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**IN THE YOUTH COURT
AT PAPA KURA**

**I TE KŌTI TAIOHI
KI PAPA KURA**

**CRI-2018-204-000110
CRI-2018-204-000262
[2020] NZYC 7**

**NEW ZEALAND POLICE
Informant**

v

**[RT]
Young Person**

Hearing: 22 November 2019
Appearances: Sgt G Rice for Police
M Jenkins for young person
Judgment: 16 January 2020

RESERVED JUDGMENT OF JUDGE F J EIVERS

Introduction

[1] [RT] is a rangatahi who has been before the Papakura Youth Court in respect of 11 charges all of which she has not denied. The lead charges are four serious charges which arose out of a series of incidents which occurred on 3 May 2018, being two of kidnapping and two of aggravated robbery. The other charges are three of unlawfully taking a motor vehicle and three of unlawful interference with a motor vehicle arose out of series of incidents which occurred on 3 May 2018, and a charge of escaping custody from 11 October 2018.

[2] On 11 April 2019 there was a disposition hearing before Judge Paul, with the Police seeking a supervision order. After hearing argument from the police, counsel and hearing from [RT]’s whānau, Judge Paul approved an informal plan for six months in relation to the offending, but with no guarantee as to the outcome. *“The fact that I am considering an informal plan does not mean that [RT] will escape a notation, even if she successfully completes this plan...”*¹

[3] On 22 November 2019 [RT] appeared in the Papakura Rangatahi Court when submissions were filed by counsel and the police regarding disposition. Ms Jenkins on behalf of [RT] seeks a s 282 discharge. The police seek a s 283(a) notation on the two kidnapping and two aggravated robbery charges, with a s 282 discharge on the remaining charges.

[4] Given the seriousness of the offending, and the need to consider these submissions carefully, I reserved my decision.

Background

[5] [RT] was born on [date deleted]. She was 14 years old at the time of the offending. She had not previously appeared in the Youth Court although she was known to the police. There is a s 333 report on file which details [RT]’s upbringing.

¹ Decision of 11 April 2018, para 26.

[6] On 1 May 2018 [RT] went on a spree of offending with four co-offenders who were also charged. One of the co-offenders was an adult aged 20 (female) [CJ], two were 15 years old (males) [CK] and [CL] and the fifth person was [CM], a child offender aged 13. [RT] was the second youngest of the group.

[7] Now that [RT] is at the end of her informal plan, the court must consider whether to grant a s 282 discharge on all charges or to deal with it as suggested by the police with the lead, and serious charges being dealt with by way of a s 283(a), and the remaining charges by way of a s 282 discharge.

Facts

[8] On 3 May 2018 [RT] and her four co-offenders who are all known to each other, were in Auckland city. The victim [VY] parked her car in Auckland city and on returning to it, discovered [RT] and [CK] trying to steal it.

[9] [CK] approached [VY] and punched her hard in the cheek causing her to fall to the ground. He has continued to punch her approximately five times while she was prone on the ground.

[10] The victim [VZ] tried to run for help but was tackled to the ground by [RT] while attempting to ring 111. [RT] stole the phone and demanded the pass code from [VZ]. When [VZ] refused to give the code, [RT] smashed the phone.

[11] [RT] directed a third associate [CL] to take [VZ]'s money. [VZ] snapped her pay wave card so they could not use it. This upset the defendants resulting her being punched by one of them. [CK] held a screwdriver to [VY]'s throat demanding her car keys which she handed over. They were unable to start the car and both victims were taken against their will in search of another vehicle. They forced the victims to accompany them using threats of violence and by holding a screwdriver to their bodies if they ask for help. The victims walked approximately 90 minutes under duress and in fear of their safety due to continued threats to their life, including a threat to stab the victims in the eyeballs, while multiple attempts were made to steal another car.

[12] [RT] and her associates stole a Mazda Demio [registration deleted] located on [street deleted], Auckland. The victims were forced into the boot of the vehicle and were driven around Auckland in search of another car to steal. The defendants stole a [second vehicle] [registration deleted] from [address deleted], Manurewa. At about 1:30am on 4 May 2018 a police vehicle saw the stolen [second vehicle] and attempted to stop it. It pulled over and police saw the Demio crash through a barrier and over a bank at the Ramarama motorway off ramp.

[13] Both victims were hospitalised. The victim [VY] had a badly swollen and dislocated jaw from being punched in the face and bruising on her back from the car crash. The victim [VZ] had a broken collar bone and bruising from the crash. Both victims were extremely traumatised by the whole incident which lasted for about three hours.

Procedural background

[14] On 19 July 2018 all but one charge was admitted, and a Family Group Conference was held on 10 August 2018. The aggravated robbery CRN ending 0308 was initially denied but after discussions with counsel and the police, it was not denied on 30 January 2019. [RT] spent approximately three months in secure custody and in addition to that spent time on electronic bail.

[15] There were some issues with compliance with bail to start with. She was arrested on 5 May 2018 and remanded under s 238(1)(d). She was granted EM bail on 16 May 2018 to her mother's address. She breached her bail several times and was arrested and was then placed in a community residential home. She absconded from the placement a day later and a warrant was issued on 15 November in Auckland Youth Court.

[16] She was arrested on 19 November 2018 and placed back into custody under s 238(1)(d) due to lack of engagement and continued disregard for the court-imposed conditions. She remained there until 21 February 2019 when she received EM bail to [a relative]'s address in [location deleted]. She has complied with EM bail since that

time. Eventually over the course of the plan bail conditions have been relaxed, including the curfew being deleted on 25 October 2019 with no issue.

The law

[17] Both Ms Jenkins and Sgt Rice in their submissions have helpfully set out the legal position. Noting the provisions of s 282(1) whereby the court may discharge the charge. Section 282(2) states that a charge discharged under subsection (1) is deemed never to have been filed.

[18] I am referred to s 283 which is the hierarchy of responses, and in this case the police seek a Group one response for the serious charges, a s 283(a) to discharge the young person from the proceedings without further order or penalty.

[19] Section 284 sets out the factors to be taken into account on sentencing when making an order under s 283, and includes factors such as the nature and circumstances of the offence and the young person's involvement in that offence, the personal history, social circumstances and personal characteristics of the young person, so far as that are relevant to the offence, the attitude of the young person towards the offence, the response of the young's whānau, the causes underlying their offending, and the young person's response as a result to their offending.

[20] Other factors include any measures taken or proposed to be taken by the young person or their whānau to make reparation or apologise to the victim of their offending, the effect of the offence on any victim of the offending, any previous offending which may have been discharged under s 282, any decision, recommendation or plan formulated by the family group conference and the causes underlying the young person's offending and the measures available for addressing those causes, so far as it is practicable.

[21] The court must have regard to s 4A(2) of the Act being well-being and best interests of the child or young person, the public interest (which includes public safety), the interests of any victim and the accountability of the child or any person for their behaviour.

[22] The court should also consider in a general sense those principles set out in s 5 and s 208 of the Act.

Factors taken into consideration in making the decision

[23] Having regard to the facts of this case and the legal considerations, I will grant [RT] a s 282 discharge on all the charges. I note that except for the two kidnapping and two aggravated robbery charges, there is no issue with that.

[24] I set out my reasons for that decision with reference to the law, the facts and the evidence before me in relation to this case.

[25] Considering the factors under 284 I note as follows:

(a) *The nature and circumstances of the offence and the young person's involvement (Section 284(1)(a))*

(i) The lead offences are of a serious nature. [RT] was an active participant in the offending, however she was the second youngest in the group and she was under the influence of alcohol at the time.

(b) *The personal history, social circumstances and personal characteristics of the young person relevant to the offence (s 284(1)(b))*

(i) [RT] is the oldest of [multiple] children. On the evidence she has not had proper boundaries in place as she grew up. There has been insecurity for the family in terms of accommodation but early in 2019 her mother [MT] and her [siblings] moved to a secure address. Her mother [MT] has been engaging and supporting [RT] in her plan.

(ii) The s 333 report highlights [RT]'s background. There are aspects of this report that infer that [RT] should be assessed for

fetal alcohol syndrome and ADHD, and which may partly explain why she offended in such a way. These are:

- a. Verbal comprehension skills fall within a very low range;
- b. Full IQ falls within the low - average range;
- c. She was restless at interview with the psychologist; and
- d. Her mother admitted alcohol and drug consumption during her pregnancy with [RT].

(c) *The attitude of the young person towards the offence (s 284(1)(c))*

- (i) [RT] is remorseful for her actions. She not denied the charges, accepting responsibility for her actions.
- (ii) The police submit that they do not know if [RT] is remorseful, referring to the comment in the s 333 report that “*her apparent lack of empathy is concerning*”.
- (iii) [RT] has completed her apology letters for the victims and it is reported in the social worker’s report that she is aware of the seriousness of the offending. She has told [her social worker] that she feels bad for how she treated the victims and that she would never do something like that again.
- (iv) The s 333 report is dated 16 October 2018 and so it was prepared well over a year ago. [RT] has matured since then. A further aspect is that given the contents of the s 333 report and a potential fetal alcohol syndrome diagnosis, and [RT]’s relative immaturity and naivety, that it may be difficult for her to express the enormity of what she has done. It appears to me that her

remorse is better expressed by her actions, that is by no further reoffending, than by words.

(d) *The response of the young person's whānau (s 284(1)(d) & (e))*

- (i) The Police submit that the plan was light in relation to the seriousness of the offending and that [RT] has chosen not to complete it, stating that she received little support from her whānau. This was reference to the comments from the tutor at Achievement NZ where it was stated “*She lacks maturity/motivation and has not taken her education seriously. She needs strong guidance and firm boundaries which appeared to be lacking at home*”.
- (ii) The Police submission is not accurate. Indeed, the evidence of the Social Worker’s report of 16 December 2019 is that [RT] has substantially completed her plan. Ms Jenkin in her submissions notes that the course with Achievement NZ was based in [location deleted] whereas [RT] was living in [location deleted] and it became difficult for her and her whānau to attend because of the distance to travel. [RT] reported to a counsel that she did not get on with the tutor.
- (iii) Of note is that [RT] and her whānau together with assistance from her Lay Advocate Ms Sophie Griffiths has enrolled with Skills Update from [date deleted] on the NCEA Vocational Pathways Automotive Level 2 programme which goes for 26 weeks. If completed by [RT] she will receive NCEA Level 2 university standards aligned with manufacturing and technology which will give her a vocational pathway.

(e) *Victim's views (s 284(1)(f))*

- (i) The victims did not attend the Family Group Conference. However, I have read their victim impact statements. It is acknowledged that both victims were subjected to an extremely dangerous and frightening experience, and that they received physical injuries, which fortunately were not serious. Of more concern and much more serious is the trauma that each of them went through and the psychological impact upon them. There is no minimising of their views and they are acknowledged and accepted.
- (ii) I acknowledge the grace and the dignity of the victim [VZ]. Her wish for [RT] and her co-offenders is for them to be rehabilitated. I quote from her victim impact statement 24 October 2019:

I would like for the offenders to be rehabilitated rather than put in an aggressive environment such as prison.

I want them to think about how they would feel if this had happened to their sister or cousin, or someone close to them, and they had to witness them going through something so difficult and debilitating every day.

They should know that I don't want them to be punished, I just want them to know how much they hurt me and understand that I too am a human being with emotions and hardships. I am someone's child and someone's best friend, and the people close to me had to watch me go through this and still have to look after me every day.

I truly believe that the offenders can change their lives around.

- (f) *Previous offence history (s 248(1)(g))*

- (i) There has been no previous appearance in the Youth Court.
- (g) *Recommendations of the Family Group Conference (s 284(1)(h))*
 - (i) There was no agreement reached at Family Group Conference. However, the matter remained in the Youth Court noting that there was no transfer argument. Further Judge Paul on 11 April 2019 approved a plan declining to make orders or group four response order.

[26] In terms of s 4A (2) of the Act, I note the following:

- (a) *The well-being and best interests of the child and young person*
 - (i) The social worker's report supports the making of s 282 noting that [RT] has not reoffended and that she is settled living with her whānau in particular with her mother and her [siblings].
 - (ii) She was young at the time of the offending, aged only 14 and with three of her co-offenders being older than her.
- (b) *The public interest (including public safety)*
 - (i) The police submit that there is high public interest in this matter and there is certainly no issue taken with that. However, this issue was considered by Judge Paul in his decision on 11 April 2019: "*I am mindful of the public interest, that serious offending of this kind cannot be tolerated and that the response must take that into account.*"² He then goes on to note that she has spent three months in residence and three months on electronically monitored bail. In effect, although brought about by herself, it was a restrictive regime and a punishment, to be electronically monitored and to be in custody.

² At paragraph 24

- (ii) It is notable that [RT] has not reoffended and in terms of public interest and public safety that must be the ultimate goal.
- (c) *The interests of any victim*
- (i) These are recorded in the victim impact statements, which I have already referred to above.
- (d) *The accountability of the child or young person for their behaviour*
- (i) The police submit that the plan lacked substantial punitive factors and that [RT] has not therefore been accountable, and that a s 283(a) notion is the least restrictive way the court can show accountability to [RT] for her actions.
 - (ii) I disagree with that submission. There has been accountability both in terms of [RT] being detained in a Youth Justice facility and custody for three months, and then being on and off electronically monitored bail for approximately three months. Following that she was on a curfew on straight bail. What is pleasing is that once she adapted to the routine and the process she did abide by the conditions of bail.
 - (iii) I acknowledge however that in the beginning [RT] had difficulty with the bail regime, but what is credit to her is that she has not reoffended. As Ms Jenkin states in her submissions³ *“it is not unusual for young people to continue to offend on an ongoing basis and adding more and more charges. [RT] has shown some real responsibility with standing away from any other trouble”*.
 - (iv) When [RT] was arrested on 20 November 2018 (after absconding and breaching bail) she was then remanded in [a Youth Justice residence] until 21 February 2019. This meant

³ Para 18

that she spent a Christmas in custody and she was not present when her [close relative] died. From 21 February 2019, there have been no issues with bail, no issues with reoffending and she seems to be more aware and has better understanding of her position, her responsibilities and the importance of not reoffending

[27] [RT] has had her plan monitored since February 2019 at Te Kooti Rangatahi in Papakura and the reports have been positive throughout. Given [RT]'s young age it is in [RT]'s interest and in my view in the public interest to promote in her a sense of responsibility, and to encourage her to grow and develop in a positive environment supported by her whanau. She has proven that she can stay out of trouble, and that shows sincerity on her behalf and an indication that she knows the seriousness of the offending. The social worker's report records that she completed counselling with [name deleted], that she completed the apology letters and that she has now enrolled in the Skills Update course.

[28] Sophie Griffiths, her Lay Advocate, acknowledges that there were difficulties for [RT] in 2018 but the Whānau have come together because of the troubles, and she has seen immense changes.

[29] Having regard to all the circumstances, it is appropriate in my view that there is a s 282 discharge on all charges and I grant a s 282 discharge in respect of each charge accordingly.

[30] I wish you well [RT], and I hope that you will make the most of your future and the opportunities that are presented to you.

[31] In closing I wish to acknowledge the victims and hope that there is ongoing support for them.

F J Eivers
Youth Court Judge