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**IN THE YOUTH COURT
AT HASTINGS**

**I TE KŌTI TAIOHI
KI HERETAUNGA**

**CRI-2018-220-000067
[2019] NZYC 59**

THE QUEEN

v

[OQ]

Hearing: 31 January 2019

Appearances: A Bryant for the Prosecutor
R Philip on behalf of K Monk for the Young Person

Judgment: 31 January 2019

ORAL JUDGMENT OF JUDGE B M MACKINTOSH

[1] Essentially, we are here today because I have to decide whether or not this matter should stay in the Youth Court and essentially impose a group 5 response, or send it through to the District Court for sentence. I have just been listening to the various agencies and everybody who is involved with your life at the moment so that I get some sense of what the best outcome is going to be for you and for also the public at large.

[2] Basically, you are here today because last year you committed an aggravated robbery. That happened on [date of offending deleted] and it seems that you and some others had been at a bar in [location 1 deleted] and one of your associates anyway approached the victim who was an [occupation deleted] here I believe asking him if he wanted a ride home anyway. They drove away with him in the car and they drove around and at one point the victim withdrew \$20 from his account and handed the money to you, you were with these people. I think that was essentially for petrol money. He wanted to go home I think to [location 2], but anyway you were in [location 3] driving around into a service station. You went in with the victim to get some cigarettes. He just wanted to be taken home but, anyway you guys were not taking him home. Eventually you went off driving again and he thought he was being taken home but [the driver], drove to [the shops] and the victim tried to get out and then everyone started assaulting him, including you. While he was getting assaulted you put your hands into his pocket and a cellphone (inaudible 12:25:12), handed that to one of your associates along with his bankcard. She went off to the ATM machine and tried to basically use it to get something out but could not because she did not have the PIN number. Anyway, she came back to the car and then you then asked one of the males to hand over a knife to you. Then you held that to the victim's chest demanding him to tell his [bank] PIN number. Obviously, he got scared and apparently he was screaming for help and he grabbed your wrist and was pleading to be let go. Eventually he did give out the PIN number and [GL] went and withdrew \$1900 from his account and after doing that they drove into [location 2] and you let him go.

[3] He ended up with some cuts on the left side of his neck and some bruising. He has made a victim impact statement. He is from [overseas]. He had been out here working. He was saving some money for his family and for their house and things and that lost money was a lot to him because it was a lot of money and he suffers some

stress and anxiety now as a result of what happened to him on that night, so that is the nature of the offending.

[4] Now, ordinarily for that kind of offending starting points could easily be somewhere between 18 months and three years' imprisonment, so it is a big deal. It could even be higher than that because there was a knife involved, money was taken and spent. Anyway, the end result is though that ultimately any District Court Judge sentencing you, by the time you got a credit for your plea and you got credits for your age and the other things that are going on in your life now, a sentence short of imprisonment would be imposed, I have no doubt about that.

[5] But what the Crown is saying is that the Court would have a discretion to impose intensive supervision as a sentence which means that you would be monitored by probation with a rehabilitative sentence, so doing something like you are doing now all to follow on and also possibly with judicial monitoring by a Judge just to make sure you do not come off the rails. The Crown is saying that that is the appropriate outcome because, of course, you are going to be 18 in [month deleted], we are running out of time in the Youth Court and whilst I do understand and the Crown said today that there are other follow-up options available post you leaving the residential side of [Youth Residence deleted], really that will depend on your own voluntary attendance through all of that without the sort of oversight for a short period of time from care and protection because there is a s 101 order, although I am told by your social worker today that there could be possibly even another year after that available to you.

[6] But essentially what I have to do is take into account a number of things when I am making this decision about whether you stay in the Youth Court or go to the District Court and of course the first thing is the nature of the offending. Well, it was a serious offence. I have just referred to all of that and I think you acknowledge that because it involved a knife. There was a lot of money taken and you yourself it could not be said you were on the fringe, you were quite involved by participating in the punching and the kicking and threatening him with a knife and that is what eventually caused him to give out his PIN number.

[7] I have to take into account your history and I have a lot of information in relation to that. You have had, I think, a very difficult background and upbringing. It has been pretty tough, but you are looking good at the moment and I can see you are doing, despite having had a rough start, you are doing the best you can now anyway but by taking this treatment at [the Youth Residence] to do the best you can to get over that. As I say without getting too much into it, the family history has been difficult.

[8] As far as your own attitude is concerned, (inaudible 12:30:31) I think on the face of it, it has appeared that perhaps you felt more concerned about the situation that you found yourself in rather than the victim's early on, but since you have been at [the Youth Residence] I think you have now realised that (inaudible 12:30:55). It takes some time I think to work through these issues.

[9] The other thing I have to consider of course is the response of your own family and whānau to what has been going on. Your dad is here today and I know that he does love you. But I think that if he is honest, [OQ] needs a lot of support to get through these addictions she has got and you are not really in any place other than to show your love, you do not really have the ability to assist her in a rehabilitative way like the people of at [the Youth Residence] for example.

[10] I think your other family members generally feel that you need now and have got to the point where you need to take ownership of your own decisions that you make and do something about that. Your grandmother and aunty who were at the family group conference they would help you with that, but essentially really it is up to you to do something about it and I think you understand that.

[11] As far as apologies to the victim is concerned, there is reparation sought. The victim has gone and not been part of the family group conference. He has basically gone home, but there is scope and room for you to apologise in your own way down the track.

[12] The effect of the offending on the victim, I have talked about that and he obviously suffered some stress and anxiety. It was difficult for him. He lost the money and now has just decided not to come back to New Zealand. A lot of these workers

come over here for jobs because it is a better chance for them than it is at home, so in a way what happened that night took that away from him.

[13] I need to think also about previous offences by you [OQ] and we know each other. I have met you before. I have seen you over the last few years and I know that you do have a history in the Youth Court. Sadly, it has involved dishonesty offending, a recent tendency to violence as well. You have been on supervision and you were on supervision until just a few days before this last incident happened, so it has been disappointing that really all those outcomes have not really achieved the desired outcome if I can put it that way.

[14] As far as what has been agreed at the family group conference I understand that there was no sort of general agreement about what to do next.

[15] As far as thinking about what has really caused your offending, well, I think we can all agree that the background and history that you have had with the exposure to family violence, alcohol, cannabis and other drug use has had a huge impact on where you are at now, but there are still options available. Ms Monk says that the continuation of your placement at [the Youth Residence] is very important because drug and alcohol abuse seem to be one of the main drivers of what causes you, or one of the main reasons why you get into trouble. She is submitting that I should deal with it by way of a supervision with activity order which would essentially direct you to remain at [the Youth Residence]. She acknowledges that any sentence by me go through to September this year, so there is eight months left, and she thinks that that would be the appropriate outcome.

[16] I think that as far as your attitude is concerned [OQ], I think it is significant now that you have recognised that when you have got into trouble you have obviously been around people who have got issues with alcohol and drugs and who are also getting into trouble. So two of the key things are, are they not, to choose your mates carefully and secondly, to also keep away from the alcohol and drugs. They are easier said than done so you need a lot of support and help in relation to that.

[17] You are currently at [the Youth Residence] and I have been hearing all about that and you are now doing well, so that is good.

[18] I think sometimes though probably you need quite a bit of assistance. What we have seen in the past is that you get yourself into risky situations, so you really need to learn how to manage those.

[19] One other consideration, although it is not currently listed in the considerations in the statute now but it is going to be, of course, is protection of the public and this situation was one where a member of the public was seriously put at risk. He was violently assaulted. You produced a knife. That could have ended very, very badly all round and he was robbed of a lot of money, so we need to make sure that any outcome that we provide for you gives the public the best chance of not being hurt in any way. You have been assessed as a high risk of reoffending so what we put in place needs to really make sure that we work on all of that for you.

[20] What the Crown is saying essentially is that given all of these things that effectively a six month supervision with activity order would not be sufficient to really address the underlying causes of your offending and what they are submitting is it needs to go through to the District Court for sentence and there intensive supervision with judicial monitoring could be imposed and that would be the most appropriate outcome.

[21] So having thought about this today and having talked to all the clinicians who are here and your support workers, having read all the paperwork that is in front of me, as I say, I take the view that we are all here really to try and get the same result which is the best outcome for you. I believe that in terms of all the considerations that I talked about and taking all those things into account, that the best outcome for you and also for the public would be one where I know that I can impose a rehabilitative sentence for a good length of time. So I am going to transfer it through to the District Court with a view of imposing intensive supervision perhaps with judicial monitoring. We will see about that.

[22] What I am going to do is I am going to order a pre-sentence report so that probation can look at that and we can just structure exactly the right sentence for you. But in the meantime, you stay at [the Youth Residence] doing what you are and doing well because you are doing well and I am really pleased to see that. I know with these kinds of issues that you have, the more that we can offer you in the long term the better it will be for you. We will put it through now to [date deleted], so that will be here in the Hastings Court, but that gives you still three months now to carry on with the good work that has been done and we will have a look at it all then and we can make some orders as necessary.

[23] Thank you very much for coming today and I am glad that your visit with Dad went well last night. Mr Philip said you made some good choices, so that is really good. You are looking really well, you are looking lovely, and you are looking healthy and I think that you are in a good space now, so let us just keep up the good work.

[24] Your bail continues on the same terms and we will see you back here on [date deleted] and if possible, I would like another update from [the Youth Residence].

B M Mackintosh
Youth Court Judge