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[SQUARE BRACKETS].

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PERSON WAS OR IS ATTENDING.**

**IN THE YOUTH COURT
AT LEVIN**

**CRI-2017-231-000013
[2017] NZYC 829**

NEW ZEALAND POLICE
Prosecutor

v

[BJ]
Young Person

Hearing	7 November 2017
Appearances:	Constable S James for the Prosecutor M Scott for the Young Person
Judgment:	7 November 2017

NOTES OF JUDGE G M LYNCH ON SENTENCING

[1] [BJ] is 14 years and 10 months old. About four months ago, so when he was 14 years and six months old, he committed a burglary and an aggravated robbery. To complicate matters, if any further complication was required, about five days after the robbery [BJ] drove committing a sustained loss of traction and a charge of driving while forbidden. I will deal with the charge of driving while forbidden now because it is fine only. [BJ] is discharged under s 282 of the Act.

[2] Ordinarily, the only discussion for charges at this level, and here I am referring to the burglary and the aggravated robbery, is whether the least restrictive outcome is met by supervision with residence. However, four factors mitigate against such a blunt approach. Those factors are:

1. [BJ]'s age;
2. The four months he has spent remanded in residence because if [BJ] had been sentenced promptly he would be nearing the end of his time in residence provided he was eligible for early release which, on my facts of [BJ], would not have been a problem;
3. The dysfunction and lack of structure which was his lot in life;
4. The structure now promised by Oranga Tamariki.

[3] The burglary was of a garage on [date deleted] 2017. It was premeditated as [BJ] had spoken to the victim when visiting the victim's neighbour a week or so earlier. [BJ] had seen [an item] in the garage and had spoken to the victim about it. [BJ] then went back and stole the [item] valued at \$880.

[4] It is the aggravated robbery on [date deleted] 2017 of [the dairy] which is plainly the most serious offending. [BJ] and two others entered the dairy at about [time deleted] wearing either masks or bandannas to disguise their identity. In a further demonstration of the planning, [BJ] was carrying a washing basket to take away the spoils, but far more worrying, one of the others had a shotgun which was pointed at the shop owner who was told to get on the ground. Fortunately the shop owner was

able to run behind the counter and activate the panic alarm before running to the office and locking it leaving [BJ] and the others in the store. All three then loaded the washing basket with tobacco products to a value of \$5796.80.

[5] The helpful social worker's report records an extensive Child, Youth and Family history from 1991, pre-dating [BJ]'s birth. It would be an interesting exercise to review the efficacy of interventions and whether there were any opportunities lost. The education report with the number of schools and stand downs rather suggests alarm bells either were or should have been ringing long and hard. Young men doing this sort of stuff usually do not appear out of nowhere. In that context, the s 333 report also makes for sad reading. The young man is a product of his dysfunctional background and really there ought not be any surprise at all where he has ended up. Attention deficit difficulties and social difficulties, as the report writer identifies, are likely to have contributed to [BJ]'s disengagement from education.

[6] The bright note here, and there is one, is [BJ]'s nan remains a key component in providing this young man structure. Additionally, Oranga Tamariki have gone out and constructed a plan which again is about structure and support, but importantly, is actually resourced through to February 2018 when it is anticipated that [BJ] will commence [training – details deleted].

[7] The Police have not been so warm to the concept of supervision with activity, which had been the primary recommendation of Oranga Tamariki, having observed correct in my view that community-based interventions have been tried before with [BJ] but without success. The Police thinking had been that supervision with residence was really the only real option left for [BJ]. There has been some modification of that view today having listened to Mr Scott and having seen the actual plan and report provided for sentencing today. The Police recognise that [BJ] has been in residence for a significant period of time, which had things gone more quickly, which is not a criticism of anyone I hasten to add, [BJ] would be pretty close to an early release hearing on a supervision with residence order.

[8] Mr Scott submits that rather than supervision with activity, which he contends and I accept is jurisdictionally not available, a supervision order is appropriate. Mr

Scott endorses the well-constructed plan and essentially is saying this is the time to give the young man the opportunity to make something of himself. [BJ] has been compliant with his medicinal regime and shows quite some insight and awareness, if I can put it like that, as he appreciates that when he takes his medicine he does not offend or get into trouble. It is a one plus one equals two situation, [BJ], take the medicine and reap the results. I know that young people, in fact lots of people do not like taking drugs like this but if you were a diabetic you take insulin, would you not? It is all about the chemicals in our brains and you need some help, but importantly you are putting your hand up and asking for help and accepting it. That is a real credit to you and Mr Scott is right, I can take into account that attitudinal change in how I dispose of these charges today and I will.

[9] In relation to this jurisdictional issue, Oranga Tamariki were promoting a supervision with activity order. I expressed yesterday my concern about that proposal because I rather saw the supervision with activity order as essentially being a supervision order on steroids. As it turns out, there is a jurisdictional barrier to the making of that order because it would have to be made under s 307(1)(b). The catch there, Mr Scott has identified, is s 290A which requires a residential component which in my assessment is not met by [BJ]'s 101 status. All is not lost though because I am attracted to a pure supervision sentence, and I appreciate that might create some parity issues with the other offenders, but [BJ] is the youngest of them, and of course already has miles on the clock in terms of the time on remand, together with a compelling personal history which needs to be brought into account.

[10] Oranga Tamariki, in their helpful report, remind me that an important principle of sentencing is that the young person should be kept in the community so far as practicable and also that any sanction on a young person should maintain and promote the development of the young person within their whānau and ultimately should be the least restrictive outcome.

[11] The easiest response today, and one that would hardly be criticised, would be to impose supervision with residence. The additional information provided late yesterday on the tailored supervised education and mentoring for [BJ], which is one-on-one, persuades me that supervision is worth exploring for [BJ] today. It is not

too difficult to plot the trajectory of this young man if he is left to his own devices. It is not impossible, [BJ], to change trajectory or paths, but to do so requires two things: firstly an alternate, and there is an alternate now available for you; and secondly a willingness on your part to change. There is an alternative path for you. We all, [BJ], have good and bad in us. It is as someone once said, it is which dog you feed. Do you feed the bad dog in you or do you feed the good dog? You have got to feed the good dog. The choice is yours.

[12] I am persuaded that supervision is the appropriate outcome and I congratulate Oranga Tamariki for going the extra mile for [BJ]. I have given them a bit of a tweak as this process has gone through, [BJ], but they really have stepped up for you and have constructed a solid mentoring plan. This will be the only plan like this in this region. I doubt that there are many plans as well-resourced as this in the country at the moment, so what that is saying to you, [BJ], is that they do not see you as a lost cause. So if they saw you as a lost cause then they would be reluctantly telling me, "Give this boy some more time in residence and we will pick him up on supervision in his 101 order later on," but your social worker has really pushed the envelope on this for you. So while you have done this bad stuff, they see that actually you can make good. As I say, they could have accepted the inevitable and reluctantly recommended supervision with residence but they did not, they went out, worked on and resourced this plan which I now adopt and approve.

[13] You need to be aware, [BJ], that you have been thrown a lifeline here so if there is a breach then I am expecting breach action, but I rather imagine with this intensive mentoring and support that you are going to be kept so busy there will not be time for a breach.

[14] The upshot is, on the charges of burglary, aggravated robbery and sustained loss of traction, I make a supervision order under s 283(k) placing you under the supervision of the Chief Executive for six months from today's date. There will be additional conditions, they are numbered one to 12 in the plan dated 2 November 2017.

[15] While the victims of your offending deserve reparation orders to be made there is no prospect whatsoever of reparation being paid either by you now or in the near future, or by whānau. Accordingly, no orders, deserving as they are, can be made.

G M Lynch
Youth Court Judge