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IN THE YOUTH COURT
AT WAITAKERE

I TE KŌTI TAIOHI
KI WAITĀKERE

CRI-2018-244-000092
[2019] NZYC 279

NEW ZEALAND POLICE
Prosecutor

v

[DX]
Young Person

Hearing: 5 June 2019

Appearances: D Broomfield for the Prosecutor
R Karena for the Young Person

Judgment: 5 June 2019

ORAL JUDGMENT OF JUDGE H M TAUMAUNU

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[1] [DX] appears in the Youth Court at Waitakere for disposition in respect of one charge of wounding.

[2] The offending relates back to [date deleted] at a time when [DX] was 16 years of age and the victim was [in her early 20s]. The victim was known to [DX], she was previously in a relationship with [DX]'s [sibling].

[3] On the evening of [the offending], [DX] went to the home address of the victim in [suburb deleted] and waited for her to come out of the home so that she could confront her. [DX] was armed with a sharp bladed steel paint scraper and at about 7.40 pm, the victim came out of her home, she was confronted by [DX] on [the street] and [DX] immediately attacked the victim with the paint scraper weapon, striking her in the head multiple times with forceful blows which knocked the victim to the ground. [DX] continued the attack, striking her further times and pulling her hair. She lay on the ground. Friends of the victim heard her screaming for help and rendered assistance by pulling [DX] off the victim at which time [DX] fled the scene.

[4] A passing off duty police officer rendered further assistance and drove the victim to [hospital] where she received treatment for her injuries. As a result, the victim suffered a [details of injuries deleted]. The victim's injuries caused a substantial loss of blood and she required reconstructive surgery for her facial injuries. At the time, [DX] declined to make a statement.

[5] [DX] entered a plea of not denied on her third appearance in Court on 17 October 2018. A family group conference was held on 7 November 2018 whereby an interim plan was agreed subject to the receipt of a s 333 report and then the

conference was reconvened and held on 18 December 2018 to take into account the recommendations of that s 333 report.

[6] The recommendations included reference to an expression of interest by [DX] in undertaking a course of therapy focusing on self-development, personal growth and identity. Alcohol and drug intervention was supported for [DX]. A referral to NEET which was to provide both regular mentoring and vocational guidance and support was recommended and also engagement with prosocial peers was recommended. Those recommendations were then taken into account when the FGC plan was agreed. The plan included 150 hours community work, an emotional harm reparation payment of $200, a letter of apology to be written for the victim, mentoring to be provided from [a mentoring service] and also the NEET services. It was also agreed that therapeutic intervention would be provided by the psychologist, [name deleted – Doctor A], with six individual sessions.

[7] It was noted that [DX] had already completed an Altered High Alcohol and Addiction Service, that she had attended her self-assessment and her follow up appointments and the plan was agreed to be monitored at the Rangatahi Court at [Marae deleted].

[8] The plan was subsequently varied to include a substitution of an amount of community work if an additional $800 emotional harm reparation was paid. By my understanding, Judge Bidois allowed the 150 hours community work to be halved if that additional $800 emotional harm reparation was paid in lieu of the 75 hours community work that was to be credited.

[9] Today, [DX] has appeared and it is confirmed that [DX] has completed the outstanding community work after the allowance was made for the increased emotional harm reparation to be paid. The full amount of emotional harm reparation has been paid and passed onto the victim. That is the amended amount that was proved by Judge Bidois. The letter of apology has now been presented at the last appearance. There is ongoing mentoring provided by the [mentoring service] for [DX]. The counselling and therapy with [Doctor A] has been completed. There has been no report of [DX] breaching her bail conditions and the other counselling with Altered High and the health assessment appointments have all been completed prior to the plan actually being approved.

[10] No agreement was reached about the type of discharge and so the Court is faced with a choice today of either a s 283(a) discharge which would leave a record of this offence on [DX]'s record or a s 282 discharge which would have the legal effect of meaning that [DX] would have no record and it would be as if [DX] never appeared in Court in the first place.

[11] Now, in terms of the decision between the two options, there is no statutory provision that specifically provides guidance on how to choose between the two options that are available. The only clear situation is where a category 4 offence is involved, a s 282 discharge cannot be granted in those circumstances but the law does allow the option of a s 282 discharge in respect of this charge because it is a category 3 offence and it also allows a s 283(a) discharge to be granted as well.

[12] In terms of guidance, therefore, there are a number of areas where the Court does routinely refer to for guidance in respect of this type of decision and there is

obviously the United Nations Convention on the Rights of the Child. There are the objects of the Oranga Tamariki Act 1989 set down in s 4, the general principles that are set out in s 5 in the youth justice principles that are set out in s 208.

[13] There are also a number of statutory preconditions for the making of both s 282 and s 283 discharges. In terms of s 282, that type of discharge is to be made after an inquiry into the circumstances of the case and as far as the s 283(a) discharge is concerned, that type of discharge is to be made after having regard to the s 284 factors to be taken into account on sentencing.

[14] It is commonplace for Youth Court judges to adopt a hybrid approach by importing the s 284 factors into the inquiry into the circumstances of the case as required by s 282 when deciding the appropriate type of disposition in a case such as this.

[15] The s 284 factors are mandatory factors that must be considered before imposing any order under s 283 and those factors are designed to allow principled approached towards the consideration of the appropriate outcome or disposition. The first factor is the nature and circumstances of the offence proved and the young person's involvement in it and obviously, that is a direct reference to the summary of facts which I have recited which clearly discloses very serious offending committed by [DX].

[16] As far as the personal history, social circumstances and personal characteristics of the young person, as far as they are relevant to the offence and any other order the Court may make, this is a situation where [DX] has explained to me throughout the course of the monitoring appearances that she was brought up in a Māori speaking

environment at school and then when she moved from her environment where she had learnt a particular dialect to [area deleted], she had issues adjusting to the dialect in the [area deleted] and it became problematic for her.

[17] I am not sure that that is as strong a problem for [DX] now as it was in the past because of her appearances at the Rangatahi Court at [the Marae], it does seem to me that she may have made some progress in terms of those difficulties.

[18] As far as her attitude to the offending is concerned, that was clearly displayed last time at the Rangatahi Court. [DX] seems to me to present in a genuinely remorseful manner when she is confronted with what she did to the victim which is exactly what happened at the last appearance at the Rangatahi Court.

[19] The next mandatory factor is the response of the young person's family, whānau or family group to:

(a) The young person's offending; and

(b) The young person herself as a result of the offending.

[20] This is a situation where the whānau have supported [DX] throughout the course of the proceedings and again, are here today in support of [DX] and the offending has been taken very seriously by the whānau in the way that they have responded because the plan was not an easy one to complete but with supportive whānau, it has been completed successfully.

[21] The measures that were taken by the whānau to make reparations were to apologise to the victim. There has been a letter written by [DX] which was approved

on a previous appearance. There has been an agreement to pay an increased amount of emotional harm reparation which is not an insignificant amount and there was also an agreement for [DX] to apologise in person to the victim if she felt able to attend the Court hearing today. That offer was extended and it was quite possible that that actually would happen today except the victim, and I am not sure why, has chosen not to attend today. I make no comment on that; there is no obligation on the victim to attend but the opportunity was there.

[22] As far as the effect of the offence on the victim is concerned, the Court has received a letter today that was provided by the police and what it sets out is the fact that the victim is still suffering from the consequences both mentally, physically and emotionally of the assault on her. It was hard for her express this at the time, she was still in shock but she realises that it was not okay. She sees it as being appropriate for [DX] to have a permanent record of her crime so that she can be made accountable due to the fact that it was grievous bodily harm, it was premeditated and she has to live with the consequences every day. So in a nutshell, there is a strong message from the victim that a s 283(a) discharge would be the appropriate outcome.

[23] There is no previous offending that has been brought to my attention, committed by [DX]. There are no previous s 283 orders.

[24] As far as the plan is concerned, I have outlined what was in the FGC record of decisions but the ultimate disposition was left to the judge to determine and the reason being, it was such a serious charge and it was serious offending.

[25] And finally, the causes underlying the offending and the measures available for addressing those causes so far as it is practicable to do so is another mandatory

consideration the Court has to take into account. That underlying issue is one that was addressed in the second family group conference by the inclusion of the counselling with [Doctor A] and that has now been completed.

[26] So ultimately, this is a finely balanced decision that has to be made today. There is the combination of the seriousness of the offending, the effect on the victim and the long-term effect on the victim and obviously, the victim's views that have been expressed.

[27] On the other hand, there is the performance and completion of the plan by [DX], the support that [DX]'s family have provided to her throughout the time she has been in Court and the fact that [DX] presents as a young person who has taken this situation very seriously which is what she should have done and which is what she did do and has attempted as much as possible to make amends for her offending.

[28] Ultimately, one of the questions here is the question of whether a s 282 discharge adequately holds [DX] to account for her offending. What needs to also be recognised when considering accountability is the fact that [DX] has had to go through a lengthy process. She has been, by her agreement, required to complete a number of tasks which she has done. Her family has also been required to assist her to complete many of these tasks and, ultimately, the question of accountability does have to be viewed in the overall context of the case and it is not just simply whether or not a record is to be imposed as part of the disposition. The accountability is much wider than that in terms of the way that this process works in the Youth Court.

[29] The police position has been described today as one of being neutral as to the ultimate outcome. I have had to go to some length to address the reasons why I have

reached the decision that I have reached because it is important that the reasons are transparent, that they are understood by all parties concerned but ultimately, [DX] is a young person who has made obviously, a very serious mistake and has caused significant harm to the victim but she has done everything she can do to make amends and it seems to me that she has earned it because of the clear impression I have gained, that [DX] has now got on the right track and is very unlikely to be seen by the Court again.

[30] Because of that confidence I have that [DX] is now someone the Court can view as having learnt her lesson properly, the appropriate outcome and the least restrictive outcome appropriate in the circumstances is a s 282 discharge.

[31] So [DX], that means it is as if you never came to Court in the first place. You are able to leave Court with no record and you may get on with your life as if you never came here in the first place. But remember the lessons you have learned and do not repeat the same mistakes in the future.

[32] That is all for today. You are free to go.

H M Taumaunu
District Court Judge