EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

IN THE YOUTH COURT
AT HAMILTON

CRI-2015-224-000023
[2016] NZYC 435

THE QUEEN

v

YO

Hearing	20 July 2016
Appearances:	R Mann for the Crown S Nepe for the Young Person
Judgment:	20 July 2016

SENTENCING OF JUDGE N D COCURULLO

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[1] YO, you appear in the Hamilton Youth Court for the resolution of a number of charges against you, most particularly the charge of aggravated robbery I found proven against you at a defended hearing whereupon on 29 November 2015 at [location deleted], you armed yourself with an offensive weapon namely a pistol and robbed a shopkeeper of cash.

[2] You denied that charge. It went to a defended hearing. I will return to the facts of that lead charge in a minute. In addition to that matter which the Crown assumed responsibility for, you also have extant for the Youth Court, charges of getting into a motor vehicle x 2, a burglary and of more recent times I have now just found the wilful damage of the bracelet together with a burglary charge from 9 October in [location deleted] which came about from what is commonly called a fingerprint hit.

[3] To those matters, Senior Constable Bacon is the prosecutor and has spoken to me about it indicating that both the wilful damage of the bracelet and the October 2015 [location deleted] burglary were discussed at conference for which you admitted those matters and accordingly that then means that on all non-Crown matters and the Crown matter, you can be sentenced today.

[4] YO, before I return to the facts of the nasty aggravated robbery that you did, I have really this decision to make. The first is whether I accede to what your lawyer is saying and keep you in the Youth Court and sentence you to supervision with residence on all of these matters, or whether I accede to what the Crown are leading and that is that there serves against the public interest the opportunity for you to remain in the Youth Court and that you should be transferred to the District Court for sentence.

[5] There are a number of factors that I need to work through to consider that but I should add that it does not escape me, that those two options at law are not the only options open to me. But because of the seriousness of what you have done, practically they are the options. What I am really saying is I am well aware of Group responses in the Youth Court lower than supervision with residence. But given as

you will hear shortly what you have done here, they would be completely and utterly inappropriate in my view.

[6] I return to the lead offence. The aggravated robbery came about because on the day aforesaid mentioned, you had been staying in close situ to this shop. You decided to disguise yourself. You decided to arm yourself with a weapon. You went over to this shop and momentarily you were outside of the shop disguised up. You entered the shop by yourself. You pulled out the pistol and pointed it at the shopkeeper who was startled by what you did and you demanded cash from her. After she gave over the cash, you exited the shop.

[7] I well recall the determinations that I made at the defended hearing. I observe these. I found the young woman family member who had a conversation with you at the house before you went and did this robbery to be an impressive young witness, a truthful witness and I might say a courageous witness. I did not believe at all your position that she got it wrong or was in any way telling an untruth. To her friend of a similar age, who momentarily saw you outside of the shop before you went in, again I found her to be impressive, truthful and a courageous witness.

[8] I did not at all believe your attack upon her to say that she had your identification wrong and I should say YO that I found that she was accurate even though she did not know you well, had a brief opportunity to see you and that the law requires me on identification to be very, very careful because people can sometimes genuinely make mistakes with identification.

[9] Those two witnesses and the truthfulness of what they said struck me together with the mature way they gave their evidence well beyond their years. I do not seek to dwell on that because there were other aspects of your case that well convinced me that you did this aggravated robbery. You will recall I had to put completely to one side your alibi witness who came to the Court. No disrespect to her, but she was a most unimpressive witness and frankly told me untruths.

[10] For this aggravated robbery, I do not accept that it is at the lower end of the scale. It is not. It is a very serious piece of offending where you disguised yourself

up to avoid detection, where you armed yourself with a weapon and where you offered that type of violence to the shopkeeper so that you could with that violence take cash. Yes it would have been worse had you committed actual violence but I have taken great care to look at the victim impact statement. You seriously traumatised by your actions this shopkeeper. It has and of your offending had a profound effect upon her and no doubt a lasting effect. Without going into the detail, she was already struggling with a not insignificant degree of personal issues in her life and you made it profoundly worse for her by your actions on this day. She was working for wages, looking after this shop for the owners and I acknowledge their victim impact statement as well and the concerns they have and you acted with a high degree of entitlement that you could not ever have been able to do to think that you could readily offer violence of this type to take property which was not yours.

[11] You have no formal previous Youth Court orders against you. That said, quite properly Senior Constable Bacon has confirmed that there have been previous offending by you which has seen informal outcomes. Ms Mann for the Crown asked me to take into account and I do that of course this offending was whilst informal matters were working through the Court.

[12] I return to the ultimate issue of how I deal with your sentencing, whether it remains in the Youth Court or goes to the District Court. I need to have consideration of the principles and objectives of the Act. I do. I also need to have an understanding of the public interest aspect and I do. Having dealt with the profound effect that you have had on the victim the shopkeeper at the time, you here were the sole offender and accordingly you had a principal role in it. I have already indicated that this is a most serious aggravated robbery.

[13] I have read the social worker's reporting plans. I have also had occasion to consider the previous psychological report prepared for you. I am well aware of the struggles that you faced when a younger person and of the care and protection issues within your family, together with the diagnosis that the psychologist has made about you. You acted particularly with respect to the aggravated robbery, with a significant degree of immaturity. You thought you were entitled to act this way but you were not and you were found out.

[14] You are now 17 years and one month old. The matter has taken the best part of eight or nine months to work through the system. Of course there are the inherent delays in readying matters for resolution but here most of the delay is yours. Before I dealt recently with the Judge alone trial, your case had been scheduled some months earlier for a defended hearing in Huntly but was not required because there was a suggestion that you were going to admit the matter. That it went to conference with you then coming back to Court confirming a denial, visits that delay upon you.

[15] Your lawyer asks that I take into account the significant time that you spent both in custody and on electronically monitored bail. It is clear that from your arrest until 4 March when you secured electronically monitored bail, you spent 13 weeks in custody. Until you cut off your electronically monitored bracelet on 29 June, you had upon being released on electronically monitored bail, spent three and a half months with a bracelet at a residential address. For the last three weeks, upon your apprehension you have been back in custody meaning that you have effectively had three and a half months on the structure of electronically monitored bail and a little over four months in custody. I take those matters into account but not to any significant extent at all. They weigh little with me in terms of a transfer to the District Court but I do take them into account to a limited extent and certainly weighed little with me if ultimately I retain the Youth Court jurisdiction.

[16] I do that because ultimately your offending here on this aggravated robbery was found out. That then means you were unsafe in to the community and it was proper that you should have been in residence and/or on the structure of electronically monitored bail which did occur in proper fashion until the cutting of the bracelet off.

[17] One of the aspects I need to take into account is the time for sentence relative to what could be done in the Youth Court. This is a troubling aspect of this decision because the practical reality is that if I was to sentence you to supervision with residence, given your age and the delays most of which are yours, whilst you could faithfully serve a six month supervision with resident sentence, we would by about one month be short on a six month [step] down supervision order following residence. There is no impediment to me considering that but the challenge for the

Court here is whether something less than such a high tariff meets the interests of justice weighing your circumstances and the public interest. Of course the time constraint does not arise if I sent you to the District Court but there would be a further delay in the preparation of a pre-sentence report and then sentence. There would be only the delay to consider there because given that I heard the defended hearing, usual principles would dictate that I in the District Court would be the sentencing Judge in respect of the matter.

[18] What I am really saying about your age is that given the amendments in 2012, the practical effect if I leave your matters in the Youth Court is that the Youth Court has about 11 months to endeavour to rehabilitate you and the issue for me is to whether that is sufficient to meet the ends of justice.

[19] I have already dealt with your lack of formally recorded offending in the District Court. I also need to weigh that you face the other matters I first talked about. It is clear that if I transferred you to the District Court they would go too and equally if I retained the Youth Court, they would simply remain in the Youth Court as well.

[20] I read with care the social worker's report and plan. The social worker is advocating that I retain the Youth Court jurisdiction. I infer that what the social worker is saying, that notwithstanding the 11 months left, there is sufficient there to be able to work with you and of course I do not discount that you have never had any sophisticated Court orders in the Youth Court before to endeavour to rehabilitate one so young. Any such sentencing here YO has to hold you accountable and has to promote a sense of responsibility for you and what happened here.

[21] I return to the balancing issue. That is your interests and that of the public interest. This is as Judge Ross put it grave offending. It is higher end offending. In the decision that I was referred to, he made the decision that notwithstanding the limited Youth Court history for one of the offenders, both should be transferred to the District Court. Against that, you have not been sanctioned with formal Youth Court orders. I note some support from your whānau and a willingness from the social workers to endeavour to work with you with the Youth Court jurisdiction.

[22] I also have to take into account a number of other criteria. I have already dealt with your personal circumstances, the serious nature of the offence. I now deal with your attitude toward the offending. You accept the non-Crown matters. You deny the aggravated robbery. There can accordingly for that matter be no observation of remorse, contrition or acceptance for what you did. I make it clear that that does not make it more serious for you, it just means that you do not get the credit for that type of response to what you did in the aggravated robbery.

[23] As I understand the situation, the time on electronically monitored bail, bar when you cut the bracelet off, worked fairly well. I remember some concern I had at the Judge alone trial when it was found out that there was some confusion about the mechanics of how on electronically monitored bail you ought to be in Hamilton for the defended hearing. The Crown quite properly raised an issue then that on the police investigation, an approach by your mother had been made to a witness staying in the same accommodation as you. Ms Nepe as I recall it had the opportunity to address me on that point and indicated that your mother said that it was not as contended. I did not intentionally deal with that matter in any substantive way. Other than that issue, we were able to accommodate electronically monitored bail with variations (leave from your residence) to get through the trial.

[24] I have dealt with your previous record and with the effect on the victim. I note that the family group conference reached a non-agreement. There is nothing there that I can take into account. In acknowledging your background and the psychologist report to an extent, there is an explanation about why you have acted in the way that you have. There is certainly much rehabilitation that is required for you.

[25] The supervision with residence plan proposes that you be resident at [name of residence deleted] for a period that I might consider appropriate and that there be for you, rehabilitation to address why it is that you have offended in this way.

[26] Having dealt with your personal circumstances, the public interest matter[s] particularly the victims, I cannot help but thinking that this is a most finely balanced decision. In my view by a fine margin only I come to the view that I can accede to

Ms Nepe's request for the Youth Court jurisdiction to be retained. I come to that principally because of the interests in rehabilitating you with the specialty that can be put into place with the Youth Court for effectively the 11 months outweighs just the public interest in denouncing by way of a transfer to the District Court the profoundly serious offending that you did.

[27] I am also saying that the 11 months is probably the last chance you and your whānau have to turn you away from offending or sadly your whānau will see you repeatedly return to jail for offending as an adult offender. It must be in the public interest notwithstanding the serious nature of what you did, that you be rehabilitated so nobody like this shopkeeper is ever subject to the really serious offending that you committed on this day.

[28] For the reasons which have been expressed I decline the Crown request to transfer you to the District Court. I retain the Youth Court jurisdiction and on all matters I intend to sentence you to supervision with residence for a period of six months.

[29] In specificity of that order, the plan will be as per the supervision with residence plan filed with any additional conditions and I specifically do not make at this juncture a supervision order, but require that these proceedings be adjourned to a date as close as possible on two thirds of your six month sentence (ie, four months) and direct the requisite residential report as to whether I consider your release from residence at that juncture or require you to serve the full six months.

[30] The issue there YO is really for you. I hope that you will be well behaved at residence and put me in a position that I could consider your release in four months. You will not get much wriggle room in bad behaviour with me from residence and if any bad behaviour comes, there is a high likelihood subject to what the report says, that you will be required to serve the entire six months. If you are to grab this chance on this really serious offending to turn away from offending, you would do wise to cut out the nonsense, the serious offending, behave yourself in residence and come back before me in four months' time, ready, willing and able to step down onto a supervision order that will be complied with so that you can turn away from

offending. I should give you this notice. Even when you move to the supervision order, if you breach that you can be re-sentenced in respect of these matters.

[31] That is accordingly the sentence of the Court at this juncture. Six months' supervision with residence.

ADDENDUM

[32] Ms Mann has most properly raised the issue of reparation. Because YO is 17 I cannot require his parents to pay that. If I could I would give them the opportunity to be heard and seriously consider that they pay for their son's offending loss. Because at law I cannot and only for that reason, I do not move further in respect of that matter. YO will be in residence. He is not currently in any waged employment. He owes this reparation but I do not seek to revictimise victims by ordering that he pays the money but that in effect they do not see it, or do not see it for a very long time. In those circumstances whilst he quite clearly owes the money, no reparation order is made.

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Judge ND Cocurullo
District Court Judge

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