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**IN THE YOUTH COURT
AT PALMERSTON NORTH**

**I TE KŌTI TAIOHI
KI TE PAPAIOEA**

**CRI-2020-254-000008
[2020] NZYC 170**

NEW ZEALAND POLICE

Prosecutor

v

[ZJ]

Young Person

Hearing: 27 March 2020

Appearances: Senior Constable E McMellon and Constable E Clarke for the
Prosecutor
R Kanjirathingal for Oranga Tamariki (via VMR)
M Woods for the Young Person (via VMR)

Judgment: 27 March 2020

NOTES OF JUDGE G M LYNCH ON SENTENCING

[1] [ZJ] is 16 years and three months old and for sentence today on two charges of unlawfully taking cars and a charge of aggravated robbery. Given the current Covid-19 situation, sentencing options are limited, but given the offending and his previous conviction for aggravated robbery, a supervision with activity outcome ought not to come as a surprise to anyone.

[2] To give the sentencing context I need to discuss the facts and I will do that relatively briefly. In relation to the first unlawfully taking, that is 0022, on 4 January 2020 the victim noticed that her \$3500 car which had been locked outside her Palmerston North address had been taken. Later the same evening it was recovered in Levin. A quarter light had been smashed and the ignition barrel removed. Police located a fingerprint on the driver's seat belt buckle which was [ZJ]'s fingerprint.

[3] Moving then to the unlawful taking and aggravated robbery, these are obviously the lead charges for sentencing today. At about 10.00 pm, 17 January 2020, a Mazda was stolen outside a Levin address. It was valued at about \$9000. At about 1.45 am on 18 January 2020 [ZJ] drove the stolen car to [a petrol station]. [DD], [EE] and [FF] exited the car with their faces covered. [EE] had in his hand a knife and [DD] had a hammer. [DD] used the hammer to smash the glass door to gain entry. The victim was at the rear of the premises in a store-room and saw all this occurring on CCTV. Fearing for his safety he closed the doors to the safe room preventing the offenders from gaining entry. Once inside the shop [DD] and [EE] leapt over the counters and removed the cash registers handing them to [FF]. Once they had the cash registers, all three ran back to the car where [ZJ] was waiting to drive them away. They then sped off. There was about \$412 in notes and coins in the cash register.

[4] I do not know what on earth was going through the minds of [ZJ] and the others. There is virtually no aggravated robbery in the country where the offenders have not been identified. Why you do an aggravated robbery is beyond me, unless of course it is an entrée into gangs which appears to be the current thinking. With CCTV all around us, and the crystal clear picture quality, no person is ever going to get away with an aggravated robbery.

[5] At about 2.33 am the police located the car travelling south towards Levin. [FF] was driving the car at this stage and sped away from the police. Those in the car began throwing items out of the windows into the path of the following police cars. At several points the police managed to deploy tyre deflation devices which resulted in all four tyres being punctured. Despite that, [FF] continued to drive around Levin residential streets. The police in the end nudged the car off the road and the nonsense came to an end.

[6] While sentencing is to a degree truncated because of the situation we find ourselves in, I will address briefly some of the more relevant factors:

Personal history

[7] [ZJ] is a descendent of [two iwis deleted]. [ZJ] has not had much exposure to his Maoritanga until his engagement with [WP]. I certainly endorse the work that [WP] has been doing in relation to [ZJ]'s culture and I am sure that the residence will take the opportunity of this young man being in their care to explore that important part of [ZJ]'s make-up. I think there is a rich vein to be mined there for this young man.

[8] [ZJ] has been through some adversity. We do not need to go into the ins and outs of that today. He is described as a very loyal whānau member and relevant here is the wider whānau's feeling of having been discriminated against in the past, and the systemic implications of this over a number of generations. [ZJ] has elected to join [a gang] and [ZJ] would say he has whānau support through that organisation. However, all putting on that shirt does is put him well on the police radar.

[9] [ZJ] has been open about his use of drugs and alcohol, but particularly now that he is in residence, and has explained that he has been using drugs and alcohol over several years. He uses tobacco, marijuana, was using methamphetamine and that is a real concern, as is his use of MDMA and alcohol binging.

[10] [ZJ] had a rocky start in the [location 1] residence but has settled well in the [location 2] residence and has not been in secure.

Effects of the offence on the victim

[11] Unfortunately, there has been no contact with the victim of the aggravated robbery. I find that a little surprising and very disappointing.

Views of the young person and attitude to the offences

[12] [ZJ] is said to have no empathy or remorse for his actions and comes across feeling a little sorrier about being arrested than anything else. That might be a bit of a gung-ho attitude that young teenagers can have, but that is something for the residence to work on.

Response of the family or whānau to the young person and the offending

[13] I do not read too much into the report on this factor. [ZJ]'s family are worried about their young man, but they seem to think that his part in this robbery was not something to worry about. I would disagree with them, if that is the real position. They were worried about the police attitude to [ZJ]. If there is something in what they are complaining about then they need to make a complaint to the IPCA, and indeed the police would invite such an application rather than there being ill-feeling in [ZJ]'s whānau. The IPCA is the right place to be talking about these issues.

Underlying causes and measures available for addressing causes of offending

[14] As we know, [ZJ] has been exposed to multiple negative experiences. It is not going to be helpful to dredge back through all that, but this is a work in progress for the residence and for the inevitable supervision sentence.

[15] The police support a sentence of four months residence. I must say I had in mind giving [ZJ] the full six months because this is his second aggravated robbery. However, three factors persuade me to work with the recommendation by Oranga Tamariki supported by police and Ms Woods, [ZJ]'s youth advocate. They are:

- firstly, [ZJ] played a lesser role than the others who entered the service station although his role ensured that they could enter and rob the store.
- secondly, the time spent in custody, about two months; and
- thirdly, the current situation the nation finds itself in.

[16] Accordingly, on the aggravated robbery charge, [ZJ] is sentenced to supervision with residence for four months. In relation to the two unlawful taking charges, he is sentenced to

one-month supervision with residence, but obviously concurrent with the four months I have imposed.

[17] I adopt the plan filed alongside the social worker's report and the conditions sought are to be made. That will mean that there will be an early release date of 15 June 2020 with a final release date of 26 July 2020. [ZJ] should expect to be released on or before 15 June 2020, provided he carries on the good work that he is doing at the moment. I do not doubt for a moment that this young man will not make early release.

[18] I create an early release hearing 11 June 2020 at 10.00 am before His Honour Judge Rowe. There is a bit of debate about the timing of these events and the making of the supervision order. If the Judge wants to adjust those dates I will leave that to him to do. Technically the supervision order needs to be imposed prior to the early release hearing through a lacuna (a mix up or error, [ZJ]) in the law, but I will leave that for the Judge to resolve. I make it plain that I would certainly support your early release. Your attitude within residence [in location 2] has been spot on and I cannot see that changing any time soon. The supervision order to be made, will follow the time spent in residence.

[19] Finally, the forensic nurse has suggested a s 333 report be prepared. There is no suggestion that there are fitness issues, rather there are other mental health issues which need to be explored. I have agreed with Ms Woods' approach here which sentencing needs to proceed, which it has, as a s 333 report can be ordered at any time in the proceedings. So, I direct a s 333 psychological report. That will be very helpful in terms of the conditions for the supervision order which will be imposed on or about 11 June 2020 and make a direction that the plan for the supervision order be filed by that date.

Judge GM Lynch
Youth Court Judge

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