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**IN THE YOUTH COURT
AT WHANGANUI**

**I TE KŌTI TAIOHI
KI WHANGANUI**

**CRI-2019-283-000005
[2019] NZYC 512**

**NEW ZEALAND POLICE
Prosecutors**

v

**[LZ]
Young Person**

Hearing: 23 October 2019

Appearances: Senior Constable P Gray for the Prosecutor New Zealand Police
K Muldoon for Ministry of Social Development
R Simon for the Young Person

Judgment: 23 October 2019

NOTES OF JUDGE D G MATHESON ON SENTENCING

[1] [LZ] is before me in relation to a number of charges which are serious. They include charges that on [date deleted], he assaulted [FR], being a person he was in a family relationship with; on 27 March 2018, with reckless disregard for the safety of others injured [VK]; 5 August 2019, a burglary of [address deleted]; 16 August, stole a scanning device, the property of [business deleted]; 16 August, had with him without reasonable excuse an offensive weapon, a knife; and on 13 July 2019, together with [CO] and another person, robbed [PF] of a mountain bike. There is a further charge of burglary on 29 June entering [store deleted]. He has admitted all of those charges at family group conference.

[2] In relation to those matters, I have received two plans and a report and I now need to deal with the matter.

[3] Turning to the provisions of s 284 which is the section that identifies matters that a Judge must look at and go through; (a) as to the nature and circumstances of the offence proved to have been committed by the young person and the young person's involvement in that, the social work summary is helpful.

[4] The offence against [VK] involved [LZ] inviting [VK] to his home where they both entered the garage which was part of the property. Once inside, [LZ] locked the door and using a lighter burned [VK]'s arm in several places, including underneath his left armpit. [VK] required medical attention for the burns he suffered. The wounds became infected and resulted in him needing antibiotics. [VK] was 10 at the time.

[5] As to the other assaultive charge, this relates to a common assault against his partner [FR] who was pregnant with their [child] at the time. It is alleged that while [LZ] and [FR] were at home, [LZ] began yelling at her, pushed her against a door and grabbed her by the head, pushing her head down and dragging her away from the door. [LZ] and [FR] both denied this version of events and minimised the incident with [FR] taking some of the responsibility for the assault.

[6] The first burglary charge on 29 June occurred when [LZ], along with his co-offenders, climbed onto the roof of [the store] where one of [LZ]'s co-offenders cut a hole in the skylight in the building. When [LZ] entered the building via the hole in

the skylight, the security alarms activated leading to [LZ] and his co-offenders leaving the building and [LZ] stated to police he did this due to being bored.

[7] The charge of aggravated robbery occurred on 13 July against [PF] who was 17 at the time. This was a particularly violent offence as [LZ] along with his co-offender approached [PF] in an attempt to steal his bike. [LZ] produced a knife and told [PF], "To fight him for his bike," while waving the knife around. [PF] swung a punch at [LZ] in an attempt to escape leading to [LZ]'s co-offender getting involved by knocking the victim to the ground and standing over him while [LZ] kicked [PF] in the head. [PF] was wearing his bike helmet throughout the assault. [LZ] stated to police that, "He just wanted to get the bike for his co-offender."

[8] The second charge of burglary occurred on 5 August and he did it with the same co-offender for the aggravated robbery. The burglary took place at a private residence and the victim was a [SQ] who was the property owner. The circumstances surrounding this involved [LZ] and his co-offender gaining access to the residence by kicking in a cupboard wall in the rear of the property. Once inside the property, [LZ] and his co-offender took a number of items including gaming consuls, tablets, iPad, cellphones, two sets of keys and nunchucks. The following day, a police officer visited [LZ]'s home on an unrelated matter and during the visit, [name deleted] handed the stolen items to the police. When [LZ] was asked why he did it, he took no responsibility stating, "He was just following his co-offender's lead."

[9] As to the offensive weapon charge, on 16 August when police were called, it was suspected that [LZ] along with an associate had committed an offence of theft from a car. While being searched by police, police found that he was in possession of a ground down and sharpened knife. When initially spoken to, [LZ] stated, "This knife belonged to Black Power and he was holding onto it for them." However, [LZ] later stated it was his and that he carried it for his protection.

[10] As to (b) his personal history and circumstance and personal characteristics as far as they are relevant to the offence, [LZ]'s situation is an all too sad one that I all too often deal with.

[11] Ms Simon, in her submissions to me, has identified what she perceives as systematic failure to provide the appropriate supports for [LZ]. Reports that I have read identify multiple layers of attempts to assist which have been unsuccessful.

[12] A report from a psychologist recently identified a huge amount of work that needs to be carried out. There is a suggestion in that report of systematic failing.

[13] In an appendix to the summary of involvement and review of plan presented by the Open Home Foundation back a year or so ago, it was, in summary, noted in discussion with [AB] from the mental health services that [LZ] had been involved with that, she was of the view that everything that could be tried had been done by many agencies and people and she queried whether, in her view, Mum and [LZ] were able to make or sustain any of the changes needed. The then social worker from Open Home concurred with that view. I accept that there have been failings, but I do not accept that there have not been attempts to assist.

[14] (c) The attitude of the young person towards the offences. Even allowing for [LZ]'s vulnerabilities, it is disappointing to read that [LZ] has no empathy for his victims, or very minimal empathy, and that he has little remorse. I accept that as a young man coming from where he has come, that those sorts of contexts often get lost and I do not feel it appropriate to criticise him unduly for that given his background. Nevertheless, I am unable to give him any credit for being remorseful.

[15] (d) As to the response of family, whānau and family groups to matters, as I have already noted from the comments of [AB] and the Open Home Foundation social worker, the family have struggled over a significant period to be able to cope and manage behaviours. I think anybody would likely have been unable to cope, but even with extensive agency support, nothing really has changed.

[16] I wish to acknowledge that throughout, Mum's home has been available. I wish to acknowledge that this young man feels pretty secure at that home and he wants to stay in that home. There is a comment in the report from Ms Muldoon though as to capacity and belief as to that capacity on behalf of Mum.

[17] As to 284(e) any measures taken or proposed to be taken by the young person or family, whānau or family group to make reparation or apologise, it is really difficult to identify any meaningful apology within the framework of this offending.

[18] (f) As to the effect of the offence on the victims, a lot of the victims really do not want to know and do not want to be involved. Some, I think, because of confused loyalty, or one in particular in relation to that, and one who it seems to me was so upset by the offending he just wanted to turn away from it and forget about it. [SQ] is most aggrieved by what went on and I acknowledge that.

[19] As to subs (g) any previous offending, I approach the sentencing on the basis that there is a blank page. That means I do not take into account any previous convictions because there are none. That is none formally.

[20] As to (h) any decision, recommendation or plan made or formulated by a family group conference, the family group conference decided we needed report and plan and left it to the social worker to come up with the result, but there was a feeling that an appropriately structured supervision with activity option with Auckland being a preferred option was front row of the grid. Sadly, the more Ms Muldoon looked, the less she could find and the options for supervision with activity were not available because of the nature of his history.

[21] (i) As to causes underlying the young person's offending and measures available for addressing those causes so far as practicable to do so, the social worker completed a Tui Tui Tuia assessment which is a well-known tool.

[22] As to education, as Ms Simon quite rightly noted, she needed really to break the report down for [LZ] for him to be able to explain because he has been out of education so long and simply, in my view, because he has been out of education so long he is not able to engage. I suspect a history of anxiety underlines fears on his part of getting back on the horse as it were in relation to education.

[23] There is a worry that any community-based plan would inevitably fail through lack of engagement and that the social worker suggests is identified in attitudes

revealed in recent weeks. It is the view of the social worker that a placement at [youth justice residence deleted] would facilitate engagement by effectively having it there in his face day in day out.

[24] As to emotional engagement, trauma and abuse have impacted on [LZ], Ms Kirsty Chapman from Acorn Therapy who provided an extensive report to the Family Court in [details deleted] underlines that.

[25] The social worker suggests that a residential placement will enable provision of therapy which does not happen in the community.

[26] Mental health needs are significant. It is the social worker's view that a residential placement will facilitate treatment.

[27] As to substance abuse, it is submitted by the social worker that residential treatment will assist with that.

[28] Ms Simon quite rightly noted that there has been a change in the wind as of 1 July with Parliament really underlining provisions that in theory have been in existence since the Children and Young Person's Act 1989 has been in existence. She drew to the Court's attention that those provisions are very important and she referred to s 208 which is the introductory section to youth justice and identifies youth justice principles and she identified that in exercising my powers I need to weigh the four primary considerations to be found in s 4A(2) of the Act.

[29] Those are:

- (a) Wellbeing and best interests of young person.
- (b) Public interest which includes public safety.
- (c) The interests of the victim.
- (d) The accountability of the youth for his behaviours.

[30] When weighing those, s 208 identifies family-based resolution in particular and a desire to keep the young person in the community as is practicable and that his age should be seen as a mitigating factor. I have already identified that in relation to the lack of empathy and remorse that I have noted. Any decision or sanction imposed needs to take the form most likely to maintain and promote [LZ]'s development within a family structure and I must take the least restrictive option available. The principles are important. They are mandatory.

[31] As to s 5 principles, the report identifies that [LZ] has been encouraged to participate. That has been through family group conference and through his counsel and his views have been heard by me. He wants to be at home. He commits to engagement with programmes within an activity regime and he wants the opportunity to do that.

[32] As to his wellbeing, he needs to be treated with dignity and protected from harm. I must consider the impact of harm and need for him to be safe and stable. I need to consider mana tamaiti tamariki which talks about the intrinsic value and inherent dignity derived from [LZ]'s whakapapa and sense of belonging to his whānau, hapū and iwi and family group in accordance with tikanga Māori.

[33] This boy is part of a family. It is important that he moves into his adult life with a sense of knowing that his identity is important and that he is important and that it is all right to be [LZ]. I think that is some of what this is about. He needs to learn about how his strength of character and personality will develop if he has a good feel for where his roots are based. There have been attempts to engage him with that, but to date, that has not been successful.

[34] The Court also is told under principles in s 5 to get on with it and I am conscious this morning I am taking a while on this, [LZ], but I do not apologise for Parliament hammering and hammering and hammering at the fact that young people should be kept out of custodial treatment if at all possible and that young people belong to a family, but you have been hanging around for a long time and it is time for us to finish this and deal with it.

[35] I am told that I must take a holistic approach and that is that I sit back and look at it overall and try and work out what is best for you and I need to look at the support mechanisms that are about for you. I need to look to whether I can place you within family and within the community and I need to look at stability and security.

[36] Very well, enough. I have put all of those various principles into my thinking. [LZ], I have determined, taking into account the offences awaiting disposition and their seriousness, the timeline of the offending, the lack of engagement and the lack of engagement with attempts at therapeutic intervention from a community base mixed with some attitudinal stuff and it would seem to me insight frailties that change is needed. We have got to change the current scenario.

[37] To simply reinforce the current placement with some further programme labels around it will achieve nothing. History shows a singular lack of engagement from a community base.

[38] To put you, [LZ], back out into the community and expect you to do programmes that it seems to me overwhelmed you in the past, will be to set you up to fail, and have you back here again and the whole process starting again. That is not acceptable to me.

[39] Accordingly, I agree with the social worker that the structure of [the youth justice residence] will provide what is needed to effect change. It will provide you with the ability to engage again with education because it will be there. It will be able to provide you with appropriate programmes because they will be there. That will enhance the prospect of successful change and it will also assist in sorting out changes to stop violent behaviours that have caused you to put yourself and those whom you love nearest and dearest at risk. I do not believe that a simple return to home will help. My hope would be that a period of supervision with residence followed up with, I hope, a START Taranaki programme will provide a sufficient impetus to effect meaningful change.

[40] You should know I do not like putting people into custody, but I am not sad about this because I see a young man who has been troubled for a long time and I think

this is the best way for us to make something work so that you can be the young man I identified earlier who goes into his adult life proud to be himself.

[41] There will be a sentence of six months' supervision with residence and I direct that the early release date decision should be on Friday 14 February at 10.00 am which is a day I have for other work, but that is the day that is to apply. I will split the sentencing. There will be supervision to follow. The supervision part of that will be dealt with on 14 February as well and I express the hope that START Taranaki be part of that.

[42] The issue of reparation will also be determined at that time.

Judge DG Matheson
District Court Judge

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