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**IN THE YOUTH COURT  
AT MANUKAU**

**CRI-2016-292-000365  
[2017] NZYC 267**

**NEW ZEALAND POLICE**  
Prosecutor

v

**[C R]**  
Young Person

Hearing	5 April 2017
Appearances:	H Benson-Pope for the Prosecutor S Waapu for the Young Person
Judgment:	5 April 2017

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**NOTES OF JUDGE J H LOVELL-SMITH ON SENTENCING**

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[1] [CR], you can take a seat. You heard what Mr Benson-Pope for the Crown said yesterday, and you heard what Ms Waapu said on your behalf yesterday, and I said I would have a think about it overnight because obviously it is very important that I have the opportunity of thinking about these things.

[2] The principal reason I wanted to think about it was because not only in your case are we dealing with an aggravated robbery and all that other offending that you did with your associates, but your behaviour since then and in particular the assault on the staff that occurred comparatively recently gave me concern that I had to really think about first of all your age, whether in fact the Youth Court really could not cope with you any more, that there was nothing that could be done for you, that you should just be convicted and transferred out to the District Court for sentencing. You will have heard that the Crown has said in relation to the aggravated robbery that the starting point of four years' imprisonment would be appropriate. It would not mean of course at the end of the day you would necessarily go to prison because you would be entitled to credit for your youth and the fact that you have acknowledged your offending.

[3] The other thing which concerned me was the social worker's report and the attitude that was described by the social worker that you really could not care, that you had no respect for anybody except yourself and that really in a nutshell you think that you can do exactly what you want. So that really was the Crown's position, that you have reached the end of the road in the Youth Court and therefore you should go through to the District Court for sentencing on everything. You have already had the benefit of supervision with residence, everything had been tried and failed.

[4] Ms Waapu then said in her view that you should be given the opportunity of remaining in the Youth Court because the suggested penalty now would be supervision with residence again with a view to possibly placing you on supervision for a period of 12 months with monitoring and, that there was some light as it were in your behaviour in that you obviously enjoy sport, that you seem to be making some progress, that part of your attitude to authority can be explained by what had happened to you during the course of your life and because you are young, that I

should give you the opportunity of one last chance in the Youth Court. I also have to take into account what you actually did and I also have to look at what the victims have had to put up with, what effect it has had on them. You will be aware that through no fault of their own the victims have been very badly frightened. They think that they are going to work like everybody else to earn some money to provide for their families, provide for themselves. They are not doing anything wrong and yet they are treated by people who think that they can just smash their way into buildings or service stations and threaten them and take cigarettes and do exactly what they like, take cars, thumb their nose at the police, thumb your nose at the social workers, in fact thumb your nose at the whole system.

[5] First I record that you appear for disposition on the following charges: unlawfully using a motor vehicle in [Auckland location 2] on 3 July 2016, unlawfully using a motor vehicle in [Auckland location 1] on 2 July 2016, unlawfully using a motor vehicles again at [Auckland location 2] on 2 July last year and in [Auckland location 1] on 2 July, there is a burglary at [Auckland location 3] , [the retailer] on 3 July, aggravated robbery at [the service station] on 2 July, another unlawfully using a motor vehicle on 2 July at [Auckland location 4], and unlawfully in an enclosed yard. You will have heard the police and the Crown and everyone here talk about that as being part of Operation Song which is what the police called it. But the offending was effectively confined to two days and occurred with a large number of others on 2 and 3 July.

[6] The decision whether or not to convict and transfer relates to those offences but, there are other charges arising from February 2017 of common assault and speaking threateningly when you were remanded in custody, which would follow along with my decision.

[7] The police say that in particular the aggravated robbery, you committed it together with 13 others and there was the use of stolen vehicles. You were apprehended following a police pursuit and there was a burglary charge. You are not a first offender, you were subject to supervision orders at the time these offences were committed, and that you have 41 previous Youth Court notations and that you were on bail at the time you offended in respect of the Operation Song charges.

[8] The police note that you were born on [date deleted] 2000. At the time of the first Operation Song offending you were 15 years and nine months old, and as at today's date you are about 16 and a half years. The police have submitted that age and time available in the Youth Court jurisdiction for intervention is highly relevant and there is a presumption against transferring out to the District Court for sentence unless the potential length of the supervision with a residence order before the Court turns 18 is clearly inadequate. The seriousness of the offending and the likely term of imprisonment in the District Court is highly relevant but not determinative, and of course aggravated robbery carries a maximum of 14 years' imprisonment.

[9] It is accepted that the Youth Court provides greater prospects of reducing the risk of further offending than the District Court which is an important public consideration but, the police say that the real question in your case is whether any available outcome short of a s 283(o) would adequately address the seriousness of this offending and the ongoing risk that you pose and, if not a transfer to the District Court is the least restrictive outcome in the circumstances.

[10] The police say that particularly relevant to your case is that the Court should ensure that you are held accountable, that you are encouraged to accept responsibility for your behaviour, to consider the interests and views of any victims, and have regard for the views of the victims and I have already referred to the affect that your behaviour would have.

[11] The police have also pointed out the need for the District Court, if you go through to the District Court, to consider parity. In respect of Operation Song, one adult co-offender has been sentenced, another young person has received disposition in the Youth Court, and others are currently subject to sentence indications. One of the starting points in the sentencing indication in one of your co-offenders was six years for the aggravated robbery but it is accepted that in your case a starting point in relation to parity would be four years.

[12] It is acknowledged that you will be entitled to discounts of up to 25 percent for your guilty plea, and there are other aspects which the Court would have to take into account which include your age. I have noted too as the Crown has your

personal and whānau history, and the instability and the difficulties you faced through no fault of your own during your childhood. You do have an extensive history of previous offending, that is acknowledged by everyone. The social worker's report notes that you have got the propensity for violence whenever you do not get your way and, as your offending has increased you have become more anti social and anti authority. I indicated yesterday that that is one person's opinion. I have to take it into account as it were but I do not in fact place much reliance on it.

[13] So far as the attitude towards your offending, you were released on bail on a 24 hour curfew and have been remanded in custody until 21 November 2016. There are breaches of bail which were recorded in December, you abscond from your bail address on 2 January 2017, and there was further offending which involved a police pursuit. While in custody you damaged four glass panes by etching the glass as a form of tagging and, I have also spoken of those two other charges that you currently face. I am also told by the social worker that very properly your whānau do not condone what you have done and, that your mother wants you to be held accountable for your actions but she remains supportive of you as indicated by her presence today and yesterday, and the fact that due to the weather conditions and everything else and the fact she has got a job, it has been a very big thing really for her to travel [location deleted] to Manukau to be present at this time.

[14] I did want to say one thing about your mother, I have to say how impressed I am by her courage and by the way she has managed her life. It is really a remarkable story and I did want to pay credit to you. I think [CR], you should listen to what I say, what your mother has done is truly amazing and I hope that you will respect her forever, and you should be very grateful that you have her present here today.

[15] In terms of your history, it is acknowledged you have been previously subject to a supervision with residence and two supervision orders. You did not complete either of the two supervision orders. You have breached for absconding in August 2015, you were placed under supervision with residence order due to end on 16 February 2016 to be followed by a supervision order. You absconded from an address in [location deleted] at the end of February 2016, and then there were further compliance issues. You were then put under a supervision order on 9 May but by

22 May you had again absconded from an address where you were placed. Again you were living in [location deleted] in July 2016, you began transitioning from [location deleted] to your home address on 3 July but on 2 July you left the address at approximately 11.00 pm with a masked youth in a vehicle and the Operation Song offending, as I said, occurred shortly afterwards.

[16] There was no agreement of course, reached at the family group conference, you know about that, the one that was held on 15 February. As a result of all of this, taking all these matters into account, the police say the need is to hold you accountable, that the least restrictive outcome given the seriousness of your offending and your history, the public interest and that while accepting that you have about 18 months in which the full suite of s 283 orders are available, you should be convicted and transferred to the District Court for sentence as being the appropriate response because anything less than that in the police submission will be clearly inadequate to reflect the seriousness and persistence of the offending and the public issue considerations.

[17] Ms Waapu on your behalf opposes the application. She has dealt with the law in detail including both the law relating to New Zealand and international considerations. She acknowledges that you have been subject to supervision with residence and two supervision orders, and the fact you have been before the Court since you were 14, with 41 notations in the Youth Court for previous offending. She wishes to impress she says, upon the Court that you were in custody from 3 July 2016 until 21 November 2016 and then again from January 2017 to 4 April 2017 (well in fact it is longer than that because we are now 5 April) which is a total of about seven months and 18 days in custody in respect of these charges. She was also aware that when you were before the [location deleted] Court you spent six months in custody when subject to a supervision with residence and, some eight months in custody on remand prior to that sentence. It is essentially her submission that having regard to all the authorities there are still a number of interventions available in the Youth Court which were created for young people such as yourself, which have not been tried and specifically she says that you have never had judicial monitoring.

[18] What judicial monitoring means is that if you were on for example a supervision order you would come back to Court on a regular basis to appear before a Judge, the reports will be available for the Judge and the Judge would have a look at absolutely everything. The Judge would hear from the police or Crown like Mr Benson-Pope, and the youth advocate, the social workers, your lay advocate to see how you are getting on. If there are any issues with it then the plan might be revised, or it might be brought to an end by the Court and things like a conviction and transfer to the District Court may well become an issue as it is today. So it is like holding it over your head by coming back and having to explain yourself to a Judge on a regular interval.

[19] Ms Waapu in terms of the offending itself and I am talking about the aggravated robbery, she acknowledges it is serious but in her submission your involvement was at a lesser end of the scale as you are not involved in directly threatening the victim, and you were one of 13 offenders.

[20] Again, the burglary was commercial premises, multiple offenders, and her submissions is a significant amount of the property was recovered.

[21] She refers to the issues in your upbringing which has affected the way you behave. I am told that you are a good sportsman, she said good at [sport deleted]. You were involved in the [sporting event and location deleted], that you are a talented artist, a good learner and you have lots of abilities. Ms Waapu spoke particularly of your attitude and the fact that you appear as someone who finds it almost impossible to engage with professionals and new people, that you come across as disrespectful and evasive but it is her submission that is a reflection of your upbringing. You have been hardened and institutionalised from long periods of time in youth residences. In her opinion, she says that you do not know how to express your views and thoughts. You are eager to remain in the Youth Court jurisdiction, you are fearful of the possibility of imprisonment. She has also said you are positive about some of the programmes available within the residence such as the waka ama programme, sports, and the Tikanga Māori. Your case leader says that you are talented and would focus on that with you. You have difficulties with school work in the traditional education based classroom. I am also told that you are very positive

about returning to your mother's home in [location deleted]. Apparently when you are there you are engaging with a mentor and doing regular gym training, and an MSD a therapist is also starting to work with you both.

[22] It is acknowledge she said, you offended when bailed to your mother's address but, the offending occurred in [location deleted]. There does not seem to have been anything happening in [mother's location deleted] so far as offending is concerned, and that the feedback from professionals was positive.

[23] You have a large whānau. Some are very positive influences. There are the steps that your mother herself has taken to provide you with a home. Your mother presents as thoughtful, firm, open to any interventions, co-operative with the police and professionals, fully supportive of you and mindful of the harm that you have caused to the victims of your offending. She has expressed her concern and remorse on behalf of you to the family group conferences, she supports you making apologies to the victims and she supports any effort made to rehabilitate you.

[24] She notes that there was a non-agreement at the family group conference but in her submission, given the fact that your upbringing had dire consequences for you, it has affected your ability to be a positive member of the community. There are some positive elements in your life such as sport, being able to live in an environment far from Auckland, the fact that your mother is now a role model. An order of supervision with residence followed by a supervision with judicial monitoring will provide the best opportunity to address the underlying causes of offending. Given your age, there is still sufficient time to place you in supervision with residence to be followed by judicially monitored supervision for six to 12 months, that that is the least restrictive outcome in the circumstances and is not an inadequate outcome.

[25] I acknowledge that you were born as Ms Waapu said at a time of turmoil and distress in your family life. Taking all that into account it is probably unsurprising that you found yourself in the Youth Court by the time you were 14. There are significant deficits in the way you behave and your response to authority. Much of that can be explained because of your age and for the matters I have already referred



to. I acknowledge that you have previously been given every opportunity with an order for supervision with residence to be followed by supervision and, that on the face of it, that I could in fact make the order that you be convicted and transferred to the District Court for sentence.

[26] The reason I am not going to do it today is because there is a sentence that in my view would meet all the concerns the Crown has raised. That will be a supervision with residence for six months where you are now, to be followed by 12 months' supervision but that would depend on how you got on on the supervision with residence. You would come back before the Judge. The Judge will have a look at it and look at the plan, and that if you have successfully completed the first part then you would be monitored by the Judge during the time of the supervision order.

[27] Hanging over your head every minute of the day will be the fact that this is it. That if you do not comply with the supervision with residence order and if you then did not comply with the supervision order, and you would not necessarily not re-offend it might be your attitude or your behaviour, the fact that they might think that you cannot be managed, then the only possible outcome will be the conviction and transfer to the District Court for sentence. So I think you have got to be very realistic [CR]what today means. I cannot give you any more warnings than I have tried to do.

[28] So I will formally make a supervision with residence order in terms of that plan, to be followed by appearance in Court on split sentencing.

[29] The outstanding charges, as everything else has been dealt all have a supervision with residence order imposed for six months. You will then appear in Court shortly before the supervision with residence order expires. That will be in the Youth Court here. You will be transferred to the [location deleted] Youth Court for monitoring.

[30] I make a s 313 order for access for Mother.

J H Lovell-Smith  
Youth Court Judge