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**IN THE YOUTH COURT
AT HAMILTON**

**I TE KŌTI TAIOHI
KI KIRIKIRIROA**

**CRI-2019-219-000178
[2019] NZYC 675**

NEW ZEALAND POLICE
Prosecutor

v

[QF]
Young Person

Hearing: 20 December 2019

Appearances: S Gilbert for the Crown
M Young for the Young Person

Judgment: 20 December 2019

ORAL JUDGMENT OF JUDGE S D OTENE

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[1] I have indicated to [QF] that I intend to make a supervision with residence order for four months in relation to the charges of aggravated robbery and burglary which he does not deny. That will be followed by a supervision order. The recommendation to me at this stage has been for six months but my sense is that it might need to be for a longer period than that and that is a matter that can be determined when we come back to Court next March.

[2] I am now setting out in detail the reasons for my decision starting with a summary of the offending. The most serious matter is the aggravated robbery. [QF] says that the robbery was his idea. He and five friends agreed at [QF]'s home in [location deleted] to do the robbery. They left home with that plan, although at that point they had not decided which shop to rob.

[3] When they got to the shops they went to [shop deleted]. This was about 7.00 pm at night on [date deleted] this year. They each had instruments, or items that could be used to threaten and hurt people. [QF] had a pistol. It was an imitation pistol but the people in the shop were not to know that. He showed that pistol to the shop keeper and two of his workers. He then jumped over the counter and demanded money. The two workers ran to the back of the shop. The shopkeeper opened the till. [QF] grabbed approximately $600, put it in a bag held by one of his friends and then they all ran off.

[4] This describes what [QF] did but to understand what the shopkeeper experienced I should also add that two of the other young people moved closer to him. Like [QF] did, those two and another showed their weapons and they also demanded cash and another stood by the door showing a knife to the shopkeeper.

[5] [QF] it is very easy to understand that would have been terrifying for the shopkeeper and he says exactly that. I have read his victim impact statement and I see in there that he says he felt totally helpless when the gun was pointed at him and his [under 14]-year-old son was present in the shop too. He had been robbed before so you made him a victim again. His family work in the shop and he cannot just shut the shop and stop working because he needs to trade to pay the rent so he has to continue doing a job where he feels unsafe for himself and for his family and for his workers in

the shop. As well as the money he suffered the loss of his iPhone which was worth about $500 and there was damage to the counter in his shop and that was about $200 worth.

[6] The burglary was in [month deleted] this year when late at night you smashed the door at [school deleted]. You went into the library and you stole 19 iPads. The repair and the related cost to [the school] have been about $2000 and the loss of the iPads has affected the education of the other students. I know [QF] that there is virtually no likelihood that that money will be repaid because you and your whānau simply cannot do it. So there has been lots of damage to these people and for your community that you and your whānau live in.

[7] A family group conference was held and there was no agreement about how to deal with you and the offending. What I do have today, and I thank you, is the benefit of the apology letters that you provided to [the school] and to the shopkeeper. Some of that was just mamae for the situation that you are in and how you felt about things but some of it shows some insight. Do you know what insight means? Some understanding of how the shopkeeper might have felt for himself and for his family and a little bit about the inconvenience that you have caused to the students up at [the school].

[8] The Crown is responsible for prosecuting that aggravated robbery charge and Ms Gilbert submitted that you should be convicted and sentenced in the District Court, first of all because of the seriousness of the offence and secondly because of your age. You will be 16 in [month deleted] so the law says that someone at 14 years can be transferred up to the District Court in these circumstance. You are well beyond that and Ms Gilbert is saying to me that because you are 16 I should be less hesitant about transferring you than if you were 14.

[9] Ms Young is saying to me that the supports that you can get in the Youth Court that will help prevent you from offending in the future cannot be provided in the same way in the adult justice system and so she is saying that the proper outcome for you and for the public is for you to be ordered in the Youth Court to supervision with residence.

[10] As a preliminary matter in respect of the seriousness of the offending I have been reminded by counsel of the Court of Appeal observation in *Pouwhare v R* to the effect that the ability to transfer the matter for sentencing in the District Court is because the youth justice system cannot cater for some offences because they are too serious or because there are other reasons that the Youth Court cannot make orders that are adequate.[1] I observe that since that decision there had been changes to the Act. Those changes took affect on 1 July and they are the most significant changes in the 30-year operation of the law.

[11] There is within those changes a very real emphasis on wellbeing and that wellbeing is multifaceted and so calls for a multifaceted evaluation when weighed with the other primary matters for the Court's consideration. It requires in my view an assessment of how a young person's wellbeing is advanced by transfer of matters to the District Court for sentencing with perhaps more stringency applied in that assessment than has previously occurred.

[12] The primary considerations that I need to weigh up are wellbeing and interests of the young person, of [QF], the public interest, including public safety, interests of victim and accountability of the young person for their behaviour, or [QF] making you responsible for what has happened. There are factors that must be taken into account when I weigh up all those matters. Some of them I have covered by the comments that I have already made and I do not repeat them.

[13] In terms of the offending I have described what occurred. [QF] this was indeed serious offending because of the planning that there was, because of your lead involvement in it, in the planning and in what you did, because there were weapons used, that there were six of you and the very large impact it had on the shopkeeper.

[14] I need to consider your personal history and your circumstances and this is where it gets difficult and might be difficult for you but I need to record some of this. You are now aged [15 years old]. You were [15 years] at the time of the offending. You are uri of [two iwis deleted] and you are the [number deleted] of [multiple] children of your parents, [AF] and [BF]. Oranga Tamariki, and Child, Youth and

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[1] *Pouwhare v R* [2010] NZCA 268.

Family as they used to be called, have been involved with you and your whānau for many years. The reasons for that are not novel, or they are not new, because they involve being deprived, neglect, abuse, mental health difficulties, violence, alcohol and drug use.

[15] [QF] you were first in the custody of the state when you were aged two years. I see first of all you were living with your [your relative] for eight months, then [another person] for about 17 months and then with your nan [CF]. She passed when you were [under 12] and that is I think when you returned to your mum. You have been a witness to violence between members of your whānau. I note that your mum has at one point been in hospital because of violence. I note that you have received violence from family members. Your education has been disrupted. You have been bullied at school and you have acted violently to other students. Your whānau still struggle and from the information I have you sometimes act abusively in your home in ways that you have witnessed. Alcohol and drug use has become a feature of your life and I see that you reported to Mr Robertson that you sometimes attended school stoned just so you can keep calm. In one sense that is a coping strategy but it has hampered or it has set you back in your education.

[16] All that said [QF] it is apparent to me that there are also real strengths that you display. You are assessed with an average level of intellectual function but that is because your education has been disrupted so what has been suggested to us is that you are an intelligent young man, that you are smart. You have creative talent and you have sporting talent. You carry a sense of responsibility. I see your aspiration is to be a carpenter with the intention of making an honest living to support your whānau. You are identified by people who have taught you as having leadership skills and I see that in the past you have had grounding in the reo and in kapa haka.

[17] Given what I have described about [QF]'s circumstances it is not difficult to understand the causes that underlie the offending and I am assisted in that by the report from the psychologist, Dave Robertson. He has provided information and details about [QF]'s upbringing that in very significant ways was damaging rather than nurturing of his wellbeing. It indicates how [QF]'s more recent escalation in cannabis and alcohol use has impeded his ability to be assisted. There is occurrence of mental

illness within [QF]'s whānau, including whānau who are very close to him. Mr Robertson suggests that [QF] likely suffers post-traumatic stress disorder secondary to his experience of domestic violence as someone who has received violence and been witness to it within his whānau and I can appreciate how all that has found expression in [QF]'s behaviour and offending. So not surprisingly [QF] you are assessed to be what is called a high-risk offender – dangerous for people who might be hurt by you.

[18] Mr Robertson's recommendations flow logically – that [QF] be in an environment where he has consistent opportunity to address alcohol and drug use, to address his violent behaviour and to address trauma and work on his education. The simplicity of that summary belies the complexity of affecting delivery of those interventions because for [QF] there is almost a generation of damage to unravel. Indeed, whānau I suspect that is likely to be more than a generation of damage because it can hardly be imagined that your mum and dad are without some of those issues too to deal with. The principles of the law make clear that your wellbeing sits within your whānau's wellbeing so that is why things are complex and need an expert response.

[19] [QF] the social worker tells me that you express strong feelings of regret for carrying out the robbery, that you know it is wrong. That is suggested to me by the letters that I have read but also you have taken responsibility because you have not denied these charges, but importantly I hear from Ms Gilbert that almost from the very first moment when you were interviewed by the police you owned up and said, "Yes I did it," and not only that I did it but that you were probably one of the most serious offenders involved with it, you led it.

[20] I read that your mother is disappointed in you. Having said that [QF] the ties of whānau bind, and they remain, and they sustain. I say that because I see you want to go back home. I say that because I read that your mum wants to have you back home but is saying that some things need to change first.

[21] You have come to the attention of police before [QF] but this is the first time that you have come to the attention of the Court and that is because it is so serious. But you have never had Youth Court orders made against you so I need to take that into account.

[22] In considering whether to transfer the matter to the District Court for sentence I have to give greater weight to the seriousness of the offence, to criminal history, to the interests of the victim and the risk posed to other people by [QF]. I have largely addressed those issues but I add these comments.

[23] The immediate risk to the victim and the sense of unease he feels by [QF] being in his community is addressed by [QF] being in residence for now. His wider interests, like that of the public, is in the Court responding in a way so that [QF] when he is again fully engaged in his community has received the type of expert assistance that is recommended by Mr Robertson. The victim and the public interest lies with [QF] and his whānau developing through that period some understanding and skill so that [QF] does not reoffend again when he is inevitably back in this community.

[24] The Crown submits that if transferred to the District Court imprisonment is not inevitable and that other sentencing options with focus on rehabilitation might be available. It strikes me however that a sentence imposed by the District Court that places [QF] in the community immediately, even if at a distance from the victim, does not provide the same level of protection for the public as containment of [QF] in a residence for now. It is further suggested that if [QF] is imprisoned he might be able to benefit from intensive youth specific programmes for a period exceeding the four-month period available under the Youth Court. I am not provided with any detail of what that might entail. Without that detail I am not confident that the level of therapeutic or rehabilitative assistance that might be available to [QF] whether managed in prison or in the community that would be imposed on a District Court sentence would be comparable to that available in a residence crafted by a case worker as proposed in the plan I have before me.

[25] Without that level of confidence I think there is a real prospect of diminishing public safety when [QF] is released from an adult prison. The public safety is best assured by measures that enhance [QF]'s wellbeing. That is best done by his detention in residence. Placement in residence is a restriction on [QF]'s liberty so it holds him accountable and I am satisfied that balancing all the considerations that is the least restrictive outcome.

[26] [QF], now I am formally sentencing you on the charges of aggravated robbery and burglary to four months' supervision with residence. The plan of your social worker dated 16 December is approved. Now listen to this. You will be allowed out of residence two thirds of the way through that four-month order so long as you do not abscond, take off, so long as you do not commit any further offences in residence, so long as you behave well and so long as you do the plan well. Now you have got a question, what is it? [What do you mean by like abscond?] Abscond? [Yeah, that's like oh] Take off, gap it.

[27] So the supervision order is going to follow that. I am not going to make it today because there still needs to be some time and some thinking and discussion with you and your whānau, social worker, your lawyer, about where you might stay when you are released. That order is probably going to be made at the hearing when we decide if you should be released early. That hearing is going to be on 28 February, I said March, it is going to be 28 February here at the [Court].

[28] I have just directed that a plan and report for supervision be available for that early release hearing and I have just made my note that although there has been some reference to six months that we have had a discussion today and some preliminary views it may need to be longer than that.

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Judge SD Otene
District Court Judge

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