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**IN THE YOUTH COURT
AT HAMILTON**

**CRI-2018-219-000090
[2018] NZYC 484**

THE QUEEN

v

[HH]

Hearing: 20 August 2018
Appearances: L Dunn for the Crown
S Nepe for the Young Person
Judgment: 20 August 2018

ORAL JUDGMENT OF JUDGE L M BIDOIS

[1] There is a s 333 report which is a forensic assessment. That says that he understands the Court process and that there were no issues with his fitness to plead. The fact that he entered a non-denial last Tuesday means he is entitled to significant credit. Something like two to three years may be knocked off what is likely to be a sentence of imprisonment. If he was an adult offender he could expect maybe four or five years to be taken off his sentence because of the fact that he accepted what he did.

[2] As the Judge, I had no difficulty in accepting his plea having seen the summary and what was alleged to have occurred. The complainant herself was present and ready to give evidence. It is a decision that weighed heavily, obviously, because of what they are involved in, whakamā and his acceptance of what he did. There were some significant injuries that occurred to the victim which were inconsistent with any claim that this was consensual.

[3] It was a burglary where he entered a house, no doubt to steal, but under the influence of alcohol and drugs some serious shit went down and he knows that. The system, unfortunately, because it is a Youth Court matter there should have been better liaison. But, as I understood there were no family here last Tuesday or if there was it was not brought to my attention so that I could ensure you were aware of what had occurred. He had the opportunity to think long and hard. This was not over in 10 minutes. The matter was stood down for him to think through what is alleged against him. It was stood down again to give him the chance to reflect and think it through just to make sure he was making the right decision.

[4] It was a huge burden but it is going to help in his rehabilitation. If you deny your behaviour when we know you did it then how can you get the necessary help and treatment because you are still in denial? An acceptance of responsibility by him will mean that with whatever counselling support can be provided there is a greater chance of that being successful when you accept what you did. Of course, the other thing is it is years off what would otherwise be an appropriate sentence. That might be hard to understand now but in a few years' time you could say, "Well I could have been getting out now," or, "I could be going."

[5] It is also going to help him in the event that I transfer it to be called in front of the Parole Board. Because it is likely that the sentence, if he goes to prison, will put him in the Parole Board category. For the Parole Board, I am a member on that. People come before us who have accepted responsibility they are treated, not differently, but there is a better acceptance because they have admitted what they did, they are not in denial and so it improves his prospects of parole in the long run.

[6] He is only 17 now, he is only a young man so he still has a long life ahead of him. But the reality is he has to learn from his mistakes. It was a huge mistake and it is great to see so many whānau here now. Obviously, it would have been great to have that support a few years ago, of course, through those difficult teenage years. He has cut off his bracelet, he was already on a sentence and he has gone on to re-offend.

[7] The reports that I have all say that he is a pretty quiet young man. He finds it difficult to engage because of a lack of self-esteem really I suppose. He is a big boy and that probably creates some issues for him but also gives him, I suppose, a bit of respect as well. But, those are the things that he has got to learn from.

[8] I have to determine whether I transfer the matter to the District Court.

[9] The Crown seek that he be transferred for the reasons that you have all heard. [HH]'s lawyer argues that I should retain the matter. She sets out the law, the objects and principles that I am required to look at. She says that he has been in custody for some time now and that can be taken into account. He is [age deleted] now so there is still [deleted] months, effectively, to run through before he turns 18 and all Youth Court orders expire. That is a significant period. There is time for us, effectively, to save him and it is not a case of him having repeatedly come before the Court.

[10] He is a young man who is motivated to change. He talks about prospects for the future and the love of his [child]. Ms Nepe says that to transfer him to the District Court will mean that he will miss the rehabilitative interventions that are available to him.

[11] I have to consider the factors that are set out and the serious nature of the offending. There is no doubt that what occurred was serious. It was effectively a home invasion motivated by burglary that turned into a serious sexual assault on the victim in the presence of her [young] year old daughter. There was actual violence, there is inherent violence in the sexual offending, there was forced movement of the victim from one area to another and then of course an attempt to get the adult victim to drive him away.

[12] In terms of the circumstances of the offending he was on a supervision order and he had cut off his electronically monitored bracelet. This offending occurred whilst on the supervision order and while he was effectively a bail absconder. I have to look at his character. He is a young person, he has had a history but obviously this is by far the most serious. This is the first type of offending of a sexual kind. He has been subject to support in the past.

[13] In terms of his attitude towards the offending he accepts responsibility and he entered non-denials. My impression was the reluctance over the last five or six months in getting to a fixture was more that he had difficulty in accepting that he behaved this way, the enormity of what he did, the whakamā and the embarrassment that goes with it. He has shown some insight. The fact that it was a late acceptance of responsibility means that he is entitled to significant credit. He is prepared to express remorse. He is not in a position to pay reparation.

[14] The effect the offending has had on the victim is significant. There is a victim impact statement which I do not go through now but is relevant for sentencing.

[15] The social worker has provided a report in some haste and I am grateful for that. It sets out [HH]'s background and his family upbringing. But, at the end of the day the social worker says that the Youth Court does not have any effective rehabilitative measures to address his offending behaviour and to minimise the risk of re-offending. So that supports a transfer.

[16] There is a lay advocate report that has been provided which I am grateful for. That sets out a lot of his personal circumstances and his family situation. Within that

he says that he is angry with himself for doing such a stupid thing. Well, stupid is one description but it is far more serious than stupid.

[17] There is, as I indicated earlier, a 333 report. That was prepared on the basis to check whether he was fit to plead. The psychologist said in the second to last paragraph, “[HH] has been through the full range of sanctions available in the Youth Court. If [HH]’s involvement was substantiated,” and it has been, “The risk, issues and treatment needs demonstrated in the index offence are beyond what can be managed in the youth justice system.” So, even the psychologist recommends a transfer so that his offending can be managed in the adult Court.

[18] I am aware of decisions like the recent Principal Youth Court Judge Walker’s decision of *Police v SD* where he traversed all the principles and objectives that need to be taken into account.¹ In that decision the Judge says that the fact that someone might end up in jail is not decisive.

[19] In this instance, there are two factors that are important. The level of criminality displayed went beyond what, in my view, the Youth Court can offer in terms of supervision with residence and supervision. Some serious time in prison with access to whatever programs are available are the only ways that his rehabilitative needs can be addressed and the community protected. Of course, the fact that he has now turned 17 means that there is limited time available for the Youth Court.

[20] Accordingly, in my view a transfer to the District Court in relation to the most serious matters is granted. Those are the matters that are set out in the Crown charge notice. It seems to me that in relation to all the other matters including the declaration matters I should give a notation because those matters can then be brought to an end.

[21] You are to be detained in custody pursuant to s 238(1)(d) to 9 October at 10.00 am. A pre-sentence report and restorative justice meeting is called for.

[22] [HH], I am calling for two reports, a probation report and a s 38 report. No-one is saying you have a mental disorder, okay, so no-one is saying you are crazy or

¹ *Police v SD* [2018] NZYC 169.

anything like that. But I want them to talk to you about what you were thinking at the time you committed this offending so that we can provide some treatment for you when you get to the prison.

[23] What I see on the Parole Board is that people just languish there, nothing happens until towards the end of their sentence and then it is too late. You are a young man and so we have to try and get you treatment as early as possible for as long as possible to help your prospects in the future. But you need to engage. I know you are shy but it is confidential, it will only come to your lawyer and the Court and obviously it is important for your future.

L M Bidois
Youth Court Judge