

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](http://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 YOUTH COURT**

**CRI-2018-041-000003  
[2018] NZYC 411**

**THE QUEEN**

v

**[FC]**

Hearing: 12 July 2018  
Appearances: J E Rielly for the Crown  
N M Graham for the Young Person  
Judgment: 12 July 2018

---

**NOTES OF JUDGE P J CALLINICOS ON SENTENCING**

---

[1] This is the outcome of a Youth Court sentencing in respect of a young man [FC]. [FC] had originally been charged with two offences of sexual violation and one of indecent assault, but the charge was effectively amended to be more of a representative nature. That was done largely because there was a highly commendable approach taken by [FC] and also [name deleted], who is the victim of his offending, after a restorative approach to this traumatic event.

[2] The matter was dealt with in an unusual and unique way, tailored for the special circumstances of this prosecution. There was a specialist restorative justice initiative undertaken through an organisation called Restore, which specialises in the very delicate matter of sexual offending.

[3] A family group conference itself, without that specialist component, could have been disastrous either for [the victim], her family or conversely for [FC]. For instance, if a conference had been poorly operated then it may have caused [FC] to take a staunch approach to the matter which would have, in general parlance, re-victimised [the victim]. Thankfully that did not occur, and throughout the process [FC] has accepted responsibility for what occurred, but not only responsibility, he has accepted genuine remorse and sadness.

[4] There is abundant information that has been made available to me through various reports, social work report, Dr Stephanie Dillon's report, which displays the depth of [FC]'s understanding of what occurred. It also highlights the characteristics which led to that offending. Those are characteristics which are not peculiar to 2017 or 2018, they are characteristics that have existed for many years. In this case, there was a situation of young people consuming alcohol, in their teens, that is nothing new. It involves the unhealthy peer attitude of young males, in this case a rugby group, who effectively adopted an approach towards sexual matters which was sport-like in mentality, without regard for the nature of the activities occurring. [FC] has accepted the summaries of fact and I need not repeat what occurred and I need not do that for the sake of this record.

[5] [FC] has no previous offending of any kind and all are agreed that it is unlikely he will do so in the future.

[6] I heard from Ms Rielly for the Crown and have read her submissions. The Crown support an outcome of supervision with activity, emphasising that it is very therapeutic in its approach in this case with ongoing counselling from Dr Dillon.

[7] The Crown had fully consulted with [the victim] and her mother as to possible outcomes. They did not wish [FC] to be sent to a Youth Justice Residence or to prison and I have expressed separately to them that they need to be commended for such a compassionate approach. The clamour for vengeful responses is all too often prevalent in our society.

[8] Mrs Rielly has noted, too, that [FC] deserves to be commended for his acceptance of responsibility. She refers to the restorative justice process to which I have made reference and to his regrets, sadness and remorse.

[9] Ms Graham endorses those comments and emphasises as well the wealth of information supporting this approach. She refers to the underlying causes of alcohol, attitudes to sexual matters, peer pressure and elements of immaturity. I emphasise that reference to immaturity is not in a pejorative tone, it is merely a reflection of age and stage.

[10] In terms of matters deriving from the reports, those submissions by both counsel are appropriate. I did note in Dr Dillon's report a rather concerning comment that [FC]'s father had told him that he was in idiot for pleading guilty to the charge. I have spoken to [FC] separately about that, because I did not wish him at all, ever, to have second doubts about the appropriate step he took in accepting the wrongfulness of his actions. I am extremely grateful that at least [FC], supported by his legal advice, had significantly greater intelligence and maturity than his father in not following that rather moronic suggestion.

[11] Given that [FC] has unreservedly accepted the amended summary of facts, he has accepted directly to the Court what he did, he has accepted it at the FGC, he has accepted it at the restorative justice, he has accepted the events to the psychologist and to his lawyer, then it is highly probable that if he had followed his father's advice and defended the original charges, then those charges would have been proven, he would

have been convicted and transferred to District Court and would be imprisoned for something approaching seven years in an adult prison. He can rightly look back and say he has made the right decision.

[12] I have read, too, [the victim]’s victim impact statement and the far-reaching implications the circumstances have had for her. She has expressed a view that she is pleased that [FC] has pleaded guilty and that his guilty plea has helped her. It has prevented her from having to go through the extreme trauma of a trial, which are always very unpleasant experiences.

[13] Against that background and having regard to the factors in s 284 Oranga Tamariki Act 1989 and the principles in s 208 of that Act, a therapeutic approach is entirely appropriate. The least restrictive outcome must be considered by me and supervision with activity is one of those. Anything more than that order, in this case, would be an injustice to all concerned.

[14] There is therefore a supervision with activity order made as per the plan, such order to expire on 2 December 2018.

P J Callinicos  
Youth Court Judge