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**IN THE YOUTH COURT
AT NORTH SHORE**

**I TE KŌTI TAIOHI
KI ŌKAHUKURA**

**CRI-2019-244-000034
[2020] NZYC 123**

NEW ZEALAND POLICE

Prosecutor

v

[NK]

Young Person

Hearing: 4 March 2020

Appearances: Sergeant J Williams for the Prosecutor
J Malcolm for the Young Person

Judgment: 4 March 2020

NOTES OF JUDGE P J SINCLAIR ON SENTENCING

[1] [NK], I have to give a formal decision about this because of the number of charges, and there may be a lot of people who are interested in the progress of your matter, but what I am going to do is go through the facts of the charges and address certain matters so that you can hear what I have turned my mind to, to decide whether to grant a s 282. You are going to hear me do that now. Some of it sounds quite formal, but hopefully you will be able to appreciate most of it and what I am doing. Then at the end I am going to let you know what my decision is.

[2] [NK], you face 19 charges: seven charges of burglary, two charges of unlawfully getting into a motor vehicle, one charge of unlawfully in an enclosed yard, four theft charges and five using a document charges. The offending spans a six months period between 24 June 2018 and 31 December 2018. The facts are as follows:

- (a) For the first burglary on 18 November 2018, you went into [shop deleted]. You were with an associate. You went down a set of stairs to the shop basement which is used as a storage area and staff area. You acted as a lookout while your associate rummaged through two bags owned by staff members and took a cellphone, a wallet containing some money, cash, loyalty cards and a credit card.
- (b) For the remaining six burglaries, between 11 November and 26 November 2018 you went to six separate residential properties [in area deleted] with various associates. You went to the rear of each property and entered each house through an open or loosely-closed window. On each occasion once inside you rummaged through rooms and tipped contents out of drawers and took property including clothing, portable electronic equipment, jewellery, handbags, shoes, watches and cameras to a combined value of around \$25,000.
- (c) For the unlawful getting into a motor vehicle on 28 November 2018, the victim parked her car on [street deleted]. A person entered her work premises and removed the car keys from her bag. On 29 November

you were a passenger in the motor vehicle being driven in [location deleted]. Your associate who was driving collided into a pole and both of you got out of the car, leaving the engine running.

- (d) For the unlawfully in an enclosed yard charge, on 31 December 2018 you went to [address deleted] with an associate. You both went into the property up a steep driveway before climbing over a padlocked gate to gain entry to the deck of a home. You acted as lookout. Your associate was observed on the deck by a neighbour who yelled out to her and told both of you to leave the property.
- (e) Finally with regard to one of the theft and using a document charges on 2 December 2018, you were at [a library]. You and your associate picked up a handbag that had been momentarily unattended by an elderly woman. The handbag included a phone, reading glasses, ASB bank card and ANZ bank card and a driver's licence. You and your associate used the ASB bank card to order food at McDonald's restaurant.

[3] You are hoping to receive a s 282 discharge today. Ms Malcolm submits when the plan was first approved in March 2019 the presiding Judge indicated successful completion would result in a s 282. There have been several other intervening issues or incidents. One is the length of time it has taken to complete the plan and also there has been further offending particularly in respect of one incident that I will get to shortly.

[4] [Constable A] commented and I quote from him that you "have done well to stay out of trouble for a good number of months" but also commented that "your plan was for a considerable number of serious offences and you had made slow progress". Initially he considered a s 282 was a possible option but at one point had some reservations given the length of time it had taken to complete the plan, and [that you were involved in] further offending that I have just mentioned of theft of a car in September last year. However, he has indicated this morning that given your efforts towards completing the plan and the lack of support you have, a s 282 would be an

appropriate or would certainly be a possible option. I understand the offending involving the theft of a car may be dealt with by way of police alternative action, which perhaps is a reflection in the minor role you played in this offending. As I say, [Constable A] perhaps more appropriately should be said to adopt a neutral stance to the s 282 discharge.

[5] In July last year significant changes were made to the Oranga Tamariki Act 1989. When considering your sentence I have to take into account the purposes of the Act and those new provisions. Emphasis is now placed on a more sophisticated and nuanced understanding of Te Ao Māori and the commitment towards the Treaty of Waitangi. The four primary considerations in relation to all youth justice matters are, firstly, recognising the wellbeing and best interests of a young person. A young person's rights under the UN Convention on the Rights of the Child and the UN Convention on the Rights of People with Disabilities must be respected by the sentencing Judge. I also have to take into account the public interest including public safety, the interests of any victim involved in your offending and your accountability for your behaviour. Young people are to be treated in a manner that takes into account the age and desirability of promoting reintegration in society so that they can become valuable and productive members of the community.

[6] Against this background, I turn to discuss all the factors of your offending and your personal circumstances in guiding me in reaching the appropriate outcome. Your offending, particularly viewed in totality, is reasonably serious. With regard to the seven burglaries, six involved entering residential addresses which always poses a risk of confrontation with an occupant. Burglaries of residential addresses are considered more serious and worrisome, because of that associated risk and the impact it has on the owner or the occupier who frequently feels that their private space has been violated. A substantial amount of property was taken during each of these burglaries. That is another thing that I have to take into account. That caused considerable loss and inconvenience for the owners.

[7] The seventh burglary, although not residential, in the circumstances raised a risk of confrontation, because the shop owner was there and you took several personal

items of property which were valuable and of personal significance. I have no doubt your offending caused them at least some inconvenience and annoyance.

[8] Finally, there were the victims involved in the unlawfully on a property and using document charges. Your activities caused those people loss. Many of the victims of your offending expressed distress and described the adverse effect that your actions had on them both at the family group conference and through the police.

[9] Your social worker describes the FGC when some of the victims attended, as confronting for you and that you learned a considerable amount from that experience. According to her, you expressed genuine remorse after hearing the impact that your offending had had on them. She said that you felt upset about what you put them through and want to avoid causing further trauma to anyone else again.

[10] All of those charges are dishonesty-type charges and mainly committed with similarly-aged whānau members and peers with you acting as both lookout and the primary instigator. You were 14 and 15 years old at the time and you are now 15 years old. You connect with [iwi deleted] on your maternal side and Pākehā on your paternal side. Your mother stated to your youth justice social worker Ms Rivlin, that you connect more strongly with your paternal Pākehā side. You presented to the CYFs report writer as ambivalent about your Māori heritage.

[11] You have experienced a number of challenges throughout your childhood and adolescence which I have no doubt has impacted on your ability to engage and complete the plan and also impacted on your judgement in terms of the offending generally. However, you did start the Ranga Tu programme aimed at empowering your Rangatahi and strengthen your cultural identity and that is to your credit. The cultural advisor at the programme provided positive feedback about your engagement with the programme so that is very encouraging. You learned your Pepeha and attended Wānanga at the marae.

[12] You attended a family group conference early last year. It was agreed that you would commence your plan on 4 March last year and complete it by August last year, so the plan was extended by a further seven months to allow you to complete it.

There have been a number of delays completing the plan for a variety of reasons including some reticence on your part, but also serious illness including [illnesses deleted]. By 27 November last year you had completed all your plan apart from your engagement with education and your disposition was remanded to today so that Ms Malcolm could represent you.

[13] I turn to the specifics of that plan. You were to complete 100 hours' community work to repay and benefit the community, complete apology letters and letters of reflection to four of the victims, attend [a drug and alcohol support service], engage in mentoring and engage in Marist Learning Centre, attend the Blue Light Camp and provide a story of your future and engage in education and schooling. So it was a full and comprehensive plan which has run for over 15 months addressing some of the causes of your offending and repaying the community, acknowledging the impact of the offending on the victims and providing you with the necessary support to minimise the chances of you re-offending. You have been in this process for 15 months. It is now time to conclude this plan and finish these matters so that you can embark on a more positive and productive path.

[14] With regard to your plan, you completed 101 and a half hours [community work] so one and a half hours more than the agreed hours for you to complete. Although it has taken you some time to complete those hours you are to be congratulated on attending to that work. One hundred hours is no mean feat. You have completed those hours by attending work at the youth centre, Marist, tree planting, attending the Blue Light Camp, participating in the RYFS screening report, attending a driver's licence course and attending the Ranga Tu programme.

[15] You have also completed your verbal apology to [the librarians] and your apology letters to the victims who did not attend the FGC and letters of reflection to the victims who did. Those letters reflected insight and some considerable thought on your part about your actions and the impact your offending had on those victims. You completed the four counselling sessions with a therapist from [the drug and alcohol support service] and achieved the goals agreed to. The therapist said you engaged well and appeared motivated to keep making changes. You also attended mentoring sessions at [a youth development service] regularly from March to July 2019,

attending 17 out of the 25 initial sessions offered. It is a pity you did not attend all of the sessions offered. However your mentor stated that when you attended, you engaged well and you were easy to work with. Your mentor described you as, and I am going to quote from her, “intelligent and highly capable if you put your mind to achieve your goals and do not allow yourself to be distracted by negative influences”.

[16] You completed a two-day driver’s licence course at [the youth development service]. You advised your youth worker that you have been studying for your driver’s licence and intend sitting it through your course at [a youth academy]. You are still interested in finding employment. You attended the Blue Light Leadership Camp from [dates deleted]. [Constable A] said that you did very well on the course and impressed the Blue Light staff members.

[17] At one point you were open to the idea of monitoring your plan at Rangatahi Court. However, you later indicated you would prefer to keep matters here at this Court. I have read your story of future. Your social worker is right, you are academically able and again your writing and essay showed considerable insight and thought. You have plans and aspirations for a bright future and a long-held goal for your future is to become a flight attendant. The educational professionals believe you are well capable of reaching this goal and the RYFS report writer identifies this goal as a significant strength and protective factor. Ms Malcolm is concerned that if you receive a Youth Court notation it is unlikely that an application would be successful as you have to pass aviation security clearance checks.

[18] Finally, I come to your schooling and education. That is one area that has not been entirely satisfactory. Initially you attended Marist School regularly but after three months your attendance dropped significantly. The report writer from [Marist?] states that “like most of the agencies working with [NK], [NK] is engaged in a motivated and meaningful way when she is there and has positive social skills and makes good progress. However, her attendance is the biggest barrier to her fulfilling her potential”. Your mentor organised and supported a transfer to [the youth academy] and you attended on occasions in October, November and December, but your attendance was marred particularly in November by your ill health. You have recommenced attending [the youth academy] over the past seven to 10 days and

spoken positively to your social worker about the work you are engaged in at [the youth academy]. You have also indicated to me that you are going to continue attending the course regularly so that is really encouraging. It is important because education can take you so many places, [NK], and provide you with so many more options. A teacher at Marist, in fact I think she is the one who sits at the back of the courtroom supporting you today, describes you as “a talented writer with the ability to achieve when you want to and the academic potential to attend university”. In fact, [NK], all the people who have come in contact with you during this process have expressed the view that you are academically able and have considerable potential. It is really important that you realise that potential.

[19] Your relationship with anti-social peers and whānau members as well as boredom have been key factors contributing to your offending, and lack of whānau support and health issues have compromised your ability to complete the plan. It was a comprehensive plan, as I have mentioned. It needed to be because of the seriousness of the combined offending and the issues that needed to be addressed, to ensure that you are on a much more positive path and your risk of re-offending is minimised.

[20] So, although there have been some glitches and several backwards steps over the past year, you have largely completed your plan with minimal support from family and some personal and health difficulties. Your social worker has advised that you went through periods when you gave up and lost momentum. However in the latter part of last year you re-engaged with your plan, resulting in you completing the community work and attending Ranga Tu programme and more recently re-engaging at [the youth academy]. You have not been subject to any bail breaches and you have attended a number of Court appearances and FGC conferences over the past 15 months. So [NK], if you use some of those skills you have learned while on the plan, and draw on your many personal strengths, you will be able to utilise that potential and ability that so many people around you speak of.

[21] I am satisfied you have been held accountable for your behaviour and the interests of your victims have been met, and that you have addressed in some considerable measure the underlying causes of your offending which has addressed

the public interest and public safety. I am satisfied that it is in your best interests that a s 282 discharge be granted.

Judge Sinclair Pippa
Youth Court Judge

Date of authentication: 21/04/2020

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