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**IN THE YOUTH COURT
AT MASTERTON**

**CRI-2016-235-000011
[2016] NZYC 423**

THE QUEEN

v

WL
Young Person

Hearing: 13 July 2016
Appearances: E Light for the Crown
J Blathwayt for the Young Person
Judgment: 13 July 2016

NOTES OF JUDGE M N E O'DWYER ON SENTENCING

[1] WL, you appear today for sentence on several charges.

[2] You have not denied, and accept responsibility for, the offending on 31 January this year. Those charges are: dangerous driving causing death to two young people; dangerous driving causing injury; unlawfully getting into a motor vehicle; driving whilst forbidden; and failing to stop for red and blue flashing lights.

[3] There is also your offending on 27 December last year, three charges: unlawfully getting into a motor vehicle; behaving in a manner likely to incite violence; and with intent to intimidate, threatening to injure a person.

[4] You are now 15 years old; at the time of the offending you were 14 years old. You have been in custody since 11 February 2016, when you first appeared on these charges.

[5] I have read the summary of facts of all the charges. I have read the victim impact statements that I have received. I have read the psychological report, the social work report and the submissions from the Crown and Mr Blathwayt.

[6] On 14 June 2016 a family group conference was held. The victims were represented at that conference by their family members. A number of people were present. It was agreed that there would be a recommendation to the Court for a sentence of supervision with residence followed by a supervision sentence.

[7] The Crown submits that the sentence should be supervision with residence for six months, taking into account the seriousness of the charges and all other matters.

[8] Mr Blathwayt has submitted that it should be for a shorter period of time based on the social work recommendation, that it should be supervision with residence for four months.

[9] I have to have regard to certain matters under the law. They are set out under s 284 of the Act. Summarising what I have taken into account is the following.

[10] Firstly, I take into account the nature and circumstances of the offending. What I have read is that on 30 January 2016 a vehicle was stolen in the evening. Around midnight, you got into the stolen car in Featherston. You drove the car to Masterton. You do not have a driver's licence, and you had earlier been forbidden by the police from driving until you obtained a licence. You drove three friends to Masterton in that stolen car. While in Masterton, you bought takeaways and you visited another person.

[11] At about quarter past two in the morning the police saw the stolen car. They activated their lights, but you did not stop. You acted impulsively. You accelerated away in the car. The police followed you for a relatively short distance, but they then stopped following you because of the dangerous way in which you were driving that car. First of all, you drove at excessive speeds; I have read that you drove at speeds of almost 120 kilometres an hour through the town. You sped through three stop signs and over four raised courtesy crossings designed to slow vehicles down, but you were driving at considerable speed.

[12] You lost control of the vehicle. You crashed into a lamppost. You managed to get out of the vehicle, although you had some mild to moderate injuries. However, two of the young people in the vehicle could not get out. They had to be extracted from the vehicle. They suffered serious head and abdominal injuries. Both of your friends died at the hospital. The third person was injured, and that person, too, had to go to the hospital for treatment.

[13] There are aspects to this offending that makes it more – and particularly – serious. One matter is that you had consumed cannabis before driving. You said you had consumed half a cannabis joint. It is to your credit, WL, that you admitted that readily. You accepted that it was wrong and you accepted that the test confirmed that you did have cannabis in your system. The amount of cannabis in your system, as far as I am aware, has not been quantified. But the relevant point is that you had consumed cannabis, and there is a reasonable inference to be drawn that that had a bearing on your driving.

[14] The second serious aspect to this is the excessive speeds that you were driving, between 109 and 119 kilometres per hour just before the crash.

[15] You have in the past driven below an acceptable standard. In December 2015 the police stopped you while you were driving a motor vehicle, and you were then forbidden to drive. I have read that previously, when you were over a year younger, in October 2014 and September 2015, you were stopped by the police when you were driving without a licence.

[16] The important point here is that you had been forbidden from driving and, perhaps more to the point, you had been forbidden from driving shortly before this offending occurred.

[17] There was what I would describe as irresponsible behaviour on your part, too, because this was a stolen motor vehicle. The police encouraged you to stop by activating their lights but, as I said earlier, you reacted impulsively by driving away. But then it escalated to the point where you lost control entirely of the vehicle.

[18] WL, the effect on the families of your two friends has been severe. It is heartbreaking to read the statements from the family members. They have lost their sons in tragic circumstances. They have to live their lives with that terrible loss, and it is each whole family and the wider family members who have to go through that loss all the time. They have expressed concern and worry for the brothers and sisters and how that loss is affecting them. It is, and will be, a continuing, emotional problem for them.

[19] Balanced against that, you have admitted your offending straight away. You acknowledged straight away that you were the driver of the car. You demonstrated straight away that you were deeply sorry for what you had done, and you accepted responsibility in full.

[20] I have also read the reports that I referred to earlier. I do not need to go into the depth of the material in those reports, but there are two things that do need to be noted.

[21] First of all, because of difficulties in your background that are not your fault, you have not been able to make good decisions as a young adolescent, particularly when challenged by authority. That has been made worse because you have been increasingly using substances over the past two years, and that is tied up and linked in many ways with the problems of your background.

[22] The reports also say that you have suffered emotionally as a result of the consequences of this offending; in other words, the reality of knowing what has occurred as a result, the reality of knowing that your friends have gone. You have said to the psychologist – and I accept this – that you are really sorry for the pain and hurt that you have caused the families.

[23] It is positive that you have been working with drug and alcohol counsellors at the residence, that you have been demonstrating that you want to put a stop to any behaviour that could put you in a similar position again.

[24] Over the five months that you have been in residence, you have been taking the opportunity to improve your education. You are working towards your NCEA credits.

[25] The psychologist said that you had clearly benefited from the stability and security that the residence had given you and the good boundaries that you had lacked.

[26] I also recognise and acknowledge that your parents are motivated to change. They are attending several different types of programmes and they are deeply sorry for the pain and suffering that has occurred and for their contribution, perhaps, to the circumstances as a result of instability in your background.

[27] In making a decision about the appropriate sentence and the appropriate length of supervision, in short I emphasise the extremely serious nature of this offending and the lifelong effect that it will have on these families.

[28] I do take into account the recommendation from the family group conference. The intention behind the recommendation for a four month sentence is to put in place the recommendations by the psychologist once you have completed your time in residence.

[29] I have come to the conclusion that the supervision with residence period should be for a period of six months.

[30] The early release date for that length of sentence is 2 November 2016. You will have to earn the early release date. You will have to demonstrate in residence that you will complete all the programmes provided to you, that your behaviour in residence must be at a very high standard in order to earn early release, because it is not a given; you have to earn it. A number of plans will need to be put in place for when you are released.

[31] In short I consider that nothing less than six months would be appropriate in this case for this type of offending and the seriousness of it.

[32] But in reaching that conclusion, I also take into account the changes that you are demonstrating, and I take into account the amount of time that you have spent already in custody. You are using that well, but you need it in order that you are in a position to continue the positive changes in the community. I have no doubt that you will need, yourself, to have ongoing counselling and help to work through the impact of this.

[33] WL, in conclusion I record that all the charges are proved.

[34] I make an order placing you in custody of the Chief Executive under a sentence of supervision with residence for a period of six months.

[35] You are to undertake a programme at residence as set out in the plan dated 6 July 2016.

[36] The supervision order is not made at this stage. A social work report and plan is to be obtained, and I adjourn for consideration on the early release date of

2 November 2016. I emphasise to you that you will need to earn early release and it will depend on the reports that are received by the Court on that day.

[37] The matter is adjourned to [date and time deleted] for consideration of early release.

M N E O'Dwyer
Youth Court Judge