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**IN THE YOUTH COURT
AT HAMILTON**

**CRI-2017-219-000224
[2018] NZYC 478**

THE QUEEN

v

**[YV]
Young Person**

Hearing: 15 August 2018
Appearances: S Gilbert for the Crown
M Young for the Young Person
Judgment: 15 August 2018

ORAL JUDGMENT OF JUDGE L M BIDOIS

[1] [YV], you are before the Court for consideration of an application to transfer to the District Court to be sentenced on a number of matters. That application is opposed by your counsel.

[2] You have not denied, so effectively pleaded guilty to two unlawful getting into motor vehicles, two separate aggravated robberies, an aggravated wounding, using a document, unlawful taking and a burglary. The aggravated robberies and the aggravated wounding charges attract the Court's jurisdiction to consider a transfer application.

[3] The Crown advocate that a transfer to the District Court with a sentence of imprisonment ultimately being imposed is the proper way to deal with you. Your lawyer recommends supervision with residence for three months followed by six months' supervision order as the appropriate way of dealing with you.

[4] In relation to the law s 283(o) allows the Court to transfer serious cases to the District Court for sentencing. Section 289 provides that the transfer is effectively a matter of last resort because the Court has to be satisfied that the Youth Court options must be clearly inadequate to address what has occurred. Section 284 provides mandatory considerations which the Court has to take into account. The Court must have regard to United Nations convention on the rights of children, Beijing rules and the wider objects and principles of the Oranga Tamariki Act 1989,

[5] The Crown says that you are [over 17 years old] at this stage and the Youth Court options available to it are clearly inadequate given the seriousness of your offending, the circumstances of your offending and there is only [limited time] until you turn 18 at which time any Youth Court sentence or order will expire.

[6] The cases that the Crown rely on include *Powhare v R*¹ in which the Court said it (Youth Court) does not cater for young offenders especially those approaching the age of 17 whose offending is alleged or is accepted to be so serious that it is tantamount to adult offending. *R v S T & W L*² where the Court said the nearer that they are to the

¹ *Powhare v R* [2010] NZCA 268.

² *R v S T & W L*

age of 17 years then of course the less time that there will be for any restorative or rehabilitative efforts in the Youth Court. The cases where there has to be a penal outcome to satisfy public interest in offences so serious and that there has to be both personal and general deterrence and denunciation. The Crown also rely on *Police v L B*³ where L B had committed two aggravated robberies in the early hours of the morning on different occasions premises were targeted, the victim faced multiple offenders, offenders were disguised and the offending had an impact on victims. The Court in that case transferred to the District Court.

[7] Your counsel has filed written submissions and I have heard from Ms Young. The matters that she raises is that the Court should give you the opportunity of being dealt with in the Youth Court by way of three months' supervision with residence. The offending was over the course of one year. The first aggravated robbery had an element of opportunism about it. The second aggravated robbery was committed whilst you had removed your electronically monitored bail bracelet. Your counsel puts quite a bit of emphasis on *Churchward v R*⁴ where the Court of Appeal received evidence from two clinical psychologists with respect to adolescent brain development. The Court there said "that diminished decision-making ability amongst adolescence is exhibited with regard to hot-processing, less efficient than adults in processing information and lacked life experience. Psycho-social and economic emotional influences can contribute to immature judgements and therefore bad decisions. During adolescence the developing brain is very much influenced by social factors such as family stability and the use of substances. Adolescence are more orientated towards peers and responsive to peer influence than adults and have a diminished ability to control impulsive behaviour. Adolescence tend to focus on the here and now rather than long-term consequences. Research findings suggest that adolescence discount risks and calculate rewards quite differently from adults."

[8] Your counsel submits that there is sufficient time between now and you turning 18 to address your rehabilitative needs. You are doing well at the present time. Accountability can take into account the fact that you have spent five months on

³ *Police v L B*

⁴ *Churchward v R* [2011] NZCA 531.

remand in a residential facility to date. Emphasis has been placed on your social worker's report and that in itself supports retention of you in the Youth Court.

[9] The Court needs to consider the s 284 factors starting with firstly nature and circumstances of the offending.

[10] There was an aggravated robbery in March 2017. It was a street robbery where the victim was assaulted by a group of offenders including yourself. Property was taken. You physically punched the victim. He was outnumbered. He was chased. A card was taken from him and it was used by you and associates shortly thereafter.

[11] There is a burglary and an unlawful taking which are unrelated. That was effectively a ram-raid by you of a service station whilst you were driving a stolen car.

[12] The aggravated robbery and aggravated wounding occurred in March of this year. You were disguised. There was entry by you and a young adult offender into a dairy. Your co-offender was armed with a machete. You had a tomahawk axe. The victim was confronted. He was struck with the machete by your co-offender to the head and to the arms when he had tried to defend himself. He was cut. Those lacerations required stitching. So there was the use of a weapon. You came to your co-offender's aid. You stomped on the victim's head twice at least to try and ensure that he let go of the hair of your co-offender.

[13] Substantial cash and cigarettes were stolen, in excess of \$14,500. You ended up with half of the proceeds. The \$14,500 that I referred to is simply the cash part of the bootie that was taken.

[14] That first aggravated robbery would not have attracted the transfer application but the second aggravated robbery certainly has. Your co-offender was 17 years at the time. In terms of *R v Mako*⁵ an aggravated robbery of a dairy would normally attract a starting point of four years. Where there is actual physical harm then sentences in excess of five years can be expected. I am told by the Crown prosecutor this morning that your co-offender has been dealt with. There was a final starting point of 10 years

⁵ *R v Mako* [2000] 2 NZLR 170 (CA).

which was reduced to one of five years for the aggravated robbery and aggravated wounding and that co-offender ended up receiving a sentence of five years' imprisonment. That clearly demonstrates how serious this offending was.

[15] It goes without saying that the second aggravated robbery was committed whilst you were an absconder on EM-bail. You cut your bracelet off. You were only [deleted] days short of turning 17 so you were pretty much a young adult. These premises were targeted. There was planning in that you had to obtain weapons and disguises.

[16] The second matter is personal history and I turn to your social worker's report to address your personal history and I commend the social worker for a very comprehensive and thoughtful report that has been provided. She says that you are the second oldest child of [AF] and [BM]. You have had an extensive care and protection history with Oranga Tamariki and CYFS between 2003 and 2016. There was significant violence within the family. Your parents, there was in terms of concern and neglect of the children alcohol and cannabis abuse, lack of engagement with the Ministry as they were very oppositional, lack of insight. [BM] over the period of time faced incarceration. The Ministry were granted custody but later you were returned to your parents' care. Further concerns have been expressed. Those concerns have continued to centre on family violence, drug and alcohol use, neglect, lack of parental supervision and generally inconsistency in ensuring the needs of the children are met.

[17] From an educational perspective 13 different educational providers. Your father has had himself a challenging upbringing. Your mother and her siblings were well known to the Ministry and had been in long-term custody of the Chief Executive since she was 11 years of age.

[18] Obviously, you have had a dysfunctional upbringing causing inter-generational behavioural issues and criminality. There is no doubt that your cards have been marked well in advance of you committing these offences.

[19] I have to have regard to the attitude of yourself, a young person. I again return to the social worker's report. You regretted your behaviour. You were apologetic.

You wanted to do a face-to-face apology rather than write a letter. You have told the social worker that you would have acted differently. You have shown some insight into the effects that your offending has had on the victim.

[20] For your offending itself you had had an argument with your girlfriend and become angry and went off and that culminated in the second aggravated robbery. The Crown suggest and I agree that there was some minimisation by you in terms of your role. In terms of the street aggravated robbery you were an assailant. You used the card that was obtained from the victim. In the second aggravated robbery it is acknowledged that you were not the one that used the machete but you saw what had gone on. You saw blood. The victim was vulnerable when you stomped on his head. Of course you took weapons there. Your explanation was these shop owners are now starting to arm themselves and fight back but the types of weapons that you took, which was a machete and an axe are pretty lethal in themselves and if the shop owners tried to defend themselves well then you should have left rather than becoming involved in a physical confrontation, particularly your co-offender.

[21] There is the response from your family. They are disappointed with your behaviour. They will continue to support you. They are prepared to support you in the future. They are unable to make any payment of reparation.

[22] The next matter is the effects your offending has had on the victim. The victim of the first aggravated robbery wanted nothing to do with the Court process. He was obviously distressed by the encounter, walking home, being confronted by pretty much a gang of youths and being assaulted, attacked and robbed. The victim of the second aggravated robbery it has had a devastating effect on him. It has had a huge impact on his family. There has been a significant financial loss which cannot be compensated by your family. He wanted the maximum term of imprisonment imposed for the offending that you and your co-offender meted out to him.

[23] The next matter is criminal history. You have got four notings for burglary. There has been a prior interest by police and other matters but I do not take that into account.

[24] The last matter is your prospects of rehabilitation and I again return to your social worker's report. You said that your decision-making was impulsive. There is a need for you to be provided a safe, stable and controlled environment where you continue to be challenged about your offending, your decision-making and your world views. You need to receive counselling for your decision-making and impulsiveness. You need to be supported to explore what your life goals are and develop yourself. You need to be provided an environment where you can progress your education and employment pathways. You have identified potential educational pathways. You want to make different life choices. You are described by the CARE team as being a mature leader, you are talented in sports, you have potential, you are currently struggling to manage yourself in some respects. You have recently completed a budgeting module. You have completed a certificate in job-seeking. You have completed the national Trades Academy [details deleted] course. You have attended the eight-week Inspire Outdoor Educational programme. You have used your time in residence to reflect and develop yourself. You are described as being outgoing and having good self-esteem. Your social worker obviously supports retention in the Youth Court.

[25] In relation to the decision that I have to make you are in a controlled environment and are doing well. For the first time in your life you are probably now focusing on bettering yourself as a person. The biggest problem is the lack of time measured against the seriousness of in particular the second aggravated robbery. Three months' supervision with residence is inadequate in my view to reflect the seriousness of what occurred, even bearing in mind the five months that you have spent which is not insignificant for a young person. The proposed six months' supervision order to follow is in itself inadequate to address what is in my view deep-seated needs that you have.

[26] We have a young person who is being kicked from pillar to post by parents, despite CYFS intervention not a lot had changed. You are progressing through to now street robbery with violence, a ram-raid using a stolen car, a failure to comply with bail, both conditions and turning up for Court. You are someone who is prepared to cut a bracelet off and then commit an aggravated robbery whilst an absconder where serious weapons were taken and were used in that robbery. Long-term support and

intensive work is required to turn your life around. It is hoped that that can be provided in a Youth prison.

[27] I consider the available sanctions in the Youth Court as being inadequate at this stage so I grant the transfer to the District Court on the two aggravated robberies and the aggravated wounding charge.

[28] In relation to all the other matters I am going to deal with now by imposing a s 283(b) noting that records that.

L M Bidois
Youth Court Judge