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IN THE YOUTH COURT
AT MASTERTON

I TE KŌTI TAIOHI
KI WHAKAORIORI

CRI-2018-235-000015
[2019] NZYC 81

THE QUEEN

v

[ZD]

Hearing: 20 February 2019

Appearances: E Light for the Crown
S Taylor for the Young Person

Judgment: 20 February 2019

NOTES OF JUDGE A P WALSH ON SENTENCING

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[1] [ZD] appears today for sentence in respect of three charges comprising aggravated robbery, driving while suspended, and unlawful taking of a motor vehicle. All these offences occurred on [date of offending deleted] 2018.

[2] On [the date of offending], [ZD], together with an adult co-offender, were on [street deleted]. They found a Nissan motor vehicle parked on the side of the road. [ZD] broke a rear quarter light to gain entry to the vehicle. The co-offender got into the vehicle. He then used a tool to break open the ignition barrel and start the engine. The vehicle was stolen as part of a pre-arranged plan to drive from [first town name deleted] to [second town name deleted] to rob the [store deleted] in [second town name deleted]. It is said [ZD] and the co-offenders planned to steal tobacco and cash. [ZD] was armed with a screwdriver; the first co-offender was armed with a knife.

[3] They picked up the second co-offender, where they confirmed the plan. On the way to the dairy, they covered their faces with clothing to hide their identities. There was a plan discussed as to how the robbery would proceed. One of the co-offenders was to use the knife to control the store owners, and [ZD] was to use his screwdriver if anyone attempted to stop them leaving.

[4] When they arrived at the store, the first co-offender with the knife, followed by [ZD], went into the store. He jumped the counter and opened the cigarette cabinet. [ZD] stood on the other side with his screwdriver in hand. The victim heard the door buzzer and walked out to the counter. The co-offender confronted him. He held a knife towards the victim and warned him to stay away. Fearing for his safety, the victim fled into a back room and locked the door. The co-offender placed cigarettes in a bag. [ZD] leant over the counter and stuffed cigarettes down his top. [ZD] then ran from the store briefly before returning to help the co-offender empty a black cash drawer he had pulled from underneath the counter. Cash was removed from the drawer. The co-offender tried to open a cash register on the counter but was unsuccessful. They then drove off.

[5] A neighbour followed the vehicle. The police became involved. [ZD] and the co-offenders were subsequently located by the police and arrested. When he was spoken to, [ZD] admitted the facts. He said he had planned the robbery with the

associates, but refused to name them. He said he was only armed with the screwdriver in case anyone jumped him while leaving the store.

[6] A family group conference was held, 28 June 2018. A plan relating to completion of community work, payment of donations and reparation was agreed, but there was no agreement as to final outcome.

[7] An updated report from the social worker has confirmed excellent progress was made by [ZD] in completing the requirements of the family group conference plan, with the exception of him getting a driver licence. Initially, he was to do community work for 60 hours. He completed 30 hours and, after getting employment, it was agreed the remaining 30 hours could be met by him paying a donation of $300, and he has done that. He was to pay reparation of $176, and he paid that amount. He was also required to pay a $200 donation to a charity and has done so. He completed apologies. The report indicates he was considered to be a hard worker. To his credit, during the time the plan was being carried out, [ZD] adhered to his terms of bail and did not commit any further offences. It is evident from my reading of the family group conference plan, [ZD] was well supported by members of his whanau and that support has been ongoing.

[8] The issue to be determined is whether [ZD] should now be discharged under s 282 or an order made, as sought by the Crown, under s 283(c).

[9] The Crown contend, having regard to the seriousness of the aggravated robbery, it is appropriate that an order be made under s 283(c) for [ZD] to be called up within six months if required. The Crown noted a number of cases where similar issues had arisen; in particular *New Zealand Police v J T*, where the young person in that case appeared on a case of sexual violation by rape.[1] This young person had performed well and had completed the requirements of a family group conference plan. The issue for the Court to determine was whether the young person should be discharged under s 282 or an order made under s 283. In that case, the Youth Court Judge considered the offending was too serious simply to have the matter resolved by

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1 *New Zealand Police v J T* [2017] NZYC 462.

way of a s 282 discharge. He noted the good progress made by the young person but, weighing all factors, felt the seriousness of the offending had to be noted.

[10] The young person appealed and that matter came before the High Court. In *MW v Police*[2], Downs J upheld the sentence and made some observations peculiar to the facts of that case. He considered a s 283 order was warranted, having regard to the seriousness of the offending.

[11] The Crown noted the nature of the aggravated robbery and the observations made in *R v Mako* by the Court of Appeal.[3] In this case, there was concern about the degree of planning and premeditation, violence, and threats. Weapons were used. Cash and tobacco was taken.

[12] There is no doubt, from reading the victim impact statements, the owners of the store were traumatised by what happened. They have described how they feared for their safety, given the actions of [ZD] and the co-offender. It is clear they have been much affected by what occurred that night.

[13] Mr Taylor has submitted the Court should give favourable consideration to discharging [ZD] under s 282.

[14] In sentencing, the Court must have regard to the provisions of s 4, 5, 208 and 284 of the Act.

[15] It was noted [ZD] was fortunate to have supportive whanau, who were at the family group conference, as I noted. [ZD] had been living with relatives, and from late 2018 he has been living with his [close relative]. She has described him as *"a joy to have around"*. There have been no difficulties with his living situation. [ZD] was enrolled at a work course and was well regarded by his tutor. He then obtained full-time employment in [mid] 2018. His employer confirmed [ZD] is an excellent worker and said, *"he listens and never stops"*.

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2 [2017] NZHC 3084
3 *R v Mako* [2000] 2 NZLR 170 (CA).

[16] Mr Taylor highlighted [ZD] is very remorseful for his part of the offending. He wrote letters of apology, which he produced at the conference, and I have seen those letters. As I have noted, there were no breaches of bail, and his initial curfew was relaxed.

[17] [ZD]'s mother could not be with him today, but he has been supported through the Court process by members of his whānau.

[18] The effect on the victims is accepted as being considerable and has been acknowledged.

[19] As I have noted, the family group conference plan was carried out. The only problem that arose was [ZD] obtaining a restricted driver licence; through no fault of his, he was not able to obtain that licence within the expected period, but has made arrangements now for [date deleted] 2019.

[20] As to the causes of the offending, Mr Taylor observed the causes were not clearly known, but it is clear on this occasion [ZD] acted impulsively without thought to the consequences for the victims and for himself. To what extent he was influenced by the co-offenders is a matter of speculation, but it is clear [ZD] has reflected on his offending, as shown in his apologies.

[21] When it comes to determining whether a s 282 discharge should be granted or an order made under s 283, regard must be had to the statutory provisions I have referred to. Young people must be held to account and encouraged to accept responsibility for their behaviour. They must be dealt with in a way appropriate to their needs and they should be given the opportunity to develop in responsible, beneficial and socially accepted ways. That is an important principle under s 4(f) of the Act.

[22] Mr Taylor referred to the decision of His Honour Judge Walker in *Police v Q P*, where he granted a s 282 discharge[4]. In that case, he did not consider there was the

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4 *Police v Q P* [2014] NZYC 525.

need to impose a record to reinforce to the young person the seriousness of the charge. A record of a charge of aggravated robbery was seen to be a serious obstruction to the young person's ability to progress.

[23] Mr Taylor also referred to the decision of Judge Fitzgerald in *Police v R E*.[5] The facts of that case are quite different; in that case, the young person was facing four charges of assault with intent to injure, aggravated robbery, aggravated assault, and assault. After hearing the facts peculiar to that case, Judge Fitzgerald was satisfied a s 282 discharge was appropriate.

[24] I accept the submissions of the Crown that the aggravated robbery, particularly, was serious, particularly having regard to the effects on the victims.

[25] When I reviewed matters relating to [ZD], he had completed his family group conference plan in an impressive way. He had stayed out of trouble. He had complied with his bail and, during this period, has demonstrated his commitment. He is seen as a hard worker. He has obviously had time to reflect on what he did.

[26] The family group conference plan held [ZD] to account. He was required to complete the community work, as I noted, and he has paid out considerable sums, for him, in reparation and by way of donations. I consider those measures have reinforced in [ZD] the need for him to reflect on his behaviour.

[27] Having regard to all those factors, I then have to determine whether he should be discharged under s 282 or an order made under s 283. [ZD] had not been in trouble previously. He is now aged [over 17 years old]. I am conscious that if a record of aggravated robbery is recorded, for the reasons discussed by both Judges Walker and Fitzgerald in the cases I have referred to, this is a notation that could work to his disadvantage. In reaching that view, I am conscious of the observations made by Downs J in *MW v Police* about the seriousness of the charge.

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5 *Police v R E* [2015] NZYC 672.

[28] The matter is finely balanced, but I have determined, weighing all factors, [ZD] should be discharged under s 282, and I make an order accordingly.

A P Walsh
Youth Court Judge