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<http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>

**IN THE YOUTH COURT
AT WELLINGTON**

**I TE KŌTI TAIOHI
KI TE WHANGANUI-A-TARA**

**CRI-2020-285-000042
[2021] NZYC 556**

THE QUEEN

v

[RK]

Hearing: 7 December 2021

Appearances: R de Silva for the Crown
S Cooper for the Young Person

Judgment: 7 December 2021

ORAL JUDGMENT OF JUDGE M N E O'DWYER

[1] [RK], I begin by acknowledging the presence of your whānau here today and of Ngāti Toa, one of the iwi that you whakapapa to. I also acknowledge the [victim's] family who are not here today but who are very much present as we go through this process. Ms de Silva will report back to the [victim's] family and I emphasise that [the victim] and his family are part of this as much as you are.

[2] You are well supported by your whanau, and by Ngāti Toa and your community. You have been well supported by Oranga Tamariki through Ms Masoe, and through police and Youth Aid.

[3] It has been a long pathway to justice. It has taken time, but you have accepted responsibility and completed the plan.

[4] You have accepted responsibility for a charge of injuring with intent to injure which occurred on 7 September 2020, that is 15 months ago today. You were 16 years old at the time. You were at school then, [School A]. You were with [the victim] and there were 40 or 50 other students around in the outdoor space. I read in the summary of facts that the group believed that [the victim] was going to fight with another student. Then, unexpectedly, without any warning, you assaulted [the victim].

[5] It was a serious assault. The particularly serious aspects of the assault were the sustained blows to his body and to his head when he was on the ground, and the injuries that he sustained. There were the physical injuries to his face. Those injuries included broken teeth; swelling to his scalp, eye and cheek, a dislocated cheekbone and a fractured nose. You punched him in the head 10 times and kicked him in the head several times, and in the stomach. Other students intervened and I understand that brought this to an end.

[6] I have spoken about the physical injuries, but the psychological impact has been significant for him. He was hospitalised and had hospital treatment in A&E. He could not go back to school immediately. It had psychological impacts. He has continued to be anxious and frightened. It has had a very significant psychological impact on his family who have supported him through this long journey. It was

difficult for them because the resolution did not come until July, for several reasons, but the delay was very hard on them.

[7] The wider implications for the whānau were difficult because they lost [details deleted].

[8] [RK], you lost [details deleted] this year. Your actions have affected the [victim's] family and your own whānau. It has been hard on both families through this process.

[9] Once the charge was resolved, you did not deny your actions and you accepted responsibility. You attended a conference, a whānau hui, that produced a very comprehensive plan. It is a plan that recognises and has a foundation in tikanga, which is the foundation of your family. What has impressed me about the plan is how deep-rooted it is. It goes into the root of the problems. It aims to help you build on your strengths and potential, and accept responsibility on behalf of yourself, your whānau, the [victim's] family and your hapū and iwi.

[10] Mr Baker said to me that the plan does not finish today. That plan will go on and your responsibility under that plan continues. Your whānau, hapū and your iwi will be watching how you live up to that plan. That is a great strength in the plan.

[11] I must consider the principles under the Oranga Tamariki Act 1989. There are several that I must consider. They include your wellbeing and best interests, the public interest, which includes public safety, the victim's interests and holding you accountable. As Ms Cooper says, the very aim of the legislation is a solution that holds you accountable and builds your strengths.

[12] All the reports about you speak very highly of your character, and your personality and strengths. They refer to your talents and gifts. They say that you are living up to those talents and trying to develop them in a constructive way. They say that you are gentle and kind, and that you have empathy for people. That is in such stark contrast to your actions on 7 September 2020. There is a huge contrast between your actions that day and what these reports say about you.

[13] I conclude, from reading the reports and hearing about you, that your behaviour on that day was out of character. It does not reflect your true character which you have shown through the work you have done in the last 15 months.

[14] I reflect on the [victim's] family. Ms Cooper and Mr Baker said that the goal of the hui was to achieve reconciliation for you and your whanau, and for the [victim's] whānau. The [victim's] whanau, unfortunately, have not been able to read this information and hear about your character. I hope somehow that they will get to learn about the changes you have made because I think it would give them some peace.

[15] A significant change has been your move from [School A] to [School B]. I read the reports from your tutors and they speak very highly of you. They are aware of this process. They speak about your character in very positive terms. They speak about your talents and your hard work.

[16] You have shown true remorse. You gave a full apology at the FGC and you provided an apology in a video message. In September last year, you were not ready to accept responsibility for what you had done. You ran away from it and tried to enlist the help of another young person to provide some form of excuse. That action 15 months ago shows you were running from responsibility then but, through this process and over time, you have accepted full responsibility.

[17] I conclude that in September last year you were much more immature than you are now. You have matured. You acted like a 16 year old who was frightened, making poor decisions and poor judgements and running from the truth. This year you have been able to face up to the truth. As you go through life, the most important thing is to face up to the truth. When you face up to the truth good will come from it.

[18] In the past 15 months you have not committed any more offences. You have not come to the attention of the police, and you have complied with your bail conditions. You have followed the whole process carefully. That indicates you were able to start the process of facing up to the truth.

[19] I must balance those factors with important principles that the Crown have submitted that I consider. They include the seriousness of the offence, the impact on the victims and, overall, what is the most appropriate outcome. The Crown submission is that the most appropriate outcome is a Youth Court order that recognises that you committed this offence and that forms a Youth Court record.

[20] Ms Cooper and others have submitted that I should not do that, that I should give you a discharge without any record. The reasons emphasised are your potential and what you can contribute to your whānau and the community if you do not have a record. What has persuaded me is your potential to carry the responsibility, not just for yourself but for your whānau, and that is a real responsibility. It is your mana and the mana of your whānau that is at stake.

[21] I have concluded that the just result here, the least restrictive result and the just result, is a discharge without a record. In other words, a discharge from the Youth Court.

[22] I want to say in conclusion, as I say to all young people who are discharged from the Youth Court, that you must never forget what you have experienced in the process of achieving this discharge. I say it to you, [RK], be mindful of this plan, your ongoing responsibility under this plan which has its foundation in tikanga. This is your plan going forward. Those are the principles you must live up to. You can because you have potential and a supportive whānau. You have the support of the community and your iwi. That is the outcome today, a discharge.

Judge M O'Dwyer

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 13/12/2021