both from your family and your social worker, lay advocate, communication assistant and the whole range of other people that have been there supporting you, [CL].

[41] That is my decision. I now impose the six-month supervision with residence order. That will be served at [youth residence deleted]. The date for an early release hearing is [date deleted] 2019. The social work report and plan for a supervision order will be considered two weeks earlier on [date deleted] at 10.30 am.

G F Hikaka
Youth Court Judge

¹ *New Zealand Police v S D* [2018] NZYC 169