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IN THE YOUTH COURT
AT BLENHEIM

I TE KŌTI TAIOHI
KI TE WAIHARAKEKE

CRI-2020-206-000015
[2022] NZYC 73

NEW ZEALAND POLICE
Prosecutor

v

[MA]
Young Person

Hearing:	22 February 2022
Appearances:	Sergeant A Young for the Prosecutor B A Millar for the Young Person L McKay for Oranga Tamariki
Judgment:	22 February 2022

NOTES OF JUDGE G P BARKLE ON SENTENCING

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[1] [MA] is before the Youth Court for disposition in respect of seven charges. There are five indecent assault charges under s 132(3) of the Crimes Act 1961 and two charges of unlawful sexual connection under s 128(1)(b). They carry respectively maximum sentences of 10 years' and 20 years' imprisonment.

[2] The background is there were in total 10 charges before the Youth Court. At a relatively early stage [MA] did not deny the seven which are before me today. Three he did deny, and those were the subject of a defended hearing in the Youth Court in April last year.

[3] I found [MA] had committed those offences which were of a similar nature and seriousness. [MA] was sentenced on those matters on 6 July 2021 to a period of supervision of six months together with making a reparation order of $5,200.

[4] The supervision order has been completed. Payment of the reparation continues and has been made regularly at $50 per week. This is able to be paid by [MA] because he has, throughout the timeframe the proceedings have been before the Youth Court, maintained employment. As all involved have recognised, this is a significant achievement on his part.

[5] The particular reason why all parties agreed to what has become a split sentencing exercise was to ensure the Court had some oversight of the STOP programme which [MA] was undertaking. He had commenced the programme itself in May 2020, having undergone an assessment in the months prior. I have an end of intervention report from that organisation dated 22 December 2021. I will refer to this more fully shortly.

[6] The victim in both sets of offending was [MA]'s young cousin, [BP]. At the time of the conduct by [MA] he was aged 17 and she eight. In brief what had transpired was [BP], with her mother, had moved back to New Zealand from [country deleted] in [2018].

[7] At that time [MA] was living with his [grandmother], who was his legal guardian. [BP] would visit and often stay the night with her grandmother. During this time [MA] befriended [BP] and the various offences took place.

[8] Some of the charges admitted were representative meaning, of course, they occurred on more than one occasion and the timeframe of the offending of over 12 months is a seriously aggravating matter.

[9] [BP]'s mother, [KP], completed a victim impact statement for the purposes of the sentencing hearing in July 2021 on the proven matters. Sergeant Young advises [KP] did not feel able to complete an updated statement for today. The earlier statement set out vividly the effect on [BP] of what had taken place and also [KP] herself.

[10] As both Sergeant Young and Ms McKay have underlined, they each recognise the positive manner in which [MA] has conducted himself since the offending took place and the charges have been before the Youth Court, which has been a considerable period. But each submit the trauma and impact on [BP] cannot be underestimated nor overlooked by the Court in determining what is an appropriate outcome.

[11] Mrs Millar, who has been [MA]'s youth advocate throughout the process, submits the outcome for [MA] on these seven charges should be a s 282 discharge. She has filed helpful written submissions outlining why this should be the result. Properly Mrs Millar acknowledges the aggravating matters in terms of the offending, however, she makes the following key points on behalf of [MA] which should not be lost sight of by the Court:

(a) First, [MA] has maintained throughout his employment. It is, I accept, an unusual circumstance that any young person before the Court has been able to successfully do so. As well this has allowed him to make a considerable payment of reparation.

(b) Mrs Millar reminds me, apart from being before the Youth Court and dealing with the charges, there has been much upheaval in [MA]'s

personal life. His grandmother, who I have already referred to, was the most stable influence in this life from early times. She was appointed an additional guardian. [MA] lived with her. There was much stress for her caused by what took place. I intend no criticism of [MA]'s grandmother in noting that everything became simply too much for her. He then went to live with [his mother]. Fortunately she, along with [her partner], have been able to provide an appropriate living situation for [MA]. They are supportive of him. Nevertheless [MA] has lost important persons in his life as a consequence of the offending;

(c) The imposition already of the supervision order and reparation order I have referred to. I acknowledge [MA] has already had a penalty imposed. As Sergeant Young has submitted, if all charges had been dealt with together this probably would have been the overall outcome, perhaps with a supervision with activity rather than supervision order. However, as a pragmatic response, the Court agreed with other participants that ensuring the STOP programme was completed was a benefit for all, being [MA] primarily, but also there is much public interest in having the programme fully undertaken and successfully completed by a young person.

(d) The successful STOP intervention.

(e) Throughout the timeframe of [MA] being before the Court, which has been since mid-2020, there have been no issues with breaches of bail or his safety plan not being complied with.

(f) Having two types of order being in place may create difficulty downstream for [MA] around employment and other matters which impact into his life.

[12] Sergeant Young has also filed some helpful submissions as far as the outcome is concerned from the informant's point of view. As I have said, he readily acknowledges the positive matters I have referred to so far as [MA] is concerned.

However, the police are of the view, having regard to the impact on the victim and the very serious offending, a s 282 discharge would not be appropriate in this case.

[13] The sergeant submits the suggestion by Mrs Millar of having a record of two different outcomes so far as [MA]'s offending is concerned may be not quite as significant as counsel has suggested.

[14] Ms McKay is of a similar view to the sergeant when she has regard to the various matters the Court must consider under the Oranga Tamariki Act 1989. Ms McKay submits a s 282 discharge would not therefore be an adequate response.

[15] I did say I was going to refer to the final report from the STOP organisation. I have read the report thoroughly, and there are a number of factors which suggest it has been of much assistance to [MA], and he has made much progress.

[16] As I understand the report it would seem there has been a significant reduction in the risk profile of [MA]. He has come to recognise the viewing of pornography and some of the social deficits he has to confront can have a detrimental impact in terms of his conduct towards females, particularly young girls.

[17] The report notes he has refrained from watching any pornography throughout the course of his intervention, and [MA] advised at the final review his intention not to do so going forward. There is also reference to [MA] being able to converse with others more fluently than prior to his treatment, and the ability to maintain employment was seen as providing evidence of this being the case.

[18] He also had developed empathy towards [BP] and other family members, and he spoke of the desire to never hurt anyone like he had again. There is also positive reference to the support [MA] gets from [his mother and her partner]. The final remark from the report is that [MA] leaves treatment with a robust understanding of his risk factors and strategies to counter any future harmful sexual behaviour occurring.

[19] As I said earlier, the treatment period following his assessment ran over 18 months from May 2020 until December 2021. There would have been a

considerable number of appointments and work required of [MA] through this period. He deserves congratulations for having been through the programme and the effort he has put in.

[20] In terms of the outcome for [MA], the Court must have regard to the purposes of the Oranga Tamariki Act ("the Act") which were expanded and enhanced in July 2019 by a suite of legislative changes. In terms of the primary considerations set out in s 4A(2) of the Act, those are:

(a) the well-being and best interests of [MA] must be considered;

(b) the public interest, which includes public safety;

(c) the interests of any victim; and

(d) accountability of [MA] for his behaviour.

[21] I then must be guided by the general principles in s 5 and the youth justice specific principles in s 208 of the Act. I acknowledge those youth justice principles have a strong diversionary underpinning. Any sanction must be relative to the age of the young person, and also be the least restrictive and appropriate in the circumstances. Then s 284 sets out matters which the Court should have regard to in deciding whether to make an order under s 283.

[22] The practical difference between a s 282 and s 283 outcome is the former means no record is kept of the offending and [MA] would be able to say he has never been charged with these matters. A discharge pursuant to s 283(a) means a record of the offending appears on the police national record and [MA] would not be able to make the statement I have just referred to concerning these charges. I have had regard to all of those principles, and especially the criteria in s 284.

[23] It is a finely balanced matter. There has been, as I have already said, considerable progress and much positive which has been achieved by [MA]. He has already been subject to the orders I have noted in respect to the proven charges. The

reparation order remains in place and is significant. As I have just recorded, the STOP report at the end of his programme is a positive one.

[24] Against this, there is the serious nature of the charges. Having said this, [MA] did admit these seven charges at the family group conference. Nevertheless, the impact on [BP] and wider family has been significant. There was obviously a considerable age difference between her and [MA] when the events and conduct took place. There was a serious breach of trust involved. There has been much upheaval for [BP] and others. This has also impacted on [MA], I accept.

[25] As best I can, having weighed all matters, I have determined in the circumstances there will, in respect of each of these seven charges, be a discharge pursuant to s 283(a). I acknowledge this will mean for [MA], as far as the future is concerned, a record of these charges. There will, however, be no other sanction.

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Judge GP Barkle
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 25/02/2022