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**IN THE YOUTH COURT
AT PALMERSTON NORTH**

**CRI-2017-254-000100
[2018] NZYC 329**

THE QUEEN
Prosecutor

v

[GT]
Young Person

Hearing: 30 May 2018

Appearances: J Harvey for the Crown
S Winter for the Young Person

Judgment: 30 May 2018

NOTES OF JUDGE G M LYNCH ON SENTENCING

[1] [GT] is nearly 17 years [details deleted] old and is for disposition this afternoon on a charge of aggravated robbery. [GT]'s age is obviously a significant issue because he does not have much time left in the Youth Court jurisdiction at all.

[2] On 17 November 2017 [GT] and another rode their bikes to the [store details deleted]. They both entered the store, [GT] had his sweatshirt pulled over his head and a bandana across his mouth and was carrying a sawn off slug-gun which he pointed at the store owner. The store owner fortunately ran out of the store and was not harmed. Of course, the emotional trauma is not to be underestimated. After the store owner ran [GT] and the person with him loaded cigarettes and tobacco into their bags and left the shop on their bikes. A member of the public who was outside the store at the time chased [GT] and his friend until [GT] pointed the slug-gun at him.

[3] The Crown no longer seek transfer of sentencing to the District Court. What had been troubling the Crown was the lack of time left in the Youth Court jurisdiction for the usual Youth Court responses being available to [GT]. Mr Harvey has reflected on the issues and in particular the principles of sentencing under Oranga Tamariki Act 1989 and has stepped back from inviting a District Court response.

[4] In an observation shared by Mr Winter it is good to see a young prosecutor in tune with the principles of the Act and with what can be achieved in the Youth Court, even when the door to that jurisdiction is quickly closing as it is here. The upshot was that Mr Harvey observed that it would be difficult to show that a disposition in the Youth Court would be inadequate here.

[5] Mr Harvey referred to the recent decision of the Principal Youth Court Judge in *SD*¹ which held that it is a strength of the Youth Justice System that the Youth Court is required to look beyond the seriousness of the offending. Mr Harvey in particular emphasised what the Principal Youth Court Judge said at para [45]:

[45] To take a solely punitive response would fail to take into account the family group conference outcome. It would fail to take into account the other side of [SD] described by his lay advocate. It would be to overlook the early emotional trauma suffered by [SD]. It would be to overlook that [SD], notwithstanding his very serious offending, has the potential to improve his

¹ *SD* [2018] NZYC 169.

life with the specialist assistance of others for his benefit and, importantly, for the benefit of the community.

[6] Having decided not to seek transfer, the Crown initially considered that the appropriate outcome was one of supervision with residence, however the Crown has further reflected on [GT]'s position and has walked back to a position where they would support a supervision sentence, together with [GT] remaining on electronically monitored bail. That can be achieved by not disposing of the male assaults female charge 00559 and maintaining [GT]'s bail status on that charge. [GT] also has a male assaults female charge in the Family Violence Court, in the District Court. [GT] is on electronically monitored bail on that charge, but it is not for this Court to interfere with those proceedings. I appreciate that the processes here have been stretched and pulled a little, but it is for the right reasons.

[7] Mr Harvey in his helpful submissions referred to [GT]'s background. What I am about to say [GT] is not to put you down in any way it is simply to put flesh on the bones of why this sentencing is so outside the square. [GT]'s early life as Mr Harvey observed could be described as chaotic and abusive for the reasons explained. [GT] had a significant involvement with Oranga Tamariki (then CYFS) during his childhood. There was sadly violence and not surprisingly [GT]'s introduction to drugs at a very early age and introduction to a gang. Since these charges have been laid [GT] has stopped using drugs and is not involved with any gangs.

[8] Mr Harvey in his submissions observed that if the Court was required to apply *R v Mako*,² which [GT] is the case we all use to get a starting point of aggravated robbery, a starting point in the vicinity of five years imprisonment would be appropriate. That, of course, is a bit eye watering. There would be some credits available to you if you were in the District Court for your youth and remorse, and a Court might have been able to get down to a sentence around two year, three months or thereabouts.

[9] As Mr Winter said any time in prison for you whether it was a long period or short period would result in a different man coming out than the one that went in. We

² *R v Mako* [2000] 2 NZLR 170 (CA).

all know that jail, particularly for young men, is simply a breeding ground for gang members and future criminals, and sadly that would have been your lot. That is why Mr Winter has acknowledged all of the players in this sentencing have done their bit for you to avoid exactly that outcome.

[10] In sentencing you I cannot overlook the effects on the victim. The victim was understandably shaken following the robbery. He observed that seeing the gun was the most frightening thing he has ever experienced and it took him some time to calm down. The victim was understandably concerned for his wife and young [child] who were in a nearby unit while you and your friend were robbing the store. That said you probably could not get a more remarkable victim, as Mr Winter described him. Notwithstanding the spate of aggravated robberies which are going on at the moment both locally and nationally, this is a victim who still has you in his mind in a good way, which is he wants you to move on in your life and make something of you. Well he has thrown down the challenge to you hasn't he?

[11] In sentencing you I am required to apply a number of factors which are set out in s 284 of the Act. I am going to whistle through those factors now for completeness:

The nature and circumstances of the offence

[12] As Mr Winter observed it is acknowledged that this was a serious aggravated robbery of its type and one that [GT] took a lead role in.

The young person's personal history, social circumstances and personal characteristics

[13] I am not going to repeat the history which is set out in the very helpful s 333 report. The report obviously deals with a lot of negative influences in [GT]'s life and I do not think this moment in time is the one to repeat all of that. What I do acknowledge is that this is a young man who has not had the easiest paths in life, far from it, and to even put it like that is a gross understatement. That said with the assistance of his [sibling and sibling-in-law] this is a young man who is turning the ship around. My fix on [GT] is he is a young man with some talent and with some

promise. He has made a significant error here, but he is doing his utmost to put to right.

Attitude of the young person

[14] [GT] acknowledged his role in the offence. The admission that [GT] made was one of the quickest on a charge at this level that I have seen. He appeared on [date deleted] on his first call. On his second a week later he admitted the charge. [GT] recognises that his actions and that of his friends created real danger.

The response of the young person's family and whanau

[15] [GT]'s father and mother are effectively not involved. [GT] is currently placed with his [sibling] and family as Mr Winter has referred to. The environment is positive. [GT] has been relatively stable since being there and responds well to the boundaries and support.

Reparation/apology

[16] [GT] is remorseful. He acknowledges his wrong-doing. Emotional harm reparation is simply not feasible and I would not direct it.

Victim effect

[17] The victim impact statement, of course, says it all and it is acknowledged how frightening this robbery was for the store owner.

The causes underlying the young person's offending

[18] This is well reported both in the s 333 report and in the very helpful social worker's report.

[19] The easiest thing to do today would be to impose supervision with residence because I agree that the Youth Court jurisdiction is the right one for [GT]. However, to impose supervision with residence would simply unravel all of the good work that

has been undertaken by [GT] and his family. One of the clearest voices in this process has been [KR]’s. In the social worker’s report it is reported that [KR] advises that she struggles to understand why [GT] would have to go to residence when he has been doing so well in their care and in the community. [KR] said that she was scared that all the ground they had made with [GT] thus far, building their connection and trust, would be lost “if [GT] was to return to lock-up”. She is absolutely right. So while an order of supervision with residence could be justified and I think would be unimpeached on an appeal, I think the concession made by the Crown is the right one for this young man.

[20] As the report writer observes [GT] has been residing with his older [sibling and partner] and their young children for some time now. It is going well, [GT] is respectful, helpful around the house, helping out with his nieces and nephews. He has, of course, been attending [a vocational training course – details deleted] and I see that as a real positive.

[21] I also see as a real positive the mentoring with [name removed] at [location deleted]. The report tells me that [name removed] has been doing some really great work around exposing [GT] to outdoor activities, even going to [location deleted]. I like also that [GT] agreed to engage with Talking Trouble who are doing some really good work with young people around the country at the moment. I think we all do not appreciate just how difficult it can be to talk and communicate with young people at times, particularly when they present with the complexities that you do. So it would have been easy for you to push back against Talking Trouble but you did not and I think you, your family, and also we as a group, have learnt a lot as a result of that.

[22] You have been adhering to your electronically monitored bail which gives me some real confidence. The Transition Conference also heard that you want to stay in the care of Oranga Tamariki until you turn 18 years old and again that gives me some real confidence that you are going to make good.

[23] The upshot [GT] is I agree with the Crown’s position here and on the charge of aggravated robbery, the charge having been proved, I now make an order under s 283(k) of the Act placing you under the supervision of the Chief Executive for

six months. There will be additional conditions under s 308 as follows, and as I observed earlier these might need a bit of a tweak because I have essentially made them up on the spot, so if they need a tweak the social worker will let me know. They are:

1. To reside at [address deleted] with his [sibling] and his [sibling]-in-law.
2. Not to possess or consume non-prescribed drugs.
3. To attend education programmes and training as directed by the social worker.
4. To attend mentoring sessions with [name removed].
5. To attend counselling with [name removed] as directed by the social worker.
6. To complete 80 hours community work at [location deleted] as directed by the social worker.

[24] On charge 0559 I remand you on the same bail conditions through to Monday, 3 December 2018 at 10.00 am or to a date and time that we otherwise arrange.

[25] Finally, in relation to the District Court charge I had forgotten that that was accompanying these matters. What I do is I amend [GT]'s bail so that the not to contact condition is now not to offer violence and he is remanded on electronically monitored bail through to that same date, [date deleted].

[26] [GT] it has been a pleasure to deal with this charge in this way. It will not surprise you that it has been a difficult four or five days in this Youth Court so it is nice to see something positive happening.

G M Lynch
Youth Court Judge