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

**IN THE YOUTH COURT
AT WAITAKERE**

**I TE KŌTI TAIOHI
KI WAITĀKERE**

**CRI-2017-290-000249
[2018] NZYC 665**

THE QUEEN
Prosecutor

v

[AD]
Young Person

Hearing: 27 November 2018

Appearances: B Mugisho for the Crown
J Verry for the Defendant

Judgment: 27 November 2018

NOTES OF JUDGE A J FITZGERALD ON SENTENCING

[1] [AD], when I have sentenced you before for earlier offending, I have explained that Judges cannot just say what the result is and that is all; we need to give reasons. I know that you really just want to know today what is going to happen so I am just going to begin by saying that I will be transferring you to the District Court for sentencing. I now just need to spend some time, explaining how I have come to that result but I reserve the right to edit what I say because I am giving this decision in Court at the end of what has been a reasonably busy day.

[2] On 27 March 2018, I sentenced [AD] to six months of supervision with residence on two charges of aggravated robbery, one of unlawfully getting into a motor vehicle and one of theft. [AD] was granted early release from residence on 24 July 2018 and a supervision order was made that day. [AD] failed to comply with the supervision order and a declaration to that effect was made on 21 August 2018. My job today was to decide what order to make to replace that supervision order, which is now cancelled, and also to cover the following new charges that [AD] has admitted;

- (a) Endangering transport under s 270 Crimes Act 1961, maximum penalty 14 years' imprisonment.
- (b) Reckless driving.
- (c) Three charges of unlawfully taking motor vehicles.
- (d) One charge of operating a motor vehicle causing sustained loss of traction.
- (e) Failing to stop.
- (f) Failing to stop and ascertain injury.
- (g) Theft.
- (h) Unlawfully getting into a motor vehicle.

[3] That offending all having occurred on 18 August 2018.

[4] In coming to my decision, I firstly had regard to the objects and principles set out in the Oranga Tamariki Act 1989, which it is not necessary to go through in any detail now. Perhaps the most relevant in the current context is the need to hold [AD] accountable for the offending, to encourage him to accept responsibility but to also acknowledge his need and to give him the opportunity to develop in responsible, beneficial and socially acceptable ways.

[5] I have also had regard to all of the factors set out in s 284 of the Act that must be taken into account on sentencing. In relation to many of these, I am not going to repeat any of what I said in relation to the earlier offending. I covered such matters when I sentenced [AD] on 27 March this year for that earlier offending and my decision then should really be read together with this decision in order to understand the full context; in fact, to understand the complete context, it would also be appropriate to read the decisions or my sentencing notes from 6 and 29 June 2017.

[6] In relation to the new offending, the facts in brief are that on 18 August 2018, [AD] and an associate stole a [car]. Petrol was stolen from a [service station]. [AD] was driving the car and when stopped by police on State Highway 16 at Waimoku drove away with the police in pursuit. [AD] drove in a very dangerous manner, including reaching speeds of up to 180 kilometres per hour. The pursuit was abandoned, given the speeds reached and the risk to the public. A short time later, the police helicopter, Eagle, located the vehicle and followed it as [AD] drove at high speeds, overtaking vehicles, including crossing marked yellow lines and driving onto the road wrong side to evade police and then colliding with a bus on State Highway 16.

[7] [AD] then entered State Highway 16 the wrong way and drove at high speeds, at times reaching 135 kilometres per hour. Initially, [AD] kept to the breakdown lane but then drove in and out of the live lanes, swerving to avoid oncoming traffic. The footage from the Eagle helicopter has been shown in Court today and I am sure no one at all disputes the submission on behalf of the police that what the video shows illustrates considerable seriousness and a very high risk to public safety.

[8] In relation to [AD]'s personal history, characteristics and social circumstances, I will only add a little to what I have said on this topic in my previous decisions. [AD] is now 17 years and nearly [number deleted] months old. Nothing significant has changed from the position on this topic set out in my previous sentencing notes.

[9] In relation to [AD]'s attitude and response to the offending, he is reported to be disappointed and angry at himself. After he re-offended he did not want to return to [Youth Residence deleted] because he felt ashamed, having been released only a few weeks earlier. He is reported to now not be confident that he can remain at any Youth Justice residential homes or trust himself not to abscond. He expects and accepts being transferred to the District Court, where he will be facing a sentence of imprisonment.

[10] I agree with Mrs Verry's submission that is probably a realistic and even mature decision for [AD] to take but I also accept her submission that, whilst he has had a lot of resources allocated to support him over the last few years, that is not a reason to give up hope and that care needed to be taken before coming to the decision that [AD] should be transferred to the District Court, where there will be very, very little available to him in terms of appropriate supports.

[11] There is very little information regarding the response of [AD]'s family to the offending. His mother, who is unable to be here today, is reported to be very disappointed. There is also limited information regarding the effects on victims, many of whom were not able to be contacted.

[12] I do think it is important to note that for the earlier offending [AD] did serve the supervision with residence component, which was the primary means by which he was held accountable for that earlier offending. He is not being re-sentenced from the beginning again for all that offending; it is for his breach of the supervision order that he is being re-sentenced today. In relation to the new offending, it is only the charge of endangering transport that [AD] can be imprisoned for. The maximum penalty for that offence is 14 years' imprisonment. Under s 18 Sentencing Act 2002, [AD] cannot be imprisoned for any of the other new offending and there cannot be any uplift for

that new offending to whatever sentence would be appropriate in the District Court for the endangering transport charge.

[13] On that topic, it is not clear what the starting point for sentencing in the District Court will be. That is not information contained within the submissions that have been provided. Mr Mugisho for the police has estimated a starting point in the range of five to six years but conceded that is a guess; Mrs Verry thinks that the starting point is likely to be considerably lower than that.

[14] As well as considering the provisions of the Oranga Tamariki Act, it is also appropriate to have regard to the international conventions to which New Zealand is a party in this situation; given that [AD] is still 17, those conventions are still relevant and contain important provisions such as ensuring that custodial sentences are always a matter of last resort and when imposed should be for the shortest possible period appropriate in the circumstances. Obviously, that is an issue to be considered at sentencing but I also have had regard to it today.

[15] If [AD] was sentenced to six months of supervision with residence today, he would be eligible for early release on 26 March 2019. That would leave four months for any supervision order that followed. [AD] has been in custody for a little over three months. If he was sentenced to three months' supervision with residence today, he would be eligible for early release on 26 January 2019 and there would then be about seven months' time during which a supervision order could apply.

[16] Before making my decision to convict and transfer to the District Court, I needed to come to the conclusion that those options were clearly inadequate in the circumstances. I have reached that view, not only because of the very limited timeframe over which those orders would apply; there is also the concerning history of [AD]'s noncompliance with previous orders made in the Youth Court.

[17] It is of concern that there will be little available in the District Court for someone of [AD]'s age in terms of monitoring and oversight in the community when he is released from prison; however, what is available in the Youth Court has not been adequate or sufficient previously to adequately mitigate the risks of re-offending.

[AD] stands out as one of the few young people who has persistently not been able to take advantage of the excellent help and support offered by the youth justice programmes contained within previous orders.

[18] In my assessment, matters have now reached the point where what is available in the Youth Court is clearly inadequate. In coming to that decision, I have taken into account the report provided from the residence indicating [AD]'s lack of motivation and failure to engage during his time on remand. It is for those reasons the decision is made to convict [AD] today in order that he be brought before the District Court for sentencing.

[19] I will set the matter down for sentencing on [date deleted] 2019 at 2.15. A provision of advice to courts report is ordered, plus the reports necessary to look at the electronically-monitored sentencing options of home detention and community detention.

[20] I am mindful that such sentences might not be recommended given [AD]'s poor compliance with electronically-monitored bail but I agree with Mrs Verry it would be appropriate to call for such reports so that all sentencing options are available if an appropriate address can be found.

[21] [AD], can I just also explain this. I have already told you that you are convicted and transferred to the District Court for sentencing. The sentencing will be on [date deleted] next year at 2.15 in Auckland and I will be the Judge. You will be staying at [the Youth Residence] in the meantime.

A J FitzGerald
Youth Court Judge