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**IN THE YOUTH COURT
AT WHANGAREI**

**I TE KŌTI TAIOHI
KI WHANGĀREI-TERENGA-PARĀOA**

**CRI-2019-088-000066
[2019] NZYC 388**

NEW ZEALAND POLICE
Prosecutor

v

[RB]
Young Person

Hearing: 15 August 2019

Appearances: Senior Constable A Henare for the Prosecutor
T Donald for the Young Person

Judgment: 15 August 2019

**ORAL JUDGMENT OF JUDGE G L DAVIS
[ON S 106 APPLICATION]**

[1] [RB], you may think I have tried to be a bit cheeky and grill you on certain aspects here. The reason that I was so keen to try and get to the bottom of what was going on was to try and build a bigger picture for all of us to see today about who [RB] is. Because when we walked in the door today, we had a young man that had some Youth Court charges that we had to deal with today, and we had a young man with some convictions in the District Court. That in itself paints a picture for certain people.

[2] As far as the Youth Court stuff goes, you admitted those charges early on in the piece. So the Court had to be satisfied that there was enough evidence to say those charges were proved, but a lot of these charges fall, went down, while you were living down in [location A] and things were not going too well for you at home there, things were not going too well for you in the broader sense of living down in [location A].

[3] One of the things that impressed us all was ‘you wanting to get out of that environment.’ Thankfully, your uncle and aunty stepped up to the plate, if that is the right word to use, and open their doors to bring you home.

[4] What that has meant as I look at all the paperwork [RB], and that is really what I have got to go on because I do not keep an eye on you during the day and all of that, is that we are seeing a young man really flourish, really grow in that environment, a young man who has owned what went down in [location A] and tried to create for himself a better pathway moving forward. I do not think there is anyone at the table here or in the whare who has not been impressed by that over the course of the last six months or so, that you have been here.

[5] Every aspect of the plan that was put together you worked hard at, over that time. You have not just worked hard, but a lot of people’s plans drag out and drag out and drag out, they have got to go back again and start again and all of this sort of stuff, never any of that in your case. In fact, the plans have always been completed almost in world-record time. That says as much about the young man that we see in front of us today as anything including down in [location A].

[6] As far as your kahu goes, when you last came here, Ms Donald summed it up pretty well, “Yeah, yeah, I’ve got it, I’ve got it.” That was pretty much what you were saying to us. We were all waiting to see what it was, but what has impressed me most about that, [RB], is it took a bit to get all the information out of you and the whānau today, but you struck me as a fellow that does not say a great deal about himself, that you need the whānau to get that full picture out for you, and there is nothing wrong with that. It is a sign of a humble young man in many respects and I really mihi to you for that work.

[7] What I have to do today now that we have made the order, pulling those District Court charges back in here, wiping the conviction that was there, granting a rehearing of that, is sentence you today on those District Court matters and also on the Youth Court matters, the Tai Tamariki Court matters as well.

[8] The police are not opposing the s 106 discharge without conviction, and often that is how they say it, they are not opposing it. Well actually I did not actually hear the sergeant say that. I think he went further than that. He said they are fully supportive of it. It is not often the police say they are fully supporting a s 106 discharge, [RB].

[9] I might be reading too much into what the sergeant is saying, but generally the police will only say they are supporting a s 106 discharge when they have had a chance to look at the young person where he was and the young person where he is today and see the progress and it is there, ‘loud and clear.’ So that the fact, as I say, Senior Constable is supporting a s 106 is actually legally quite a big thing, quite significant. I agree with him he should be supporting it but I think what we need to explain is the significance of that.

[10] Just because he supports it and Ms Donald wants it though, does not mean that you get it. There is a legal test to get over.

[11] The Court has to be satisfied that the consequences of a conviction are out of all proportion to the gravity of the offending. That is the legal works that we have to look at.

[12] I agree with both Ms Donald and with Senior Constable, the District Court stuff was serious offending, dangerous driving, failing to stop from the police, pinching cars. Unfortunately, we read about that in the paper and see that on the TV, too much where that happens and it has gone horribly wrong for someone, accidents, fellows get killed, fellows get injured, terrible things to happen.

[13] But I also agree with Ms Donald, that you had just hit 17 when that happened. Had it happened after 1 July you would be still back in the Youth Court, but I also agree we have to look at not only what happened then, but where you are now. And there is no question in my mind that the [RB] that we see today is not the same fellow that did this work.

[14] I agree with our matua that what I see here today is the makings of rangatira. All of the courses that you have been doing, they speak of how well you have applied yourself, how much effort you have put in to it, the leadership qualities that they see in you. Those are the attributes that our people need more today than probably ever in our history.

[15] As our matua said right at the start, things like our reo, our tikanga and there is (inaudible **14:01:03**). What have you got there in that kahu is the start of the grasping of some of those important tikanga aspects, that you have that probably no one else around this table possibly has. So I ask you to, as you move forward in your life, not to forget that, not to think that, "I have done this kahu and therefore I can leave them."

[16] Think about it as a pathway forward for you to learn more, to be in a position to teach others, to help retain, to help this taonga, this knowledge grow and not be lost forever. Those are the challenges that we all see here for you as a young man as you go forward.

[17] Those are all of the things, for me, that need to go into this s 106 mix. It is not a traditional way of looking at things, but I agree when we look at it through the traditional lens, if you are going to move forward with all of this knowledge you are going to be travelling to look at it, to help that knowledge grow, to teach others, and a conviction will get in the way of all of that.

[18] A conviction will get in the way of you getting into Aussie or it might get you a free return ticket home earlier than you expect, and for a young man of 17 years of age that is not something that you need to start your life on.

[19] Legally speaking, in respect of these District Court charges I am satisfied that the consequences of a conviction are out of all proportion to the gravity of the offending. I am going to grant the s 106 discharge without conviction in respect of those matters.

[20] Things such as disqualifications have already been imposed. I am not going to reimpose any other penalty, that is, those charges, more to an end today.

[21] We have still got the Youth Court matters here. We had a plan that, as I say, you have worked through well over the months that you have been in front of us. The agreement was at the FGC, that if you completed the plan, s 282 discharge would be granted. That plan has been completed today, to everyone's satisfaction and more.

[22] In respect of the Youth Court charges, [RB], I am also going to be granting a s 282 discharge today.

[23] That means, in respect of the Youth Court matters, it has the legal effect as if those charges were never laid in Court in the first place. I am going to leave that kōrero there for the moment because I cannot do anything else about the District Court charges. They are gone, there is no conviction entered there.

[24] That brings to an end today all of your matters, whether they are before the Youth Court or the District Court, as the case may be.

[25] The only thing that remains to be done is to make sure that taonga is given to the victim in the appropriate fashion, and that is something that I think needs to be discussed with you and your whānau and the social workers today, to make sure that is given to them in the appropriate fashion.

Judge GL Davis
Youth Court Judge

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