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**IN THE YOUTH COURT
AT GISBORNE**

**I TE KŌTI TAIOHI
KI TŪRANGANUI-A-KIWA**

**CRI-2018-216-000043
[2019] NZYC 225**

THE QUEEN

v

[NB]

Hearing: 15 May 2019

Appearances: A Bryant for the Crown
A M Simperingham for the Young Person

Judgment: 21 May 2019

JUDGMENT OF JUDGE H L C RAUMATI

[1] On 14 June 2018, [NB], born [date deleted] 2003 did not deny four charges. Three charges of unlawful sexual connection with a female under 12 years and one charge of raping a female under 12 years.

[2] [NB] was aged [under 15] years at the time of the offending. The victim, his sister, was aged [under six] years.

[3] The offending occurred over a two-week period and only stopped when [NB]'s young sister disclosed the offending to their mother on [date deleted] 2017.

[4] [NB] and his sister were sharing a bedroom at [home, details deleted]. They would regularly go to bed at the same time. [NB] would get into his sister's bed, remove her pyjamas and underwear, and make her watch pornography on his laptop.

[5] The offending has involved [NB] licking his sister's vagina and anus and having both vaginal and anal intercourse with her.

[6] The Crown did not oppose [NB] remaining before the Youth Court and an agreed family group conference plan was approved by the Court on 24 July 2018.

[7] [NB] has successfully completed his family group conference plan without issue. That has seen him complete WellStop therapy, mentoring, and 100 hours' community work. A safety plan is in place and further mentoring is proposed.

[8] In circumstances where there was no agreement at the family group conference as to how the charges might be disposed of, the issue to be determined is whether [NB] should be discharged pursuant to s 282 or s 283(a) Oranga Tamariki Act 1989.

[9] The Crown position can be summarised as acknowledging that [NB] has done everything that has been asked of him but supportive of a discharge pursuant to s 283(a) of the Act given the very serious nature of the offending and the significant impact it will have on the victim (for the rest of her life).

[10] In filing a social work report (as directed by the Court) [NB]'s social worker takes the same position as the Crown.

[11] The submissions of [NB]'s youth advocate seek a discharge pursuant to s 282 of the Act (along with the provision of further mentoring pursuant to s 283(jb) of the Act).

[12] In determining what type of discharge is appropriate, I need to consider the factors which are to be taken into account on sentencing, as set out in s 284 of the Act, the youth justice principles set out in s 208, the general principles set out in s 5 and the objects of the Act as set out in s 4.

[13] A discharge pursuant to s 282 results in the informations being deemed to never have been laid. A discharge without further order pursuant to s 283(a) results in the police being able to keep on record details of an offender and the offence. Such information can be disclosed to the Youth Court in the event of further offending.¹

[14] The seriousness of offending is not in itself a bar to a s 282 discharge.

[15] Here there is no dispute that the nature and circumstances of the offending are extremely serious.

[16] A report completed by the psychologist who worked with [NB] identified [NB]'s unstable and conflicted family environment, his own sexual abuse at age six, hormonal changes and a lack of knowledge and understanding about managing sexual urges, and the suppression of emotional needs as contributing to the offending. The psychologist reports that [NB]'s risk of re-offending has reduced significantly.

[17] [NB] has expressed remorse and had a good attitude to addressing the offending.

[18] [NB] has been dealt with in a manner consistent with the principles and objects of the Act.

[19] The effect of the offending on [NB]'s victim however, cannot be overstated.

¹ Westlaw NZ YJ12.2.04 Discharge from proceedings s 283(a)

[20] I find that a s 283(a) discharge is the least restrictive approach appropriate in all the circumstances. Only such a discharge appropriately takes into account the effect of the offending on the victim.

H L C Raumati
Youth Court Judge