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**IN THE YOUTH COURT
AT BLENHEIM**

**I TE KŌTI TAIOHI
KI TE WAIHARAKEKE**

**CRI-2020-206-000009
[2020] NZYC 195
JUDGE VIA AVL**

**NEW ZEALAND POLICE
Prosecutor**

v

**[DI]
Young Person**

Hearing: 21 April 2020

Appearances: Constable E Gage for the Prosecutor (via AVL)
B Millar for the Young Person (via AVL)

Judgment: 21 April 2020

NOTES OF JUDGE R J RUSSELL ON SENTENCING

[1] [DI] appears by AVL video link during this COVID-19 level 4 lockdown period facing a number of serious charges including three burglaries, escaping from police custody, unlawfully taking a motor vehicle, theft, trespass and shoplifting. A supervision order was imposed on 10 December on three charges of burglary and one of escaping from custody. Further offending has since occurred. A family group conference has been held. [DI] has breached the supervision sentence that was imposed on 10 December 2019 for a period of six months. This has been subject of a declaration application and the supervision order was suspended by Judge Ruth. [DI] has been placed in the [residence deleted] where he has been for the past three months or so in [location A].

[2] Ms Miller has filed a memorandum on behalf of [DI] seeking that in effect he be sentenced on a time served basis, and submits that a s 283(a) order should be imposed discharging [DI], meaning the Youth Court proceedings would therefore be at an end.

[3] This is strongly opposed by Constable Gage from Youth Aid. He has drawn my attention to the extent of [DI]'s offending. [DI] has faced something in the order of 30 to 40 charges since he has come to the attention of Youth Aid. Constable Gage has been and continues to be involved with [DI], and expresses the police's real concern that if released back into the [location B] community without any supervision or oversight, [DI] would quickly lose any benefit of the programmes that he has been engaged in in [location A] and would quickly relapse and re-offend. Constable Gage seeks a supervision order be imposed.

[4] When tasked by me about Ms Miller's submissions, Constable Gage agreed that the existing supervision order which was made on 10 December 2019 and then varied on 14 January could continue through until the expiry of its term which I would understand to be 10 June 2020. Constable Gage would agree to the other charges that

[DI] faces being dealt with under s 283(b), which means that he would be admonished and discharged without further penalty apart from a reparation order in the sum of \$752.26 which is sought on shoplifting and unlawful taking charges.

[5] Ms McKay for Oranga Tamariki began her submissions by supporting a discharge under s 283(a) or (b) and, in essence, supported the submissions by Ms Miller, however, when tasked by me about Constable Gage's submissions, Ms McKay agreed that a reinstatement of the suspended supervision order was feasible and would provide [DI] with some oversight in [location B] through until mid-June 2020. Ms McKay explained there is not any clear idea during this COVID-19 level 4 period how [DI] could get back to [location B] and options about this have been discussed today. I have also been through with Ms McKay the provisions of the earlier supervision order which would need to be changed for the remaining term of the order.

[6] I need to record that Ms Miller does not support this outcome and, in particular, takes issue with the continuation of the curfew which is from 7.00 pm to 7.00 am and reiterates her submissions towards a s 283(a) outcome as contained in the memorandum which she has filed.

[7] I need to record that there is currently a s 139 temporary care agreement with Oranga Tamariki which remains in place, which does provide some responsibility for the Ministry to provide care for [DI]. As, however, I have observed, if I were to make the orders as submitted by Ms Miller and Ms McKay there is nothing to stop [DI] walking out the front door of [the residence] today and going wherever he likes. No bail conditions which hold him to that address would remain in place, and I agree with Constable Gage's submission that this position for [DI] would be untenable, and it would quickly lead to all of the gains that he has made so far in the residence being quickly undone and the risk of him becoming involved in further offending is real.

[8] I have a duty not only to [DI] but also to the wider community to prevent a repetition of what is, I accept, a high level of offending which [DI] has been involved with to-date. Constable Gage has told me that [DI] is one of the most prolific offenders which the [location B] Youth Aid has had to deal with over recent times.

[9] I acknowledge the points made by Ms Miller in her memorandum to the effect there have been restrictions on [DI]'s liberty akin to that of a s 311 order for the past almost three-month period. I recognise that the circumstances for [DI] in the [location A] residential home, however, are different than would be the case if he were placed in a youth justice residence such as Te Puna Wai, but the point is validly made by Ms Miller about this issue.

[10] I have reached the view that the supervision order made on 10 December and then varied on 14 January should be further varied and remain in place until it expires on 10 June. The judicial monitoring requirements will continue and, providing the COVID-19 restrictions permit, I would like a Youth Court Judge, preferably me, to be able to review [DI]'s progress on the supervision sentence in either late May or early June at a date and time to be advised by the registrar and notified to [DI] and the other parties.

[11] Finally, I need to record that I have spoken to [DI] directly. I know him, having dealt with him on a number of occasions previously in this jurisdiction and I have spent some time speaking with him today. Clearly, he has benefited from the time he has spent in the residence in [location A]. He has engaged with Te Reo learning programme and wants to gain a greater knowledge and understanding of matters relating to his culture and heritage. He has expressly mentioned that [name deleted] from Mata Waka could specifically continue to help and assist him with any course and programmes, and I have specifically encouraged him to continue with this work.

[12] I am satisfied that the orders that I am going to make will allow an orderly transition from [the residence] back to [location B] where there will be some supervision or oversight. It will be for a relatively brief period of approximately six to eight weeks depending on when arrangements are able to be made for [DI] to [the residence] and go to [location B].

[13] For the avoidance of any doubt, the requirements are that [DI] is to remain where he is in [location A] until the Ministry have approved appropriate arrangements for [DI] to travel from [location A] to [location B]. As circumstances currently stand, I consider this will need to occur by motor vehicle and travel will not be able to occur

by air. Ultimately, this will be a matter for the Ministry to arrange. For the avoidance of any doubt, I express the view travel arrangements should be made for [DI] as soon as it is possible and feasible for travel to occur. It is deemed essential travel for COVID-19 purposes.

[14] Having set out the background, I make a declaration under s 296(e) of the Act that [DI] has breached the supervision order conditions. I now vary the supervision order in the way that I outline as follows:

- (a) In respect of the charge three charges of burglary and the charges of escaping from police custody, I discharge the suspension of the supervision order which has been made.
- (b) The supervision order is reinstated with the following variations:
 - (i) The conditions contained in clause (f), (i) and (j) are to be discharged.
 - (ii) The remaining conditions in the order are to continue. This includes the curfew. I hear Ms Miller's submission against the curfew being retained, but agree with Constable Gage and Ms McKay's submission that this curfew is needed for the next six to eight week period to ensure that there is an appropriate and safe transition for [DI] back into the [location B] community with some oversight provided. The curfew assists with this and for this reason I do not accept Ms Miller's submissions that the curfew should be discharged.
- (c) I direct that an amended supervision order be prepared by the registrar and served on [DI] and the other parties.
- (d) I direct the registrar allocate a judicial monitoring date in either late May or early June for review. The date is 3 June 2020.

- (e) In respect of all of the remaining charges which [DI] faces, he will be discharged under s 283(b) of the Act, meaning that he is admonished and discharged.

- (f) On the shoplifting and unlawful taking charges, there will be a reparation order made under s 283(1) order that the sum of \$756.26 be paid as per the police schedule submitted.

Judge RJ Russell
Family Court Judge

Date of authentication: 22/04/2020

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.