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**IN THE YOUTH COURT
AT NORTH SHORE**

**I TE KŌTI TAIOHI
KI ŌKAHUKURA**

**CRI-2018-244-000119
[2019] NZYC 360**

**NEW ZEALAND POLICE
Prosecutor**

v

**[PN]
Young Person**

Hearing: 7 August 2019

Appearances: Sergeant K Evans for the Prosecutor
R Karena for the Young Person

Judgment: 7 August 2019

ORAL JUDGMENT OF JUDGE P J SINCLAIR

[1] [PN], today is a disposition hearing. You face 14 charges. I am going to list those charges because I have to incorporate that in my decision:

- two unlawfully taking a motor vehicle charges;
- two resisting police;
- robbery by assault;
- two assault with intent to injure charges;
- unlawfully getting into a motor vehicle;
- two common assault charges;
- two driving dangerously causing injury charges;
- failing to stop when followed by red and blue flashing lights; and
- shop lifting.

[2] Those offences occurred between 17 September 2017 and 5 December 2018. You have been coming to Court since December 2017 when the first of those charges were laid. Today I have to decide whether I should discharge you on all of those charges or discharge you without further order or penalty.

[3] Your lawyer, in discussions with you, would have told you that I can make a number of different orders today, ranging from a s 282 discharge of all of the charges right up to residential orders requiring you or ordering you to live somewhere and with supervision conditions.

[4] You want me to grant you a s 282 order. Your lawyer and social worker also urge me to do that. That is understandable, because it would mean you would leave the Court with nothing on your record – it would be as though the charges have never been laid.

[5] The police propose that I make a s 283(a) order. That means that these charges are notated in your record. They are concerned you have not completed all that was asked of you under your plan and that a s 282 order should only be granted for people who complete all the tasks and address all of the aspects in relation to their offending.

[6] I have to take into account many factors when I dispose of these charges and your involvement in the Youth Court. I have to decide the best way to prevent and reduce future offending by you. I have to hold you accountable for your offending, but I also have to incorporate your best interests and needs against the background of obligations I have under international conventions, which provides that a punitive approach is always to be outweighed by the wellbeing of a young person like you in securing your future. I also need to consider the circumstances and your involvement in the offending and the effect on the victims for each of the charges, your personal circumstances, your attitude and your family's attitude and response to the offending and the plan that was prepared at the FGC.

[7] Another factor I have to bear in mind is how long you have been coming to Court on these charges. As I mentioned, the first group of charges were laid in December 2017 when you were 14 years old, so around 21 months ago.

[8] In April I gave you some more time to complete your plan. In some ways I would like to give you more time, particularly in relation to you completing work on your anger issues and engaging in a course or programme or a job which may give you some pride. However, it is important that matters are not dragged on indefinitely. I think that there needs to be some finality today.

[9] So I am going to go through those factors that I have mentioned. Firstly, the charges. They cover an array of different types of offending. [PN], some of your offending when I looked at those summaries of facts was really scary. You assaulted a number of different people and in some instances really harmed them. You hurt them physically. But you also frightened and distressed them – they were fearful of you and what you were going to do next. The items you stole affected the owners, they would have been upset about losing their cars and possessions as they were the rightful owners of those items. For your driving charges, your driving was so dangerous that

it resulted in you injuring two people. You were really fortunate you did not kill them or injure yourself or kill yourself that day. So [PN], the combination of this offending is serious, but I need to balance that against your personal circumstances and what positive things you have done since the offending.

[10] I am aware from the reports and information on your file that your upbringing has been difficult at times and you have had to deal with some challenging issues. I have no doubt those difficulties have played a part in your offending. You have had to fend for yourself when more support could have made a considerable difference to your situation. I acknowledge that has also posed some problems with you engaging in some aspects of your plan.

[11] Over the life of these charges you have attended a number of FGC conferences, meetings and appointments. You have been working through the latest FGC plan over the past months and there have been some positive features. You have not offended since December 2018. That is encouraging [PN], because before that you had engaged in a real crime spree and some of those offences were committed whilst you were on bail. As a result, you spent some time in Oranga Tamariki care, but since March 2019 you have been on bail and you have been largely compliant on bail. There have been a total of four breaches, but those were not very recent. In fact, it seems to me there has been an increase in your insight and maturity, particularly in the last four or five months. You are and have been under reasonably strict conditions, so compliance with those rules is significant. Your time under Oranga Tamariki's care and on bail under strict bail conditions is recognised as punitive in itself, and a restriction on your life.

[12] You admitted the charges, which is important because it indicates to me that you accept responsibility for your offending and again shows some insight and maturity. You also wrote letters of apology to the victims. That was important as well. Some of those victims felt that some community work or some other punitive measure may have addressed your accountability in a more meaningful way. However, the victims have heard from you that you were sorry for what you had done and about the more positive things going on in your life now.

[13] You have also engaged with the mentoring programme. There have been several glitches when you did not meet with your mentor, but the mentoring programme has been largely successful.

[14] However, some other parts of your plan have not been fully completed. Initially it was planned that you would engage with [an alternative education centre]. However you did not wish to continue in education, resulting in you not being engaged for several months. Alternative courses and programmes were explored and considered. You were enrolled at [organisation deleted] and recently attended for two days to commence an apprenticeship but discontinued. That was a great pity [PN], because as I mentioned earlier I was really hoping you would have been engaged in a course or programme or apprenticeship that was really interesting for you by the time these charges were disposed of.

[15] You initially engaged well in the Living Without Violence programme. However, after attending six sessions you stopped attending because you did not believe you needed to attend any more. That was concerning to me as well [PN], because I consider it was important you completed this course to address your offending – because a lot of your offending involved violence and assaults, including the robbery – so it could provide you with some skills to use in times of conflict, stress and anger so that you do not resort to violence.

[16] Finally, you did not find a pro-social activity. Again, that was a shame because you were not able to utilise the support and encouragement of your mentor to work out an activity that you would like to engage in.

[17] So, when I take into account all of these matters I have just talked about, all the offending and the effects on the victims and the extent of your engagement in the whole FGC plan, I do not consider a s 282 order is appropriate. I am aware you have not had a s 282 order before but there has not been wholehearted embracing of your plan and I consider that is needed before a s 282 order can be contemplated.

[18] However, given the efforts you have made, I consider a s 283(a) order is warranted. That, in my view, is the correct outcome. It is not as celebratory as a s 282

order, but a s 283(a) order is not crushing or deadening and it recognises, as I say, the efforts you have made. In my view, it is also the least restrictive order in all the circumstances.

[19] So thank you [PN], and I wish you well for the future. I do hope you find a course or programme that suits you well and that you are really interested in so that you can engage in it.

P J Sinclair
Youth Court Judge