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**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2015-085-010776  
[2016] NZDC 18820**

**NEW ZEALAND POLICE**  
Prosecutor

v

**LOSI FILIPO**  
Defendant

Date: 15 August 2016

Appearances: Sergeant C Morgan for the Prosecutor  
N Sainsbury for the Defendant

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**NOTES OF JUDGE B DAVIDSON ON SENTENCING INDICATION**

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[1] This is a sentence indication hearing for the defendant Filipo. He faces related charges of injuring with reckless disregard, assault with intent to injure and assault on a female.

[2] The charges relate to events, also involving his elder brother which occurred in the early hours of Sunday 11 October 2015 in the Wellington CBD. The defendant and his brother encountered another group comprised at the very least of 2 young men and 2 females, although they were all not together at the same time.

[3] The genesis of the incident is not entirely clear but what is clear enough is just how the defendant responded. He ran up to the first victim, that for which the charge is injuring. He grabbed him by the collar, punched him towards his head,

knocking him unconscious, and while on the ground stomped on him around 4 times. This caused fairly significant injuries including concussion, grazing and bruising. The victim was taken to hospital and held overnight, presumably for observation. That victim has suffered significantly. He had been an active sportsman but has had to give up his chosen sport because of the risk of further head injury.

[4] From there, the incident developed. The 2 charges of assault on a female, apart from the fact they involve young ladies, are not particularly serious in themselves. They are more in the nature of pushing and shoving of each of them.

[5] The last charge, that of assault with intent to injure involves the defendant joining in his elder brother and punching the victim towards the head. The victim received nasty injuries. He also suffered a fractured finger which because of the nature of his work as a builder has caused him ongoing difficulties.

[6] The defendant's brother was charged with his involvement with this victim. I am told that he was convicted, fined and placed on supervision. Unlike this defendant, he had previous convictions.

[7] Apart from the specific effects of the offending which I have already mentioned, the victim impact statements and comments from the victims' parents make fairly sobering reading as a whole. All of them have been affected, are apprehensive about coming into the city, and are concerned that the defendant be held accountable for what happened.

[8] The defendant was 17 at the time. He turned 18 about 6 weeks or so later. At the time, he was still at school but during 2016, has worked part-time as a car groomer. He has managed to save \$1,000 which he offers by way of some form of reparation. His employment is part-time because his intended career is in professional sport.

[9] He is said to be remorseful and apologetic. He was willing to attend restorative justice had the victims agreed to participate. He has undertaken voluntary work with a youth development group which promotes sport as a way of assisting

youth with personal development. I am told he has completed around 150 hours' voluntary community work with that group. He has undertaken counselling. He is lucky that a variety of people, some of whom are at court today, have mentored and assisted him. This of course shows that a number of people, independent of any view I take of the matter, see the prospects he has and have been prepared to mentor and assist him.

[10] He has already made significant steps in a professional career in sport. He has represented New Zealand at age group level. He has a current professional contract. There is evidence before me from a person involved in professional sports management that a conviction would be a significant barrier to a professional sporting career, either in New Zealand or overseas. The affidavit evidence shows that while it would not be an absolute bar, it nevertheless would be a genuine barrier.

[11] I think it needs to be said that many people in our community do not seem to regard professional sport as a career, but rather as some form of entertainment. While it has entertainment value for the viewers, the watchers of any particular sport, professional sport is a career path available to young people who have the requisite skills and ability. It should not be seen as anything less than, say for example, a career in law or medicine or the police force or anything else. It is purely and simply a professional career.

[12] The defendant seeks an indication of a discharge without conviction. The test is well known and not disputed. I can discharge a defendant without conviction if I am satisfied that the direct and indirect consequences of conviction would be out of all proportion to the gravity of the offence. The first stage is to assess the gravity of the offence and then to weigh that against the direct and indirect consequences of conviction. I do not have to be satisfied that those consequences will certainly or inevitably occur, rather that there is a real and appreciable risk that they will. All factors relevant to the usual sentencing exercise are to be taken into account.

[13] Both Sergeant Morgan and Mr Sainsbury acknowledge the gravity of the offending; that is simply unquestionable and inescapable. This was a fairly serious case of street violence, the kind of offending that is of significant concern to the

public. Seemingly it was unprovoked. There were 4 victims. The attack on one of the males was serious with repeated punching and stomping, rendering him unconscious and overnight hospitalisation for observation. The offending has had a significant effect on him and the others.

[14] Conventional sentencing would demand a starting point of at least 1½ years' imprisonment; such a starting point in my view would be unimpeachable. Obvious mitigating features would include his age (he was only 17 at the time), his lack of previous convictions; his remorse; willingness to undergo restorative justice; the large body of community support he enjoys suggesting an unlikelihood of ever re-offending; his commitment to counselling and voluntary community work and the like. Conventional sentencing would not see the defendant sent to prison but would see him suffer a conviction.

[15] In my view, there are real and significant consequences of conviction for the defendant. His chosen career could well be outside his purview if convicted. As I said before, there is no difference in assessing this than assessing someone at the beginning of any other form of career. The evidence about the potential damage to career prospects is all one way.

[16] Coming to the weighing exercise, can it be said that those consequences are out of all proportion to the gravity of the offence? In my view, they are. I have to ask myself are the courts truly in the business of destroying people's career prospects when there is a safety valve mechanism available? It has been said time and time again in recent years when dealing with applications for discharge without conviction that there was a time a generation ago when convictions were often regarded as a rite of passage. But it is only now in New Zealand in 2016 that people are truly beginning to understand the impact of convictions on people for all sorts of reasons.

[17] To sum up, in my view the offending is in the relatively serious category, both in itself and for the kind of offending it is. But there are significant potential consequences.

[18] For those reasons, I am prepared to indicate that were the defendant to plead guilty, he could expect to be discharged without conviction.

[19] Given that he has completed a significant amount of voluntary community work and has reparation funds available, they would be reflective of the kind of conditions imposed upon the discharge.

B Davidson  
**District Court Judge**