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**IN THE YOUTH COURT
AT WAITAKERE**

**CRI-2018-290-000059
[2018] NZYC 230**

NEW ZEALAND POLICE
Prosecutor

v

[AD]
Young Person

Hearing: 27 March 2018

Appearances: N Copeland for the Prosecutor
J Verry for the Young Person

Judgment: 27 March 2018

ORAL JUDGMENT OF JUDGE A J FitzGERALD

[1] [AD], when Judges make important decisions like the one I must today, we cannot just say what the result is. We have to give reasons because people need to understand how the decision was made. So I am going to need to take some time now to explain why I am not going to transfer you to the District Court to be sentenced but sentence you to supervision with residence instead. That is going to take a while so you can remain seated for now while I say the things that I need to.

[2] Before I move to those things, though, I just want to acknowledge the excellent written and oral submissions that have been provided by Ms Copeland for the police and Mrs Verry for you. I think the competing arguments could not have been better presented than they have been.

[3] On 6 June last year I sentenced you to six months' supervision with residence on 38 charges that you faced. There were some fines only charges for which you received a s 283(a) order. I also made a reparation order for you to pay \$1154. Some reasons were given on 6 June for why those orders were made but my reasons in full were provided in writing on 29 June last year. To understand the full context of what I am saying today, what I said on those earlier occasions needs to be read together with what I am saying today.

[4] You were granted early release from that supervision with residence order on 3 October last year by Judge Hikaka, and on that day he made a supervision order for 12 months. At the time of your early release on 3 October you had served just under nine months in residence altogether. That is because time on remand is not deducted in the Youth Court from a residential sentence imposed, unlike the situation in the adult Court where time on remand in custody is deducted from the sentence imposed.

[5] The supervision order which was suspended on 9 January this year is now cancelled. Today I need to decide what orders to make to replace that supervision order and to cover the four new charges that you have admitted. Those charges are, firstly, an aggravated robbery on [date deleted] 2017. This was a street robbery in central Auckland. You and another person approached the young victim, asked for cigarettes and then began walking with him up towards [location deleted]. The two of you then set upon the victim, the other person grabbing him around the throat in a

headlock. You punched him several times in the head before taking numerous items including an iPhone, a driver's licence, WINZ card and shoes. The police found both you and your companion soon afterwards and all those items were recovered. The young victim, he was [age deleted] years old, has provided a victim impact statement recording the stress of the experience for him but he ends by saying that he has found the strength to move on and hopes that you can too.

[6] The second of the new charges is unlawfully getting into a stolen car on [date deleted] 2017. There is a letter from the victims in relation to that offence and they are upset and annoyed, understandably. The third offence is theft of clothing valued at just under \$500 from [store name deleted] on [date deleted] 2017. The fourth offence is another aggravated robbery committed on [date deleted] 2017. You and three others entered an alcohol store at 9.30 pm. You had your faces covered. One of the group had a sharp object which was presented at the staff members who were there and demands were made that they open the till. They did that and \$3350 was taken. The rest of you took alcohol and a large amount was taken. No value has been provided, nor a victim impact statement for that offence.

[7] There are a lot of things I need to take into account before deciding what to do. They begin with the law that applies in the Youth Court which is in the Oranga Tamariki Act 1989. In that Act there are some important general objects and principles that I must consider. The most relevant of those for present purposes is the need to hold you accountable for what you have done, encourage you to accept responsibility but, also, acknowledge your needs and give you the opportunity to develop in responsible, beneficial and socially acceptable ways. There are then particular principles that are relevant to the Youth Justice provisions which I take into account as well.

[8] There are then matters that I must take into account on sentencing and they are set out in s 284. Now, in relation to those I am not going to repeat all of the things that I said on 6 June last year. However, there are the new offences and there is now further information that has been provided in the helpful reports which I do need to comment on.

[9] Firstly, there is the nature and the circumstances of the further offending and, of course, it is the aggravated robberies that are of particular concern. In terms of the seriousness of those the police have pointed out, by way of illustrating the seriousness of those offences, what the starting point for any sentence you would be facing in the District Court would be. The first of the robberies was a street robbery and in relation to that it is submitted that the starting point would be a sentence of imprisonment between three and four years. In terms of the hierarchy of aggravated robberies that is one of the less serious types. The second aggravated robbery is more serious. There was some planning, there were disguises, there was a weapon involved, and for that it is submitted the starting point would be between five and six years' imprisonment.

[10] In relation to your personal history, characteristics and social circumstances I covered those in some detail on 6 June and 29 June last year. But further information has now been provided in the recent report from the Regional Youth Forensic Service and also the social work report. For example, there is more detail given about your family history including the time you spent [overseas]. There is also more information about your [close family member]'s death and the unresolved grief and the need for healing of family relationships. A proposal has been made in the report by Mr Mendes to address those issues and for a trip to be made [destination deleted], and I hope that can be implanted at some stage for everyone's sake. It has been mentioned today that might be, or will be hopefully, one of the things that would be included under the supervision sentence that will follow the residence sentence.

[11] Comments were made by me previously about your attitude to the offending and your whānau's response and those are still apposite. In relation to the impact on the victims, I have already mentioned that as far as further reparation is concerned it would seem as if the only reparation that might be sought relates to the charge of theft from [the store] and possibly a contribution to the insurance excess for the unlawfully getting into charge. You already have an order that you pay more than \$1000 worth of reparation for the earlier offending, and given that and your circumstances it is simply not realistic to make a further reparation order.

[12] I have referred already to your previous offending. The charges for which you were sentenced in June last year were the first charges you had faced before the Court.

There was no agreement reached at the family group conference about what should happen.

[13] In relation to the underlying causes of offending there is now more information than there was in June last year. That is set out in the forensic report and the latest social work report very helpfully sets out things that have worked in addressing those issues, things that have not, and options available in future to try and address those issues. It is clear that a lot of thought and work has been given to identify therapeutic and other needs and supports that should be provided to try and ensure those issues are addressed, and I do want to acknowledge the hard work that has clearly been done by your social worker and supervisor in relation to those issues.

[14] As you know, the police were applying to have you convicted and transferred to the District Court for sentencing, which I have already told you I am not going to do. Amongst other things they submit that the public interest would best be met by that because a sentence in the District Court would better send a strong deterrent message to you and others and protect the public from further offending. The recommendation that your social worker made was for supervision with residence to be followed by supervision, and that is what Mrs Verry has advocated for on your behalf.

[15] There is no dispute that if you were sent to the District Court for sentencing you would be sentenced to imprisonment. In fact, that is a primary purpose for the police seeking the transfer, because they say that a strong sentence that would deter you and others from such offending is necessary.

[16] I do just want to note at this point that for the earlier offending you have already served a period of about nine months in residence which was a significant period in a custodial setting for someone who was 15 years old at the time but 14 years old at the time of all of that offending. It is the breach of the supervision order that followed that order that you are being sentenced for today together with the new offending.

[17] From the information available it seems likely that if you were sentenced to imprisonment in the adult Court you would receive little if any access to any youth-

specific programmes, and that is because very few exist. Although the police submissions say that there are rehabilitative options in the District Court which are more wide ranging and appropriate, that is clearly not the case given the information provided by Corrections. Advice sought recently by the Principal Youth Court Judge from Corrections as to what if any youth-specific interventions would be available if the sentence was imposed in the District Court on another young person who was aged 17 produced this response.

In the space of youth (17 to 25 years) within the Department of Corrections there are unfortunately limited services available. If sentenced to a custodial term he may be eligible for the Young Offenders Programme. This is a specific programme unit targeted to those under 20 in a custodial space. This is offered in Christchurch and Hawke's Bay Prisons. If sentenced to a community-based rehabilitative sentence there is, again, limited resources. The only programme available in Auckland is the Mauri Toa Rangatahi programme which is offered once per financial year. The current programme is already running in South Auckland. There are multiple agencies in the community which can encourage youth to engage, however it has proven difficult once they reconnect with antisocial associates and the like.

[18] Your social worker, Ms Vatau, had also made enquiries about this issue and received a similar response.

[19] If you were sentenced to imprisonment with adult offenders you would experience the violence, the stress and the tension that prison life involves. In their submissions the police identify a number of concerns about you, the first of which is that you are easily susceptible to peer pressure and negative influences, and so you would be particularly vulnerable in the adult prison system. Almost certainly you would come out of prison a much greater risk of reoffending. You would still be a young man, almost certainly still a teenager, having probably had access to little or no rehabilitative support whilst in custody, and then little if any as part of any release conditions.

[20] So, while prison might provide some short-term protection by locking you up and keeping you away from the community for a period of time it overlooks the public safety interest in doing the best that can be done to reduce the risk of re-offending. The high risk period for you is upon release from residence, and I think we all recognise that. Again, if sentenced to imprisonment in the adult system there would be little or no programmes provided, nor any, or little or no effective monitoring or

oversight, and I need to compare that with what is available in the Youth Court. In the Youth Court in residence you would continue to have access to youth-specific programmes provided by professionals who are interested in and have expertise in working with young people. There are some excellent programmes and excellent work done in residence and it was apparent that you benefitted from some of those previously. As I have said, the issue is more to do with what happens upon release. Upon release, if made subject to the Youth Court orders, you will continue to have a social worker who is clearly dedicated to exploring options that will give you the best chance of returning to the community and provided with ongoing supports to manage the risks, as well as the conditions that would be included in any supervision order, you would be subject to judicial monitoring. I will return to those issues in a moment.

[21] As well as the law that applies in the Youth Court, which I referred to earlier, there are the international conventions which I must have regard to. The Higher Courts in New Zealand have emphasised that these conventions are an important aid to interpreting legislation. It has been said that our Courts could be criticised if we fail to give effect to the international conventions to which we are a party. The two key conventions in your situation are the UN Convention on the Rights of Children and the Beijing Rules on Juvenile Justice. Both of those conventions include provisions stating that custodial sanctions should always be the option of last resort and when they are used they should be for the minimum period necessary.

[22] So in that regard you have been on remand in custody for at least four and a half months. You are now being sentenced to supervision with residence for six months which will mean you will likely serve approximately nine months again if you are granted early release, or it will be closer to 11 months if you do not get early release. Again, for a 16 year old that is a significant period of time in a custodial setting. As Mrs Verry said, being 16 means there is plenty of time for Youth Court orders to continue to run. As I have already mentioned, during the residential part of the sentence and the supervision part you will be provided access to good programmes and supports aimed at reducing the risk, and these are run by people who are interested in, trained in and involved in working with young people.

[23] Before I could send you to the District Court to be sentenced I would need to have decided that those options are clearly inadequate, and I am not satisfied about that, and so it is for those reasons that I am making the following orders, [AD], and it is at this point I will get you to stand while I just explain the orders that I am making.

[24] So, [AD], to replace the supervision order that has been cancelled and to cover the four new charges you are sentenced to six months' supervision with residence. The plan that has been prepared by your social worker is approved. The sentence is to be served at [Youth Justice Residence].

[25] You would be eligible for early release from that sentence two thirds of the way through it, as long as you satisfy the requirements for that on [date deleted]. For that reason I am now setting a date for the early release hearing for [date deleted].

[26] As I have already mentioned, there will need to be a supervision order that will follow the residence order. I am not making that order today. I agree with your social worker it would be better to make that at the early release hearing, and so I am just asking today for the necessary social work report and plan to be available at that next hearing.

[27] So [AD], thank you for your patience because it took me a long time to say all that, but I needed to for the reasons I mentioned earlier. That is all for today.

A J FitzGerald
Youth Court Judge