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**IN THE YOUTH COURT
AT PORIRUA**

**I TE KŌTI TAIOHI
KI PORIRUA**

**CRI-2018-291-000017
[2018] NZYC 542**

NEW ZEALAND POLICE
Prosecutor

v

[FV]
Young Person

Hearing: 20 September 2018

Appearances: E Light for the Prosecutor
C Smith for the Defendant

Judgment: 20 September 2018

NOTES OF JUDGE J A R JOHNSTON ON SENTENCING

[1] [FV] is 14 years old. He appears for sentence on five charges. He has not denied all five charges and has accepted responsibility for them.

[2] The charges are:

- (a) Dangerous driving causing the death of [PQ]. In the adult Court that charge carries with it a maximum penalty of up to 10 years' imprisonment;
- (b) Three charges of dangerous driving causing injury to [CK], [MS] and [DZ] respectively. Each of those charges carries a maximum penalty in the adult Court of up to five years' imprisonment; and
- (c) A charge of unlawfully taking a motor vehicle. That charge has a maximum penalty of up to seven years' imprisonment in the adult Court.

[3] From the outset, I wish to acknowledge [PQ]'s whānau who are present here today.

[4] I also acknowledge [FV]'s whānau who are also here, supporting [FV].

[5] The relevant facts are these. On [date deleted] this year you, [age deleted], were in Porirua with associates, [CK] who is [age deleted], [DZ], [age deleted], [MS], [age deleted] and [PQ] aged [age deleted]. You and those persons got into a van at the Porirua train station to take you to [details deleted].

[6] At the [event deleted], you and the others were asked to leave [details deleted]. You and the four others left the [event] at about 7.45 pm and were last seen walking along [address deleted]. The owner of the vehicle that was stolen had parked her car there at about 7.00 pm about 200 metres from the [event] where you and the others were asked to leave.

[7] You and the others saw the vehicle and using [CK]'s screwdriver smashed a window before you were given a set of pliers by [CK] and the screwdriver. You started

the vehicle using the tools and drove it away from [address deleted] with the four others as passengers. You did not have permission from the owner to take the car valued at just under \$9000. Police Communications received multiple driving complaints from the public in relation to your driving, both in Petone and Wellington.

[8] You and the others parked the vehicle in the Wellington CBD before visiting internet cafés and socialising in the city. In Wellington, you met up with a fifth person who was aged 21 years, who was also from Porirua. You and the now five others got back into the stolen vehicle with the intention of returning to Porirua. [PQ] got into the boot of the vehicle as there were insufficient seats for everyone. None of the passengers in the vehicle used a seatbelt.

[9] At about 2.45 am, it was now Saturday morning [date deleted] 2018, a police officer witnessed the vehicle travelling at speed northbound through The Terrace tunnel. The officer turned and caught up to the vehicle with red and blue lights and the siren activated to stop the vehicle.

[10] However, you failed to stop.

[11] Checks found the vehicle had been reported as stolen. The rear window of the vehicle had darkened glass so the pursuing officer could not see into it. A pursuit occurred northbound on State Highway 1 and the vehicle that you were driving was captured at the Thorndon speed camera travelling at 151 kilometres per hour with the police vehicle following. The speed limit is 100 kilometres per hour on this section of three lane motorway.

[12] The road surface was wet from previous rainfall and there was light traffic. You remained on State Highway 1 and travelled up the Ngauranga Gorge. The speed limit there is 80 kilometres per hour. The vehicle slowed down to about 90 kilometres due to the engine not having sufficient power to maintain the speed up the hill.

[13] At the top of the gorge you positioned the vehicle to take the Johnsonville off ramp, only steering back onto the highway at the last moment.

[14] During the pursuit, you used all available lanes of the road to reduce the angle of the corners allowing the vehicle to maintain higher speeds. The pursuit continued on State Highway 1 north of Johnsonville, the pursuit reaching speeds of between 150 and 160 kilometres per hour. The speed limit is 100.

[15] There were three vehicles in the left lane as you approached multiple corners before the Tawa off ramp. Your vehicle was travelling in the right lane. Approaching a left bend, you positioned in the right lane to again make use of both lanes in order to take a corner. However, another vehicle was in the left lane blocking your intended path. You steered left and the front left corner grazed the front right of another car that was in your path. You braked heavily and steered right, resulting in the car losing control. The other vehicle was travelling at 80 kilometres per hour and slowed down to a stop following the impact.

[16] You continued to skid out of control heading towards the raised bank between the north and southbound lanes. Your vehicle spun in a clockwise direction, the front left corner making the initial impact with the bank before the left rear corner of the vehicle. The vehicle hit the bank, spun and became airborne. With the speed of the vehicle and the sudden impacts that forced the rear seat occupants and [PQ], who was in the boot, towards the boot hatch. The lock on the boot hatch broke away from the hatch under the pressure. It appears that [PQ], [CK], [MS] and [DZ] were all ejected from the vehicle through the boot. The vehicle came to rest on its wheels in the left northbound lane. Once stopped, you exited the vehicle from the driver's door and ran to the left bank where you were arrested by the pursuing officer.

[17] Emergency services attended the crash which was about 12 kilometres from where the pursuit had initially started. [CK], [MS] and [DZ] were found lying in the grass on the bank that the vehicle crashed into. [PQ] was found lying at the top of the bank.

[18] As a result of the crash [PQ] suffered fatal head injuries and unfortunately died at the scene.

[19] [CK] suffered a fractured rib.

[20] [MS] suffered multiple fractures to his collarbone.

[21] [DZ] suffered a four centimetre laceration to his head.

[22] The other occupant was not injured.

[23] I note at the time you did not make a formal statement to the police but you said that you took the vehicle as you all had no way to get home, that you had messed up and that you only wanted them to get away and not get caught.

[24] I note that since your arrest you have been in custody. That has been some four months now.

[25] I have received and considered victim impact statements from [PQ]'s mother, that is [TE] and from [PQ]'s father, [WQ]. Those statements speak of the significant impact on them and their whānau from your offending. The statements are moving and show the hurt, the sadness and the anger that they feel at the loss of [PQ]. I am grateful to them for providing that information to the Court and also for speaking to the social worker as part of the preparation of the social work report and also attending the family group conference. I also acknowledge their attendance at some of the earlier Court cases.

[26] [FV] has no previous convictions. I note [details deleted], but I put that to one side.

[27] There has been a family group conference on 17 July. That conference included representatives from [PQ]'s whānau, [CK], [DZ] and members of their whānau as well as [FV]'s whānau. An apology was made by [FV] at that conference and a social work report and plan was recommended.

[28] The first social work report and plan is dated 16 August 2018 and that recommends supervision with residence of up to five months to be followed by a supervision order for a further six months. I note that supervision with residence is the maximum penalty available in the Youth Court jurisdiction.

[29] Sentencing was adjourned until today to enable a cultural report to be completed. That has been received and copies provided and for an updated social work report and plan. That updated social work report is dated 18 September 2018 and the recommendation now before the Court is for a sentence of supervision with activity for six months, followed by six months of supervision.

[30] The Crown position is that they submit that a sentence of supervision with residence for the maximum period of six months is appropriate and warranted and takes into account the seriousness of the charges and all other relevant matters. Their submission is that the supervision with activity plan is inadequate and they express some hesitancy with the address that is proposed and concerns about the suitability and stability of the proposed placement and protection of the community.

[31] In the Crown submission, it would be of benefit to [FV] to continue with the positive progress and stability that he has had whilst he has been in residence and that any transfer to the Auckland address proposed could be done later under a sentence of supervision. The Crown also submit that there be a period of disqualification from holding or obtaining a driver's licence.

[32] Mr Smith for [FV], submits that the Court should consider the new recommendation of supervision with activity. That sentence, along with the proposed additional sentence of supervision, is in all the circumstances in his view appropriate and the least restrictive outcome adequate in the circumstances. In making that submission he is clear that he is in no way suggesting that this is not a serious set of charges with tragic consequences. He does, however, as is his job as youth advocate representing [FV], provide some context. He submits that even though the charges are serious, they are not the most serious charges that are dealt with in the Youth Court.

[33] His submission is that in looking at the relevant Youth Court principles that are contained in the Oranga Tamariki Act 1989, in particular ss 5, 208 and 284, that the Court should consider imposing the sentence recommendation set out in the plan dated 18 September.

[34] Mr Smith also submits that it is relevant that [FV] has spent some four months now in custody and that the supervision with activity plan is a good plan. It is a placement with whānau in [location deleted]. [FV] has now had the opportunity of meeting that family and wants to go there and that the sentence proposed in the updated plan is appropriate in all the circumstances, along with a disqualification from driving.

[35] Mr Smith also submits that a split sentencing is appropriate, whether the outcome be supervision with activity or supervision with residence and that the supervision component can be addressed at a later date. If the Court was to consider supervision with residence as the appropriate outcome then he submits that that sentence should be as short as possible, taking into account all of the relevant circumstances.

[36] In deciding on sentencing [FV], I have to take into account certain matters under the law and those are set out in s 284 Oranga Tamariki Act.

[37] First, I need to take into account the nature and circumstances of the offending. I agree with the Crown that overall this was an extremely serious incident and of course this is reflected in the maximum penalties that are available in the adult Court that I have referred to.

[38] There are aspects to this offending that make it serious. These include the excessive speed, the prolonged persistent and deliberate course of very bad driving and irresponsible behaviour, that the vehicle was stolen, and that the speed and bad driving led to you losing control which then led to the outcome which is all too common with offenders trying to evade police in cars, the needless loss of a young life and injury to three other young persons.

[39] I also take into account your personal history, social circumstances and some of your personal characteristics so far as these matters are relevant to the offending. I glean this information from the social work reports and the cultural report from Mr Walker. I note that you are of Samoan descent. You [have multiple siblings]. You and your siblings are New Zealand born as is your mother and, as your mother has acknowledged today in addressing me, there have been issues. Oranga Tamariki have

been involved with the whānau since [year deleted]. Family violence has been a part of the household and you have observed and been subject to it as a child.

[40] There have also been concerns about your welfare as a very young person since [date and age deleted] in respect of inadequate parenting. There was a care and protection referral made by police in February of [year deleted]. You also have [a close family member] who is currently in prison.

[41] The cultural report provides more detail. I note and acknowledge your strong whānau support today but according to the report there does not appear to have been a strong focus on your Samoan heritage. There has been perhaps somewhat of a disconnect and a gravitation towards a number of Māori peers. You have according to the information in front of me been regularly attending church [further details deleted]].

[42] Being expelled [from the event] as you were because of your behaviour and without transport to return to Porirua, you took it upon yourselves to steal a vehicle and others were clearly involved in that enterprise. Now that does not justify your action in stealing the vehicle but from the information in front of me it does provide an explanation as to why it was taken. However, you and the others did not go straight back to Porirua. You instead went into Wellington and a number of hours later the accident occurred.

[43] I also take into account the attitude of you towards your offending. Although in some of the material before me there are some question marks about the remorse that you expressed at the family group conference, it is to your credit that all charges have been admitted and that you have accepted full responsibility for them.

[44] I also note Mr Smith has submitted that you have accepted the time that you have been in custody right from the outset and did not make applications for bail.

[45] I also recall when I first saw you on that first morning, that appearance on [date deleted], you were still suffering from concussion, but my observations were that you

were clearly sad and upset about what had happened and as I say the fact that you have fronted up to all of the charges is something in your favour.

[46] I also note the response of your whānau. They are supportive and that is always good to see, but there are limitations and they know that.

[47] One aspect of the reports is that there are still some acknowledged risks of potential for re-offending even if you were to reside with the family in [location deleted]. The proposed supervision with activity plan address is with whānau but they are relatives that are not well-known to you and they have two very young children at that address.

[48] I also note that you have made the admissions that I have referred to and at the family group conference in the material before me, you did make apologies and a koha was offered. That is referred to in the cultural report.

[49] I also note that you are a young man of some potential. You are physically healthy, you are good at sport, you are good at rugby and running and on top of that I am told that you are academically able. Not many young people before me can say that they are good at maths or that maths is their favoured subject at school.

[50] Another factor that I need to consider is the effect of the offending on victims of the offending. It is self-evident from the victim impact statements that offending of this kind has a significant and lasting impact on them. Whatever happens today will not undo the tragedy that has occurred, particularly for [PQ]'s whānau. But as I say, I acknowledge the victim impact statements and the input made by [TE] and [WQ] during this process.

[51] I also note that they, in their material before the Courts, support a supervision with residence outcome. I also take into account the views expressed by [CK] to the social worker and the apology made by him for being disrespectful as I understand he was giggling at the FGC. I also note the views expressed by the owner of the car taken and the impact both emotionally and financially of that occurring.

[52] I also consider the causes underlying [FV]'s offending and the measures available for addressing these causes so far as it is practicable to do so. The cultural report as I have said, refers to what appears to be a disconnect from his Samoan heritage and the author of the social work report notes that [FV]'s early exposure to family violence and inadequate parental care are in the author's view, a predominant cause of his current offending behaviour.

[53] That background [FV], which is not your fault, has meant that you have not been able to make good decisions as a young man. You have said how sorry you are but it is now time for you to truly understand that your actions have consequences.

[54] You are still 14. You will be 15 in [date deleted]. You have been in residence in custody for the last four months. In making a decision about the appropriate sentence I emphasise the very serious nature of your offending and the lifelong effect that it will have on [PQ]'s whānau and of course on you. I also take into account ss 5, 208 and 289 and the other relevant provisions of the Oranga Tamariki Act.

[55] In weighing the matters up the supervision with activity plan that is proposed in my view is insufficient. I am concerned by such a sentence and it being derailed quickly with the proposed placement with a very young family. I am also concerned about the two young children at that household. In my view and in balancing all matters up, a sentence of supervision with residence is justified and is the least restrictive outcome adequate in the circumstances.

[56] In setting the length of that sentence I do, however, take into account the time spent on remand in custody and the submissions made by Mr Smith. In my view four months of supervision with residence is appropriate.

[57] An early release date would be two-thirds of that sentence and I will adjourn the making of a supervision order today so that you will return to Court for that sentence in due course. I will also adjourn the matter for consideration of early release.

[58] So, in conclusion [FV], on all charges I record that they are all proven. I make an order placing you in the custody of the Chief Executive of Oranga Tamariki under

a sentence of supervision with residence for four months. You are to undertake a programme at the residence as set out in the plan dated 16 August 2018.

[59] The supervision order is not made at this stage. A social work report and plan is to be obtained and I adjourn for consideration of that matter to [date deleted] and that is also the date for consideration of any early release.

[60] I also disqualify you from holding or obtaining a driver's licence for one year on each charge and that starts today.

J A R Johnston
Youth Court Judge