

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

This judgment cannot be republished without permission of the Court. Publication of this judgment on the Youth Court website is NOT permission to publish or report.
See: Districtcourts.govt.nz

NOTE: NO PUBLICATION OF A REPORT OF THIS PROCEEDING IS PERMITTED UNDER S 438 OF THE ORANGA TAMARIKI ACT 1989, EXCEPT WITH THE LEAVE OF THE COURT THAT HEARD THE PROCEEDINGS, AND WITH THE EXCEPTION OF PUBLICATIONS OF A BONA FIDE PROFESSIONAL OR TECHNICAL NATURE THAT DO NOT INCLUDE THE NAME(S) OR IDENTIFYING PARTICULARS OF ANY CHILD OR YOUNG PERSON, OR THE PARENTS OR GUARDIANS OR ANY PERSON HAVING THE CARE OF THE CHILD OR YOUNG PERSON, OR THE SCHOOL THAT THE CHILD OR YOUNG PERSON WAS OR IS ATTENDING. SEE

<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>

**IN THE YOUTH COURT
AT MANUKAU**

**CRI-2018-292-000086
[2018] NZYC 393**

**NEW ZEALAND POLICE
Prosecutor**

v

**[FW]
Young Person**

Hearing: 5 July 2018

Appearances: Sergeant D Cooper for the Prosecutor
C Leys for the Young Person
L Kovaleski for the Chief Executive Oranga Tamariki – Ministry for Children
A Ulu as Lawyer for the Child
V Han and C Talamaivao as Social Workers

Judgment: 5 July 2018

ORAL JUDGMENT OF JUDGE F J EIVERS

[1] This is a disposition hearing in respect of [FW]. [FW] was born on [date deleted] 2004 [personal details deleted].

[2] On [date deleted] 2018, [FW], as he likes to be known, was involved in criminal offending. That offending is five charges of escaping lawful custody, unlawfully taking a motor vehicle, failing to stop, reckless driving causing injury, and unlawfully getting into a motor vehicle.

[3] [FW] has been remanded under s 238(1)(d) since that time, some three and a half months in custody. On the face of it, these are not the sort of charges that would usually attract a young person spending such prolonged time in a youth justice facility, but the issue for [FW] was placement.

[4] There have been many family group conferences held. The last family group conference, held on 15 May, recorded no agreement. A social worker's report and plan was therefore called for, and I have that before me today. We have discussed the aspects of that plan in some detail, together with a care and protection plan which was put before me and which was filed on 3 July 2018.

[5] The social worker's report and plan for the youth justice matters set out [FW]'s background. He is described as a high-risk offender, and the offending in this case, [FW], was one where you took a car, drove at high speeds for a considerable length of time, and were stopped only when spikes were set up on the roadway.

[6] What is quite interesting is the report from the victims, and one of the victims was a lady whose car you ran into the back of. It always amazes me how gracious and forgiving some victims can be, especially once they realise that it is a young person that is involved and a young person who probably has not had the best of starts in life and has gone on the wrong tracks. In this report this victim, [name deleted], did not attend the family group conference, but in her email, she said she does not want to see [FW] in jail. She wants to see him turn over a new leaf. Although the offending caused her and her whānau great heartache, they will recover. She said that she really wants you, [FW], to make something good of your life and she wishes you all the best.

She is not seeking any reparation, meaning money, for the damage that you caused to her vehicle.

[7] The other victim is not seeking any reparation, but mentioned the damage to his vehicle, and said that he did not want to be involved in the family group conference.

[8] Therefore, the victims have been spoken to, and they have given their views. It is a very important part of the process, [FW], and it is important that you know what the victims are feeling. I always think it is a real shame that victims do not attend family group conferences because I think once they sit down at the table with a rangatahi like yourself and you are face to face, you will realise that she could be your nan, she could be your mum or your aunty, and so you see that person in a more personal light. I hope that as you go forward with your life and you find yourself in difficult circumstances – because you will, life throws all sorts of challenges in our way – that you might think twice about hurting somebody in that way.

[9] You have not had youth justice orders imposed before. There were issues trying to find a placement. Many of your whānau had other children they were caring for and that has been part of the reason for you being in youth justice so long. The report sets out your background. [Personal details deleted]. And you are supported by your dad and he is in Court here with you today, and I acknowledge him for that support.

[10] We had quite a big kōrero, your dad and I, talking about the plan to send you to [location deleted] to live with your mother and her whānau, and Dad is supportive of that. He wants to give you that opportunity, so he tautokos that idea, but he wants to make sure that he keeps in touch with you and has contact with you and you with your siblings, and that is important too. The social worker here today, is going to consider that and we have had a discussion about that today.

[11] I know you come from a large family. The report talks about your background and ways to try and help you do your best. It talks about how your mum and dad have done their best to try and manage your behaviour, so only you know why you get up to mischief, [FW]. There may be too much Maui in you, I do not know what it is, but

it is important, young man, that you start thinking about where you want your life to go. And maybe you should have a good kōrero with Dad about that, because he was young once, he probably made choices that were not the best at the time, and I am sure he does not want you to make those bad choices either.

[12] What is important now, [FW], is that you are supported by your whānau, and that you are supported by Oranga Tamariki, because Oranga Tamariki is in charge of your overall care, together with your mum and dad and your whānau, and so that is what we talk about when we say words like “interventions” and “custody”, where all we are meaning is that the Chief Executive or the boss of Oranga Tamariki is the person that is ultimately responsible for your care.

[13] What is proposed today by your youth justice social worker, and is supported by your youth advocate, is that you are given a 282 on these charges and that I approve the plan for care and protection, which is your Family Court file. That will then mean that you have nothing more to do with the Youth Court, but we continue along a path of care and protection, and that is the one that supports your everyday living.

[14] I refer to Ms Leys’ report, because it is an interesting report, [FW]. It is not something that I see in this Court every day, and that is what you have told Ms Leys about your goals, about what you want to do and the things you like to do and the things you need to work on. That tells me, [FW], that you have got a good brain, that you are an intelligent young man and that you have got a future. One of the things that Mr Tupaea tells me and is mentioned in here is that you love music. And I am not sure if Mr Tupaea has told you, because he is very humble and he is probably going to growl me after this, but do you know he was very famous? Have you heard of the Little River Band? When I was your age they were on the radio all the time, and I have got all the CDs. He is from the Little River Band. A guitarist in the Little River Band, our own famous musician here in South Auckland. So, it is awesome that he shared that time with you, but yes, he was a very famous musician in his day and he has come back home to be with his people and to help our youth, so we are lucky. So kia ora, Mr Tupaea, and thank you for helping [FW] with the music.

[15] You want to go back to school, awesome. You want to get your NCEA level 1 and 2, that is awesome. You want to go to your mentoring sessions, you want to build a better relationship with your [sibling], you want to stay out of trouble, you want to impress your family and listen to your family. You need to work on your behaviour, your goals, your manners. I think your manners are pretty good, as I said before. You are listening, well, you have had a long session today and you have been listening all the way, so obviously you have been working hard on that one. And you love being around your family. All those factors, if I think hard about them, are incorporated into your care and protection plan, so that is important.

[16] Before I leave the youth justice file, the police do not agree that you should be discharged on these charges today, and the reason for that is the usual course in Youth Court is that a young person does a plan. There are certain aspects to that plan: one is punishment, one is acknowledging the victims, another one is a rehabilitation path. What Sergeant [name deleted] is saying to me today is that none of that has been done, that while they acknowledge you have spent a long time in youth justice residence that the usual course has not been done, and they would prefer that that is done before it converts to care and protection. Now, you heard the sergeant and I having quite a long discussion about different parts of that. He is going to lose that battle today, because I am satisfied that a s 282 discharge should be given on these youth justice matters.

[17] My reasons for that are that, firstly, I am satisfied that the aspects that we would usually see in a youth justice plan are partly already accounted for and will be accounted for as you go through the care and protection plan. So, for example, the victims. They have been consulted, I know what their views are, you know what their views are. You have done an apology letter today. When I look at your goals that you set out to Ms Leys, you are already on a pathway to thinking about what you have done wrong, how you can make it right, and how you can make things right in the future.

[18] The second aspect is that it was appropriate that you were detained under 238(1)(d) in the early stages, but possibly at least a month down the track you should have been released into the community. It was no fault of the police nor of you nor of

your whānau nor of anyone, really, even youth justice and care and protection, that that could not be done. It is just a situation that we are finding at the moment, is that we have young people like yourself who should not be in custody but there is nowhere for them to go in the community. That is a gap that we as a people, have to look at, because while the personnel at the youth justice residence work hard and do a great job caring for you, [FW], and it is a good structure, good routine and you learn some good things at the school there, it is not intended as an ongoing measure, and it is not ideal that you are there with other young offenders in close proximity. What we are always trying to aim for is that you are back with your whānau.

[19] Because of the circumstances of your particular case, I consider that the time spent in custody should be taken into account as if it were the punishment aspect of any plan that you might do. And while you have been in youth justice you have been going to school, you have been making plans, you have been making goals. Your behaviour has been great in youth justice, so there have been no issues there, and I consider that the aspects that I would usually look to see in a plan have, by and large, been carried out already.

[20] The other aspect, and this is one that I discussed at length with [the Sergeant], is your age. You were [under 15 years old], when you committed these offences. The literature about keeping a young person in custody, and indeed the principles of the Act, support that you should not be kept in a criminal system or a detention system any longer than you need to. I am referring now to s 208(c) of the Act, which says that any measures dealing with young offenders should be designed to strengthen the family, whānau, hapū, iwi and family group of the child or young person, and to foster the ability of families and family groups to develop their own means of dealing with offending. Secondly, you should be kept in the community as far as is practicable and able to ensure the safety of the public. Your age should be considered when determining whether or not to impose sanctions in respect of offending, and the nature of those sanctions. 208(f) states that I should take the least restrictive approach that is appropriate in the circumstances, and 208(h) refers to vulnerability.

[21] When I consider all those principles and the law that has been developed around those principles, I am satisfied and I consider that it is appropriate that you

receive a 282 today, and that a good care and protection plan which wraps around you and your whānau should now commence. By discharging your Youth Court charges today, I am enabling you to come back into the community. I am enabling you and your family to strengthen your relationships. I am considering your age. I am also applying the least restrictive outcome, and it is appropriate in the circumstances, and given the amount of time that has gone by, that it is the correct course of action. I also note that these offences are not at the higher end of the scale, and in terms of sanction what you have done to date is adequate, in my view, in terms of addressing any other aspects of youth justice legal principles.

[22] In respect of each of these charges, [FW], you are given a 282 today.

[23] I now go on to look at the care and protection plan that is before me. We have had a rigorous discussion about this today. Your social workers, Mr Han and Ms Talamaivao, are both here today and they have spoken to me about the plan. My concern mostly, [FW], is that when you go down to [location deleted] that there is good support for you and your whānau. I am told that Mum has gone back there to be with her whānau. She has got good support from [close family members], that they will help care for you, and indeed your [close family member] is being assessed as a caregiver, so that she can support your mum. Your mum has her own house, she has a job, and she seems to be doing well. In terms of your placement, that seems to be a good start.

[24] Secondly, everyone is looking at enrolling you at the kura kaupapa down there in [location deleted]. That would be a great thing, in my opinion, but what I want to make sure is that you start school on day one, which is [date deleted], so it is not far away. Everyone has got a lot of work to do, and I would hope that even if all the paperwork is not finished you can still start so that you are there on day one and you do not miss any school.

[25] The other aspects of the plan include mentoring. It includes assistance with alcohol and drug counselling. You are going to be able to pursue your music, which is guitar and piano, and also, I know you are interested in sports. All of your goals are set out in that plan. A further component we talked about today was making sure that

you have that ongoing relationship with Dad and your siblings [in location deleted], and that is going to be worked on as well. Ms Talamaivao is going to speak to your dad about that and see what can be put in place. It might be irregular to start with, just to allow you to settle into [location deleted], but once you have done that it will be good that that is ongoing.

[26] Therefore, in terms of the care and protection plan, it is approved subject to those discussions that we had. The s 78 custody order is discharged. A s 101 custody order is made in favour of the Chief Executive. There is a review of the plan in three months in Manukau Family court.

[27] Good work, [FW]. It is up to you now, young man. You have plenty of support in place, Mum and Dad are right behind you, and the rest of your whānau, so good luck.

F J Eivers
Youth Court Judge