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IN THE YOUTH COURT
AT HAMILTON

I TE KŌTI TAIOHI
KI KIRIKIRIROA

CRI-2020-224-000002
[2020] NZYC 636

THE QUEEN
Prosecutor

v

[GL]
Young Person

Hearing: 9 December 2020

Appearances: A Gray for the Prosecutor
R Boot on behalf of M Young for the Young Person

Judgment: 9 December 2020

ORAL JUDGMENT OF JUDGE R H PAUL

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[1] I am being asked today to make a decision about [GL]. [GL] is 17 years of age. He will turn 19 years of age in [date deleted] 2022. That means the Youth Court has an opportunity over the next 13 months to work with [GL], however, the Crown has asked that [GL] be transferred to the District Court for sentencing so I need to decide between the two options that I have in front of me:

(a) Transfer [GL] to the District Court.

(b) Decline that application and sentence him to six months' residence with nine months of supervision and 12 months mentoring.

[2] I have received submissions from his lawyer and from the Crown. I have read the social work plan and report and I am grateful for the cultural report. If I make the order to transfer it will be the most punitive, that is the harshest order available in this court. It will mean that [GL] would be subject of the Sentencing Act 2002 in the District Court rather than the Oranga Tamariki Act 1989 in this court. This is the only order in the Youth Court that acts as a criminal conviction for the purpose of a young person's record.

[3] At the outset I accept that there is jurisdiction for the application for transfer to the District Court as [GL] was over the age of 15 at the time of offending.

[4] Before making an order I must assess the restrictiveness of the outcome in accordance with the hierarchy set out in s 283 and not impose the outcome unless satisfied that a least restrictive outcome would in the circumstances, and having regard to the principles within s 208 of the Oranga Tamariki Act and factors in s 284, be clearly inadequate. That means that I must be satisfied that this court has a punishment or an outcome which is not enough to address the seriousness of the offending that has occurred. In undertaking this exercise, I am guided by the purposes and principles and duties in ss 4, 4A, 5 and 7AA of the Act.

[5] I refer to s 284(1) and I consider that I must deal with the following four matters:

(a) The seriousness of the offending.

(b) The criminal history of the young person.

(c) The interests of the victim.

(d) The risk posed by the young person to other people, that is the public interest.

[6] I first consider the seriousness of the offending. [GL], along with several youth offenders, has committed a series of aggravated robberies within the [location deleted] area. The [first Liquor Store] was targeted three times within a month. The [second Liquor Store] was targeted once by [GL] and an unknown associate. Each robbery involved significant victim impact, multiple offenders, an extent of premeditation, the use of disguises and weapons. The weapons used were not insignificant and each had the potential to cause serious harm.

[7] The Crown submitted within their written submissions: "The use of weapons appearing to be firearms is particularly grave given that the victims of that offending would have anticipated that their lives were in danger." Each robbery has caused significant financial loss. Counsel for the Crown submits that each robbery would attract a starting point of around five years' imprisonment in the District Court. The Crown submits that there would be significant uplifts applied given the further aggravating robberies and other offending. The Crown submits that the starting point would be eight to nine years.

[8] [GL] was first arrested in respect of the aggravated robbery matters in January of this year. He escaped from custody and was located in about March of this year. That of course creates the further offending.

[9] Section 284 of the Act was amended on 1 July making it mandatory for the Court to give greater weight to, amongst other factors, the seriousness of the offending and the risk posed by the young person to other people. The Court of Appeal stated that the purpose of a transfer is to make available a wider and more punitive range of

sanctions than those in the Youth Court. The Court of Appeal has recognised the seriousness of offending may in and of itself be the basis for transferring charges from the Youth Court to the District Court.

[10] When determining the seriousness of the aggravating robberies in this matter I determine that they are within the middle category of this type of offending as there was no actual violence caused in the offending.

[11] To ensure parity I have asked counsel to provide me with further information today. I wanted to know what the other offenders received so that the decision I make about [GL] is fair as it relates to the others. I am told that one offender involved in the first aggravated offence was 17 years old at the time of the offending. He is been dealt with in the District Court as a result. His outcome is yet unknown.

[12] In regard to the second aggravated robbery I am advised that two young persons of the same age as [GL] were not transferred to the District Court, one receiving six months' supervision, the other, eight months' supervision. I am advised at least one of the young people spent some four months in custody.

[13] In respect of the third aggravated robbery the co-offender was 17, not 16, and his outcome in the District Court has been a sentence of home detention. None of those involved have received terms of imprisonment, however, I must take into account that their outcomes might differ because [GL] has a history of criminal offences including aggravated robbery.

[14] I then turn to whether [GL] has offended while subject to a Youth Court order. I am advised by the Crown that there was offending by [GL] while he was subject of a supervision order in 2019 which included two burglaries. He received admonishment pursuant to s 283(b) of the Act. I take it from that outcome, that and the lower tariff provided, I will give that some weight but not great weight.

[15] I turn to the interests of the victims. Counsel for the Crown has set out the effect on the victims at paragraph 320 to 330 of her submissions. No aspect of those submissions has been challenged by [GL]'s counsel. It would be trite to say that the

victims have been negatively impacted by the offending. These are members of the public going about their business trying to make a living for themselves and their families. They have been traumatised, they have been targeted by youth offenders. Further, they are unlikely to receive any financial compensation as the young people involved are unlikely to be in a position to meet any costs to repay the loss. [GL] is not in a position to satisfy any reparation order.

[16] I agree with the submissions of counsel for [GL] that the victims' belief or feeling that young people are simply getting away with this offending is not the case for [GL]. He has been in custody for the last nine to 10 months. If I impose the lesser outcome today, he will spend at least another four months in residence. On release he would be subject to strict supervision conditions for another nine-month period. I accept that this outcome is not getting away with offending. It is a total restrictive period of one type or another for a total of 23 months, nearly two years.

[17] I now consider the risk posed by [GL] to the public and as I have said, the best predictor of the future is the past. The past for [GL] does not paint a good picture however [GL] during his stay in residence has taken advantage of the rehabilitative options and programmes available to him. The Crown have put to me that [GL] by his previous offending and current offending poses a risk and needs to be made accountable for his offending. I take it firstly that he has been made accountable previously for his previous offending. I need to make him accountable for this offending. I need to consider whether the punitive and rehabilitative options available within this court satisfy me sufficiently that he should remain in this court.

[18] I sought further information from the social worker. She tells me that [GL] from the time he commenced his stay in custody pushed and asked for support. He has undertaken alcohol and drug programme. He is obtaining psychological support and engaging in that. He has completed a Tikanga Māori programme. He is considered a leader in residence. He is motivated not to re-offend. I am also told, and I take into account that this was not [GL]'s attitude when he was in residence last, he has clearly and evidently made a change in his attitude and his engagement and receptiveness to rehabilitation. It is the rehabilitation that is more likely to bring an

outcome of lowering risk of re-offending to the public than a longer stay in a prison environment.

[19] Counsel in their submissions refer me to other factors set out in s 284. One of those is [GL]'s cultural background, by that I mean his environment in the past. It is fair to say that [GL] as a child and young person was exposed to violence, drugs, alcohol, gang activities and criminal offending within his environment. His father was in and out of prison. The Court cannot minimise the trauma this would have caused to [GL] as a developing child the exposure of this trauma within the home. There is a plethora of research discussing the damage that is done to a child within this type of environment and the deficits that it can cause to decision making. I give great weight to the fact, and have referred to it already, that [GL] has an extensive previous history of serious nature.

[20] In summary, the Crown has asked me to consider the reasons as set out in paragraph 4.3 of their submissions and grant the transfer. I take it from their submissions that the core of the argument is accountability. On the other hand, counsel for [GL] suggests that the least restrictive outcome is a sentence within the Youth Court. He is more likely that he will be successfully rehabilitated through the Youth Court process than in the District Court. If [GL] were to receive a term of imprisonment this court has no power to determine whether he remain in a Youth Justice Residence or goes to a prison and the Crown accepted that that was the case. That gives me great cause for concern given [GL]'s age. I refer to the case of *Police v S D* where Judge Walker said: "It is a strength of the youth justice system that I am required to look beyond the seriousness of the offending and I do so."[1]

[21] Having considered the submissions of both counsel, the principles and the Act and caselaw guidelines I decline the application to transfer these proceedings to the District Court. In doing so I take regard of the following:

(a) There has been sufficient accountability of the offending within the Youth Court in that [GL] has spent nine months in custody.

[1] *New Zealand Police v SD* [2018] NZYC 169 at [46].

(b) He will spent at least another four months in residence.

(c) He will be the subject of strict supervision conditions for another nine month period.

(d) He will also have the benefit of a mentoring order to continue his support out in the community when he is released.

[22] I take into account:

(a) The role of addiction in his offending and the steps he has taken to address that within residence.

(b) His age and development.

(c) The deficits that he has incurred as a result of his environment.

(d) Parity with the other offenders.

(e) That a District Court will have a lesser level of oversight for [GL] on his release.

(f) The District Court will not be able to provide the benefit of a mentoring order.

(g) The positive work that has been undertaken by [GL] in residence to address factors of offending. It is my view that this is a young man who has the potential for a different life. He has shown that in his time in residence. He is motivated by the fact that he is a young father. He has pro-social support through his partner and his own motivation to be a good dad. A dad who is present and there.

(h) His willingness to engage in programmes to lower the risk of re-offending.

[23] Against that background I make the following orders:

(a) I decline the application to transfer to the District Court.

(b) I make an order for supervision and residence. [GL] shall receive a period of six months in residence and nine months' supervision. That will be a split sentence.

(c) [GL] will be required to appear in Court [in early 2021] to consider early release. A time to be confirmed by the registrar in due course.

(d) I direct that a s 334 and s 335 reports be filed in contemplation of that early release hearing at least five days before the hearing date.

(e) I make a mentoring order as set out in the proposed plan provided and dated 18 November 2020 and that is to commence on [GL]'s release, whether that is granted early release or not.

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Judge R Paul
Youth Court Judge

Date of authentication: 21/12/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.