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**IN THE YOUTH COURT
AT DUNEDIN**

**CRI-2016-212-000027
[2016] NZYC 367**

NEW ZEALAND POLICE
Prosecutor

v

WT
Young Person

Hearing: 13 June 2016
Appearances: Sergeant R Aarsen for the Prosecutor
J Farrow for the Young Person
Judgment: 13 June 2016

NOTES OF JUDGE D FLATLEY ON SENTENCING

[1] WT, you are here for disposition or in other words sentence in relation to nine charges as I have already indicated; four of common assault, four of indecent assault and one of assault with a weapon.

[2] WT, these are serious charges. You know that. The indecent assault charges carry a maximum of seven years in prison, so if these were laid in the adult Court that is the sentence that the Court would be considering as a starting point. The common assault carries one year's imprisonment and the assault with a weapon, five years' imprisonment, so serious offending.

[3] I now have a plan and a report prepared for the purpose of the sentencing exercise and as I have already discussed with Mr Farrow this morning there was an agreed outcome of the family group conference and an agreed sentence of supervision with residence so that you could, particularly, attend the MAC Programme. You understand what that programme is all about? It is a Military-style Activity Programme. [Yeah] I am sure you have discussed that with Mr Farrow. You know what you are in for? You know what you are going to have to do? [Oh, yeah] A bit about it? [Yeah] It is pretty tough going, but I think that that is what is needed here.

[4] I say now and I may say it later on that this is, really, probably a last ditch attempt to change things around for you because of your age because any further offending and you are going to end up in the adult Court and things are going to be viewed very differently. You understand that? [Yeah] I get the sense from reading all of this information that you do not necessarily understand the significance of what you do, the significance of your actions. To some extent you might be mucking around, fooling around, and think that this is not particularly serious, but you do not understand how serious it is taken by the victims, what is happening for them at the time. To put it simply, I read from all of this information that you have an attitude problem that needs to change, WT, and if it does not change you are going to end up in some fairly serious trouble and that has come through loud and clear in the report that I have read.

[5] I have to go through some legal stuff when I sentence you and you are going to have to bear with me while I do that, but in doing so you will hear some of the things that I am going to say about those factors, particularly about this attitude that you have and the attitude change that is required in you so that you do not end up back here.

[6] In sentencing you, WT, I have to have regard to some of the relevant sections of the Children, Young Persons, and Their Families Act 1989, specifically ss 208, 283, 284 and 289. Section 283 sets out the hierarchy of the Court's responses to offending and sets out that the Court in exercising its powers must be guided by the principles and objectives contained in those other sections, and also included in ss 4 and 5. The Court is guided, WT, by the principles set out in s 208 and the relevant principles here for me are these:

- (a) Age is a relevant mitigating factor to be taken into account. The Court must impose the least restrictive outcome and Mr Farrow has already referred to that and it is accepted that the proposed sentence is the least restrictive outcome.
- (b) The Court must consider that any measure imposed should as far as practicable address the causes underlying your offending, so it is hoped here that your attendance at the MAC Programme will deal with some of those underlying causes, and I will refer to that again in a minute.
- (c) I need to consider and have regard for the victims of your offending, so I need to impose a sentence that takes into account how they have felt about how you offended towards them.

[7] There are a number of factors that I have to take into account having regard to s 284 and I will refer to those in a moment. They are largely set out in the s 334 report under the various headings and I do want to refer to some of them. I need to note at this point, WT, that I have had regard to all of the information on file, particularly the summaries of facts, the s 334 report that has been filed and the

accompanying plan. I have not received lengthy oral submissions today from Mr Farrow because I do not need to because it is accepted that this is an appropriate outcome.

[8] As far as the factors to be taken into account under s 284, the first heading is “The nature and circumstances of the offending”. I am not going to go through the summaries here, I do not need to do that, you are well aware of what you did, everybody else is well aware of what you did, it is set out in the summaries, but basically you touched young female adults in ways that were entirely inappropriate, sexual in nature. You, I think, took the view that you were mucking around, you were joking to some extent, they were opportunistic interferences by nature, grabbing and groping, I think is the terminology that has been used. You were also violent, although I accept to a lower extent in terms of seriousness and that relates to the common assault charges, but you were violent on occasion. On one occasion you used a knife against a young female adult and that relates to a charge of assault with a weapon.

[9] This largely occurred whilst you were [details of offending deleted] and I say again, you took the view, I think, that this was not a big deal, that you were simply mucking around, you were joking, you did not see that you had done anything particularly wrong, but this offending has had a huge impact on those victims. Are you aware of that? [Yeah] Has your thinking now changed about what you did? [Yeah] Do you understand that you cannot behave in that way? [Yeah] Do you understand that it was wrong to behave in that way? [Yeah]

[10] I read that the effect on the victims has been ongoing and the victims’ families. There is reference to a victim struggling with sleep, being anxious when they are in town and going out to a social event, particularly in relation to seeing you. That will not happen for sometime because you are going to be at residence, but you will return to the community. Initially, one of the victims could not understand why you would be going to the MAC Programme because that was something that you had indicated that you wanted to do, and the victim could not see why you should get to do something that you wanted to do that was positive for you when you had offended as you had. When they understood what the programme

involved and what you might learn from it (hopefully) they changed their view and thought it was a good thing. It is hoped that it will provide you with a dose of reality and I think we are all of the same view. As I said earlier, and I told you, and I will say it again, this, really, is the last chance to change your thinking and give you that dose of reality.

[11] I have to take into account your attitude towards the offending. I read here that you are ashamed of your actions, that what you thought was fun and banter between students was actually bullying, intimidating and traumatic for the victims of your offending. Is that the case? Is that true? [Yeah, yes] When people like you behave in that way towards other people when they do not want that behaviour that is how it makes them feel. They are frightened. They feel threatened and bullied. [Yeah] You are not a big guy, but you can be scary, and behaving in the ways that you did can be intimidating for other people, particularly if you have a knife. Fortunately, nothing happened. There was no injury, there was no physical injury at least and things turned out okay, but that does not mean to say that it was not really, really frightening for the victim. [Yeah] You get to move on and put it behind you. It is not so easy for them. Do you get it? [Yeah]

[12] I have to consider the response of your family to your offending and it says here that your mother feels ashamed at your behaviour. She is at the end of her tether. She has supported you right through all of your appearances in Youth Court, the family group conferences, no doubt meetings with professionals and so on, but it says here that you do not necessarily see this as your mother's support. Rather you see it as your mother being a taxi driver and getting you to the places that you need to be. Your mum is at a loss as to how your offending can be curbed and she supports you going to the MAC Programme. She has done everything that she can for you to try and change your behaviour, to try and stop you from offending, and she does not know what else to do. But maybe that is one of the problems. Maybe you expect her to do all of these things for you and to get stuff for you and to run you around. That comes through a little bit later in the other report that I have read. I will come back to that.

[13] As to underlying causes and measures available to address those causes, it says here that you have a sexist and chauvinistic attitude towards females. Do you know what that means? [Kind of] Yes. What do you think it means? [It's like I have a problem with females] Yes, sort of, yes. [But I don't] Right. It also means that you think that you are, as a male, above females, that you can tell them what to do, that they will do what you want, that you can do whatever you want towards them. [No, that's not it] Good, well I hope it is not the case. [It's not] Because it is one of the dangers, WT. We see in the adult Court males who are violent towards females and often it is because they believe they can control females, that females should do what they want them to do and when they want them to do it. So you need to change this attitude otherwise you run the real risk of getting into serious trouble later on. [Yeah]

[14] It says further down, "The minor holds a negative view of females" and that has come up again since the report was written. There have been complaints from students at [details deleted] about things that you have said to them. It is recorded. "Continued to behave in an inappropriate and bullying manner towards females, which might escalate into something more if not addressed adequately by staff at the course." So it seems to be an ongoing theme, WT, and that is what has to change. There is also reference to violence as well; "sexism and violent tendencies". As I said just before, that is a really dangerous combination and they are risk factors because if you can be violent and you view females in that way, then there is a risk that you may perpetrate domestic violence in the future. [Yeah]

[15] I have had regard to the informant's views. The police are on board with what is proposed. There are no reparation issues in relation to this offending. I have to consider previous offending or previous orders; there are no orders in place.

[16] The family group conference outcome is the other thing that I have to consider and as I have already indicated it was agreed at the conference as to the outcome being supervision with residence and, particularly, attendance at the MAC Programme.

[17] The rationale is clear as to the proposal. It is hoped that this programme will change your thinking and behaviour. I was interested to read the report, which is attached to the assessment report, and to gain some understanding, WT, as to why you may think, as you do, in relation to females, although you dispute that, and why you may behave in the way you have behaved. I had a guess before I read the report about what might be going on for you in relation to your background and your upbringing and the first thing that I read that I expected I would read is that you do not have a relationship with your father and you do not have many other adults in your life with whom you have a meaningful relationship. It is not a criticism of you, but it gives me some context.

[18] You have not had the benefit of learning from a male role model as to how to act towards females and that puts you on the back foot. Does that make sense to you? [Yeah] You are at greater risk than other young people, particularly other young men. And as I say, that is not your fault, but you need to be aware of it and you may need to think about where you get your thinking from in relation to how you relate to other people, particularly females. It says here that you did struggle with anger in a residential setting and that was because of frustration in being placed in a secure environment with some people you did not like and that says to me that you have a degree of immaturity in relation to being told what you have to do.

[19] I add that to comments that were made in relation to your mum, and it is no criticism of her, but I read here that she has done pretty much everything that she can to support you. That she works hard to earn an income to look after you, that the house is pretty well set up, you get everything that you need for your care and that you are well dressed and groomed, and I have always gained that sense when I have met you as well. So, you have a mum who runs around and does everything for you and gets everything that you want and keeps you looking good and you do not have any understanding from any significant male in your life as to how to treat females. So what does that teach you? It teaches you that women will do what you want them to do. Is that a fair comment? [Yeah]

[20] So this MAC programme is going to be, hopefully, something that will change that structure. I read that there are quite a few tough women on this

programme who will be telling you what to do and when to do it and you have to respond.

[21] It says here under “Identity and Culture”, “WT has made comment on what he identifies as being taonga which appears limited to masculine attributes that he admires; strength and violence.” You do not have to be tough to be masculine, WT. It says under “Behaviour”, “WT appears to enjoy antisocial behaviour in attempting to maintain a tough guy image.” Well in my experience people who do that end up in prison, so you need to lose that. It says further, “WT presents as a very self-confident young man, but then in some situations appears to lack understanding of what is happening around him.” Again, some degree of immaturity. Under “Friendships”, “WT’s lack of empathy for his victims is noted” and it says here, “I would not think that WT would be a very emotionally available or understanding friend,” which I am not sure is entirely correct. I think that you can achieve that, WT. It just requires a bit of learning on your part and a bit of change is required.

[22] It also says that as far as your learning is concerned and achieving that you are a well able young man, but you have limited achievement due to your disconnection with school. You were at school, but you left and were associated with alternative education, but you were removed from there because your mum was concerned about people that you were connecting with there, and that is of concern, which means that you have not had much by way of educational support or background. As far as family whānau is concerned, here it says that you do not have close connections with your wider family, which also is a risk factor for you.

[23] So there are a number of factors as far as your background is concerned. Your early childhood development is the concern that puts you at real risk and you need to have some insight in relation to those things, otherwise you run the risk of getting into further trouble in the future.

[24] It says here under your “Hopes, dreams and wishes” you want to complete some formal qualifications that will assist you to get work so that you can get some money to buy stuff. Well, there is nothing wrong with that. Everybody wants to have a good life. It does not necessarily mean that you have to have piles of money

and buy piles of things, but having money in today's society certainly helps. You can pay your rent, pay for your food, and have a social life. You go the other way and you run the risk of continually getting into trouble and ending up going to prison. You appear motivated to get a qualification, but your offending behaviours are preventing you from following through on this and taking opportunities as they arise, so you need to change that.

[25] Enough of the lecture from me, WT, but interesting reading, certainly in relation to the second report and no real surprise to me at all.

[26] Now the hard work begins. I am going to sentence you as proposed to supervision with residence and you will attend the MAC Programme. The date for your return to consider early release is 26 September.

[27] You are sentenced to supervision with residence, pursuant to s 311, for five months and one week and remanded to 19 September at 11.00 am for consideration of early release.

[28] I make no other direction or order at this time. Those matters will be dealt with at the early release hearing and perhaps that should be the case also in relation to the early offending. Alternatively, the recommendation of s 282 can be noted to be considered at the early release hearing in conjunction with how well WT has performed on the MAC Programme. Let us put everything in one basket and it is all down to your performance now, WT. Do you understand that? [Yeah] But there may still need to be a reparation order at that time, so let us do it that way.

[29] I will remand those matters through to the same date in September for consideration of a s 282 discharge. There may have to be a reparation order. It can be dealt with then, but if you do very well on the camp and in relation to the supervision with residence sentence, then s 282 is likely on those matters.

D Flatley
Youth Court Judge