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IN THE YOUTH COURT

I TE KŌTI TAIOHI

**CRI-2020-206-000017
[2022] NZYC 399**

NEW ZEALAND POLICE
Prosecutor

v

[PW]
Young Person

Hearing: 6 September 2022

Appearances: Sergeant [name deleted] for the Prosecutor
[Name deleted] for the Young Person

Judgment: 6 September 2022

ORAL JUDGMENT OF JUDGE R J RUSSELL
[as to a discharge under ss 282 or 283(a) of the Oranga Tamariki Act 1989]

Introduction

[1] [PW], you appear facing a charge of wounding with intent to cause grievous bodily harm. In the adult court it has a maximum sentence of 14 years' imprisonment. It is a category 3 offence and is the most serious charge of assault any person can face under the Crimes Act 1961.

[2] The offence occurred on [date 1] 2020 when you were 13 years of age. The purpose of this hearing is to decide whether you should be discharged under s 282 of the Oranga Tamariki Act 1989 as [your youth advocate] seeks or under s 283(a) of the Act as the police and the victim and survivor of your offending, [the victim], wants to occur.

[3] A family group conference was reconvened again on 22 July 2022 to consider this issue following your completion of the court-approved FGC plan. No agreement was able to be reached and so this Court decision is required.

[4] In advance of this hearing, I have received lengthy written submissions from the police, [your youth advocate] and from [name deleted] from Oranga Tamariki. At this hearing I have heard oral submissions from [counsel for the prosecution, your youth advocate and the representative from Oranga Tamariki]. I have spoken to [your mother]. I have also spoken to [the victim] and other members of her whānau who are present in the court. I have taken into account in this decision all of that has been written and said.

The offending

[5] What the police say has happened is on [date 1] [PW] was wandering the streets of [location A] in the early hours of the morning. He randomly selected and entered [the victim]'s home through an unlocked front door. She was home alone and was asleep in her bed. [PW] has walked into the kitchen where he selected a sharp solid carving knife before going into her bedroom and finding her asleep. He has then proceeded to stab her multiple times on her facial region penetrating her throat and eye socket.

[6] Serious injuries resulted. These are graphically shown in photographs I have viewed and are recorded in the police summary of facts.

[7] [The victim] woke up and tried to fend [PW] off. During the attack she grabbed the knife and bent the blade to prevent further injury occurring. At this point [PW] has proceeded to punch her about the head region multiple times, and only when she was able to yell at him, did he leave the home. She has managed to call for help using a St John medical alarm.

[8] Approximately an hour later [PW] has walked into another [location A] address, stood next to the bed with a male asleep in it and started stroking his hair which then woke him. Police were then called.

[9] [The victim] was left cut, bloodied, bleeding and bruised. She was taken to [Hospital] but later transferred to [another city] in a serious condition. She was placed in an induced coma for five days, but able to make a recovery from her injuries. She is extremely fortunate to be alive and present today in the court. [PW]'s explanation to the police is he did not have any memory of what had occurred.

Court processes

[10] [PW] was charged and first appeared in the Youth Court on 25 June 2020. He was bailed to his mother's address on a 24 hour curfew in [location B] and there were a number of other restrictive bail conditions imposed. Psychological reports were directed to see whether he had any psychiatric and psychological issues.

[11] On 25 August 2020, [PW] admitted the offending and a family group conference was directed. This was convened in September 2020. A comprehensive two-year plan was agreed upon which was approved by me on 22 September 2020.

[12] What followed were initially monthly, then bi-monthly and then quarterly court appearances for reviews of [PW]'s progress on the plan until the plan was completed last month. There have been a number of medical and mental health assessments carried out. These reports rule out any psychiatric or psychological issues. [The

psychiatrist]’s best assessment is that [PW] suffered a blackout occurred which was triggered by alcohol or possibly drugs.

Acknowledgments and thanks

[13] Before coming to this decision, I want to make a number of acknowledgements and give some thanks to those who have been involved in [PW]’s progress through the Youth Court.

[The victim]

[14] I need to record and specifically acknowledge [the victim]. I have now met you on two occasions. You are a remarkable woman who has survived one of the most brutal attacks imaginable. It is a miracle you have survived this, and I accept your rehabilitation has been a huge battle for you, both physically and psychologically. Your wish is for there not to be any vengeance or retribution, but to try and make sure this sort of thing never happens again to anyone else.

[15] In advance of the hearing today I re-read your two victim impact statements which you have made at the time of the offending and just prior to this hearing. You are [over 80] years. You live on your own in [location A]. You have disability and mobility problems as a result of [details deleted]. In your first victim impact statement you set out your fear and horror about what occurred to you on [date 1]. You go into some detail in your victim impact statement. I am not going to repeat this in open court today, but you say you will live with these memories for the rest of your life.

[16] In your statement you record that you were not only thinking of yourself but also of others. You note the distress others suffered at the time, including [your friend], your immediate family, your extended family, long-time friends and the [location A] community in general.

[17] In your second statement you say the past two and a half years have not been easy for you. You have had difficulty coping and have gone through periods of feeling very angry, to feeling frustrated and unable to move on with your life, and you have

been constantly reminded of the horrible experience when you have been visited by the court and justice officials during the course of this Youth Court plan.

[18] You have set out your thoughts about the outcome you wanted from this case. At the outset you wanted there to be two years of ongoing supervision of [PW]. You wanted family parenting education and counselling. You wanted regular drug and alcohol testing. You wanted a psychological assessment undertaken. You wanted monitoring of his phone including social media contacts, and you wanted him not to enter the [location A] area during the period of the plan. And finally, you wanted to thank everybody who had helped you, naming the police, St John Ambulance, the medical teams and the physiotherapists who had worked with you as well as your friends, neighbours and the [location A] community.

[19] In your second updated victim impact statement you commented on the mobility issues you are experiencing. You have come to court today in a wheelchair. With the reparation monies [PW] has paid you, you have bought yourself this wheelchair. You have viewed the [details deleted] [PW] has made for the [location A] community and you regularly walk there with your friends. You accept the past two years have been hard on [PW] and his family, you think he has many years of growing and learning to do, and you are pleased he now sees a future ahead of him and you wish him well in his desire to become [profession deleted].

[20] You think it is important for a boy of [PW]'s age to have friends and say he cannot continue to hide away as he has been doing. When he is accessing social media, you ask him not to get side-tracked by the misinformation and the video games, because this will not help him get a better life. You say this offence has had a major effect on you and the serious trauma you have suffered could well have resulted in him facing a charge of murder.

[21] In your statement you outline your background of 19 years as [profession deleted], your work with young people involved with alcohol and drug issues in [location deleted], and other programmes to help young people who have been expelled from school, particularly for using drugs, cannabis and glue. You are concerned that in the future, if [PW] should have a predisposition for mental health

issues, including schizophrenia, then any ongoing cannabis use, alcohol and other drug use can play a part and lead to violent and irrational behaviour.

[22] Finally, you say your concerns are for this young boy because his future will be a lot longer than yours. You have spoken to me again today and reiterated much of what I have already summarised.

[23] [Name deleted - the victim], I have to say, and place on court record, that I think you are a remarkably brave and articulate woman. No one should ever have to go through what you did on [date 1] 2020. I want you to know that I have regularly asked about you during [PW]'s Youth Court reviews of his case and received reports from the police about how you have been getting on. It is something of a miracle that you are able to come to this hearing some two years later. As a victim and survivor of this offending I want you to know that I have made sure that you and your interests have never been forgotten over the two-year period of this plan.

[24] I have listened carefully about what you had to say and I will not forget you and the dignified way in which you have handled yourself throughout this entire process. You have my best wishes for your future. The outcome you want to see is a s 283 discharge and I will come back to this shortly.

Other support persons

[25] I want to give thanks to some others. Firstly, to Oranga Tamariki, [the representative from Oranga Tamariki] and her team. You have put in hours of help to make this plan work. I accept there has been a huge number of hours involved in the mentoring, the monitoring and preparing updates for the Court to review. This has helped me at each court appearance.

[26] I want to offer my thanks to the police, to [counsel for the Police] and to [Constable X] in particular. I know you have spent a huge number of hours liaising with [PW], his family, [the victim] and others to keep everybody informed about what is happening, and also keeping an eye on [PW] to help make sure this plan has worked.

[27] Although he is not able to be here today, I wanted to thank [JD]. He got alongside [PW] to help make the plan work, helped get [PW]'s community work hours done and helped get the paid work done so the reparation could be paid. [PW] has learnt a lot of skills from these experiences. [JD]'s work has been of valuable assistance in getting the plan completed, and [the representative from Oranga Tamariki] I would ask that you pass my thanks on to [JD].

[28] Finally, I want to acknowledge my thanks to [PW's mum]. No young person appearing in this court could wish for a better parent than you facing what possibly is the worst circumstances any parent could face. His offending has cost you your relationship, your standing within the small community in which you live, and I accept has cost you emotionally, mentally and physically.

[29] Notwithstanding this, you have not wavered in your support of [PW]. You have been at every court hearing with him, and at every hearing I have spoken to you enquiring about how you are doing, how you are going, and what is happening in your home. Without your support this plan had no chance of success. You have my very best wishes for your future.

The FGC plan

[30] Having made these acknowledgements, I want to talk about the plan. Rather than making disposition orders under s 283 of the Act, which was an option back in September 2020, the family group conference decided, and I agreed, that a court-approved plan was the best way to address [PW]'s behaviour and the requirement that there be consequences and accountability for what he had done, and also the rehabilitation work necessary to see this does not happen again. I counted some 31 participants attended that initial family group conference. It was a well-attended conference.

[31] It was made clear at the time this disposition outcome issue, which I am dealing with today, would be addressed at the end of the plan. No promises were made about this at the start. It was also made clear that careful organisation and planning would be required for the plan to succeed. The plan requirements were:

- (a) [PW] pay \$2,000 to [the victim], and that he was to earn that money himself.
- (b) He was to stay out of [location A].
- (c) Neither [PW] nor his family were to contact [the victim].
- (d) [PW] was to [details deleted] and it would be anonymously donated to the [location A] community.
- (e) An apology letter to [the victim] was to be completed.
- (f) [Constable X] was to keep [the victim] informed of progress on the plan.
- (g) [PW] was to complete 200 hours' community work and this was to be separate from the work he needed to do to pay the \$2,000 in reparation.
- (h) There was to be a 24-hour curfew in place for the first four months of the plan.
- (i) [PW] was to undergo a psychiatric assessment, anger management programmes and counselling.
- (j) There was to be one-on-one mentoring support to help [PW] find part-time work, to help him complete the plan, to help him engage in achieving his educational goals, to help him engage in the positive activities including sports and exercise, and also support doing volunteer work and to experience a range of experiences to help him.
- (k) He was to complete a project called the Great Brain Robbery to understand the effects of drug use on the brain.
- (l) Then he was to write an essay to give to me showing what he had learnt.
- (m) He was regularly tested for alcohol using a breathalyser by the police.

- (n) He was regularly tested for drugs using the hair follicle drug test each three months.
- (o) Support was to be put in place to help [PW] with activities during the school holidays.
- (p) Support was to be put in place to help [PW's mother] with parenting programmes which she was required to attend and did attend.
- (q) [PW's mother] was required to undertake that she and [PW] would not leave the district to enable the plan to be completed.
- (r) And finally, [PW] was to write a project for me outlining what he had learnt through this process.

[32] This was the plan. It was continually reviewed at each court appearance. Because of the seriousness of the charges [PW] faced and the length of the plan, I elected to manage the file through to its conclusion so that a Judge would have close knowledge of what had happened and what would need to happen to make the plan work.

[33] By my count there have been 12 in-court reviews of the plan which have happened over the past two years. For most of them [PW] and [PW's mother] have come from [location B] to attend. There were a couple of appearances which for COVID-related and other reasons [PW] was not able to attend. [PW]'s bail terms were relaxed, in particular the 24-hour curfew, once the medical reports became available, and after everyone could get some understanding of why this offending happened.

[34] [PW] was initially held out of school because of what occurred but has since returned to school and is continuing to attend. The school officials have been aware of and have supported [PW] through this plan.

[35] The plan has been discussed and overseen and has been implemented as well as anybody could have possibly expected in the circumstances.

[36] Worth noting is the Ministry's final report where [the representative from Oranga Tamariki] has referred to the contents of the psychological report prepared by [the psychologist], who assesses [PW]'s risk to himself as low, his risk to others as low and the risk from others as also low, and there was no previous risk history. The assessment did not support any contributing influences of psychosis, autism, low intelligence, memory problems or callous disregard for others. The primary hypothesis of what could have contributed to [PW]'s offending is that there was low level of supervision in the home preceding the offence. [PW] sought to manage family stresses. He was impacted by his mother's health issues and sensitive to this. There was an absence of appropriate supervision at his stepfather's address in [location A] on the night the offending occurred, meaning [PW] had access to alcohol, and this led to him being in a disinhibited state at the time of the offending.

[37] I was not satisfied with a psychological assessment and sought a psychiatric report to find out whether [PW] had any undiagnosed mental health issues. This psychiatric assessment was completed by [the psychiatrist]. She could not find any evidence of a psychiatric disorder. [PW] did not show any features of a personality disorder or any social disorder. [The psychiatrist]'s opinion is that a reasonable explanation for this offending was his experiencing an alcohol blackout, and it is likely the stress he experienced the preceding day may have contributed to his drinking spirits in a relatively large quantity over a short period of time.

[38] [The representative from Oranga Tamariki] noted contact between Oranga Tamariki and [PW] over the period of the plan involved revisiting with [PW] what had happened at the time of the offending. [PW] had difficulty in recalling what had occurred. It is suggested this related to the enormity of what he had done, and a natural response to trauma. [PW] cannot understand how he had done this terrible thing. He has asked how [the victim] has been doing, and did she get the reparation he had worked for. [PW] found it hard to verbalise his emotions. There was no doubt in the social worker's review that [PW]'s enquiries about [the victim] and her wellbeing are genuine.

[39] The Ministry's conclusion is that [PW] has engaged well with all aspects of the plan. This has been a difficult time for [PW] and his family. [PW]'s offending has

been of a serious nature and it is hoped that the right outcome can be achieved for him. His hard work is acknowledged. The views of [the victim] and her whanau must be considered. The outcome must not have an adverse effect on how [PW] progresses through his life, with his career goals and choices. [The representative from Oranga Tamariki] submits that I should order a s 283(a) discharge.

[PW]'s project

[40] One of the tasks [PW] had in the plan was to complete a project. This is a five-page typewritten document which [PW] gave to me at a recent Youth Court appearance. I am not going to go through this in any detail in this decision. It records his view about what happened to him following the offending. He does not have much memory of the night itself and struggles to remember what happened. He found his experiences with the police scary. His experiences with family group conference were hard. He accepted it would have been hard for [the victim] to be there as well.

[41] There were lots of people at the family group conference. He says he has changed his social life significantly. He does not go outside unless he has to. He does not like hanging out with his friends. Peers of his age are drinking alcohol and stuff and this is something he does not want to do. He does not mind being inside all day. He says he showed remorse and regret by sticking to the plan and following everything it says. He says he is not an emotional person, and while it is hard for him to show, he said he always feels remorse and regret about what has occurred. He said he found his bail conditions hard, but he stuck with them because he knew he had to.

[42] He talked about the effects of the offending on his family, in particular on his mother, and the impact this had on her. He found the experience with [JD] doing his community work and other work in order to repay [the victim] valuable, and was taught a lot of skills as a result. He says he has changed a lot in the past two years. He wants to be [profession deleted] and this is his career goal. Finally, he says he understands what he has done was a very bad action. He will strive to do his best in the future and he understands what he did was completely wrong and should never happen to anyone. He is truly grateful that [the victim] is okay and hopes she does very well in the future. He says he wants to be the best person he possibly can be.

Section 282 or s 283 outcome

[43] Against this background I need to make a decision about whether [PW] should be discharged under s 282 of the Act so that he does not have this charge recorded and lodged against his name, or alternatively as the police and [the victim] seek there be a record of this offending to be noted against his name under s 283(a).

[44] I have received lengthy written submissions both from the police and [the youth advocate] on this issue. Deciding between the two entails my weighing the public interest of keeping a record of the offending, against [PW]'s interests of having a much more limited record of the offending which s 282 provides. This can be a difficult exercise, and there is no statutory provision giving me guidance on this. I must be guided by the general purposes and principles in ss 4, 4A, 5 and 208 of the Act. I must also have regard to the United Nations Convention on Rights of a Child, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

[45] For a s 282 discharge each case must turn on the particular facts and circumstances and considerations. A high degree of remorse, accountability for behaviour, strong family support, excellent compliance with the family group conference recommendations, lack of offending and a good prospect of rehabilitation can weigh in favour of a s 282 discharge.

[46] In deciding an outcome under s 283, I need to have regard to the matters referred to in s 284. Counsel and the sergeant have referred to these in their submissions which I shall now refer to. Section 284 provides:

Section 284(1)(a) - the nature and circumstances of the offence proved to have been committed by the young person and the young person's involvement in that offence.

[47] The police in dealing with this refer to the summary of the offending, which I have already recorded, and do not need to repeat.

[48] [The youth advocate] submits the violence used and the impact on [the victim] was serious, and this has been reinforced to [PW] time after time. [PW] has been shown the photographs of the injuries [the victim] suffered. The summary of facts has been read and re-read to him and covered again at the two family group conferences which have been held.

[49] [The youth advocate] submits that [PW]'s brain functioning and ability to make decisions at the time of the offending were highly impaired by alcohol. Although consumption of alcohol by a 13-year-old boy was voluntary, she submitted it must be remembered that he was a child, and the alcohol had been left in the room where he was staying. [PW] was able to get into an alcoholic blackout because there was not adequate supervision of him at the time. She draws my attention to the content of [the psychiatrist]'s reports on this issue, and submits it makes this case as one of [PW] having diminished responsibility.

Section 284(1)(b) - the personal history, social circumstances, and personal characteristics of the young person, so far as those matters are relevant to the offence and any order that the court is empowered to make in respect of it.

[50] Police submit [PW] was living in [location B] with his mother and sister at the time the offending occurred. He was attending school. It is reported [PW] had been using cannabis and was wandering around [location B] at irregular times. Since the plan has been in place [PW] has been drug tested. There has never been any positive results because the curfew and bail restrictions means he has not had the opportunity.

[51] [The youth advocate] submits that on the night before the offence [PW's mother] had been rushed to hospital in a helicopter. [PW] thought her partner had assaulted her. Other family members and himself had driven halfway to [location C] until they were turned back. He was then put in the care of his stepfather and his parents in [location A]. [PW] did not want to be there. He was stressed by what he thought had happened. The nature of the relationship between [PW's mother] and her partner was apparently toxic where neither [PW] liked the partner, nor the partner liked [PW].

[52] Prior to this offending, and when living in [location B], [PW] had played violent video games and had been able to sneak out of the house at times to meet up with others. [His mother] had not been aware of this.

Section 284(1)(c) - the attitude of the young person towards the offence.

[53] Police submit [PW] admitted the offending at the family group conference and expressed remorse. He accepted the facts and endeavoured to complete his plan and was fully engaged with it. He has done the maximum number of community work hours available and has made a substantial payment to [the victim]. The police accept he has done well in all of these areas.

[54] [The youth advocate] reinforces this and submits that prior to this offending [PW] had not come to the notice of the police and had not been violent in the past. His family did not know he had ever threatened or harmed anybody. The school did not know him to have acted violently and so this offending was out of character. [The youth advocate] again draws my attention to [PW] being only 13 years of age at the time of the offending.

Section 284(1)(d) - the response of the young person's family, whanau, or family group to (i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so; and (ii) the young person themselves as a result of that offending.

[55] Police submit [PW] has been well supported by [his mother] through the plan, which never wavered. He is also supported by extended family and used to stay with his grandparents. Police acknowledge [PW]'s offending has placed considerable strain on him and his wider family. The police commend [PW's mother] for the support she has been able to offer.

[56] [The youth advocate] submits [PW]'s response to the offending has been sincere. He has engaged with all of the assessments and testing which has been required. He engaged well with her as his youth advocate. The family has taken the

offending very seriously. [PW's mother] has had to work at nights and has been able to rely on [PW] to care for her young daughter in the home since he was 14. [PW's mother] has been able to regularly check on him, and [PW] has not abused the trust she has entrusted in him. [PW's mother] reconfirmed this to me today.

Section 284(1)(e) - any measures taken or proposed to be taken by the young person, or the family, whanau, or family group of the young person, to make reparation or apologise to any victim of the offending.

[57] Police note the \$2,000 reparation which has been paid and the remorse which has been expressed. This is confirmed by [the youth advocate], who also notes that [PW] has completed the Menz Shed programme and the counselling for alcohol harm. She submits his apology was sincere.

Section 284(1)(f) - the effect of the offence on any victim of the offence, and the need for reparation to be made to that victim.

[58] Police submit [the victim] was vulnerable and suffered considerably physically and mentally. She continues to reside in the same property. She receives support from her friends. She has been consistent in her views in that the only thing she wants is the best for [PW] moving forward, but police say this does not mean the offending should be forgotten nor should be treated like it never happened.

[59] [The youth advocate] accepts [the victim] was badly affected by the offending and has reconfirmed this today. She does not seek to minimise the seriousness of what occurred in any way. [PW] is grateful that [the victim] agreed to engage in the family group conferences. [The youth advocate] accepts nothing can truly repair the harm which was done on that night, but submits [PW] has done all he can since. [The youth advocate] says [the victim] has shown a genuine desire for [PW] to do well in his life going forward.

[60] [The youth advocate] makes the point that if the Court had not approved the FGC plan and instead made a supervision order under s 283 back in 2020, this order would have been completed within six months, and [PW] would have been free of his bail conditions and the court process by early 2021. While he would have had a

notation on his Youth Court record made at the time, he would have been able to get on with his life from early 2021 without any restrictions. She submits the length of this plan and length of the bail restrictions for the duration of the plan are unusually long for a Youth Court process.

[61] [The youth advocate] says the length of the plan was not agreed to lightly and if there were any issues of violence or other flaws in [PW]'s character, then this would have shown itself by now. She said [PW] never complained, the plan was there for [PW] to complete in the hope that he could in some way make up for his act of violence, and he always held the thought that at the end of the plan he could be given a s 282 discharge.

[62] Finally, the Act requires me to consider previous offending (s 284(1)(g)), there is none, and the recommendation from the family group conference as to the outcome (s 284(1)(h)) and there is none.

Concluding submissions

[63] The police conclude by submitting that [PW] has done well on his plan and accept he could not have done better, but a s 282 disposition is not appropriate. They draw my attention to the practices of the police vetting service meaning that the information of this offending can be disclosed by the New Zealand Police vetting service regardless of whether a s 282 or s 283 order is made. The police say there should always be a record of his offending, and while it is important that [PW]'s hard work is acknowledged, the seriousness of the offending outweighs this having regard to what [the victim] suffered, and she having nearly lost her life.

[64] [Counsel for the Police] submits that while [PW]'s best interests must be considered, this needs to be weighed against the public's desire to see a deterrent sentence and a denunciation of this type of offending.

[65] [The youth advocate] makes some other submissions. She submits [PW]'s offending could have been pushed back into the Youth Court at the age of 13 years. I have made it clear that I do not accept this submission. As a Judge I would not have

pushed back offending of this seriousness into the Family Court to be dealt with as a care and protection issue.

[66] [The youth advocate] submits that a s 282 discharge will remain on the police national computer system and the Oranga Tamariki computer system, and also in the court system. I accept this submission. [The youth advocate] says [PW] has completed the plan addressing all aspects of punishment and rehabilitation to a high standard. He has not re-offended and he has not breached his bail. A s 283 order will impact on him as he grows into adulthood. She tendered me some cases which I shall refer to shortly.

[67] If [PW] does not receive a s 282 discharge, [the youth advocate] submits this may impact on overseas travel, the completion of fit and proper person tests, for example getting a manager's licence to work as [profession deleted] in Australia or running a business there. He would have to disclose offending committed at any age if he wanted to register as [profession deleted] in Australia. It could impact on security clearances, for him to undertake [deleted] to work in secure areas in places like airports, army bases or Parliament. It could affect him if he wanted to join the Defence Force, become a social worker, a police officer or lawyer or working in education.

[68] [The youth advocate] raises cultural factors. [PW] is a Maori child, and although he does not have a relationship with his father and although he does not have much knowledge of his culture, she submits his whakapapa does matter and cannot be denied. A s 282 discharge would result in helping him to restore his mana. [The youth advocate] refers me to s 5 of the Act, which refers to the United Nations Convention on the Rights of the Child and also the other s 5 principles about timeframes, and submits that [PW] should be allowed to move forward in his life to achieve his goals. I accept these submissions.

Conclusion

[69] This is a summary of the written and oral submissions that I have heard. My analysis as to whether to grant a s 282 discharge or a s 283(a) discharge I acknowledge is finely balanced and is a difficult decision for me to make. I have given this a considerable amount of thought since I have received the written submissions and

reviewed the file. I record both [counsel for the Police] and [the youth advocate] have presented comprehensive, thorough and sensible submissions on the issue.

[70] As I see it the factors in favour of a s 283(a) discharge are:

- (a) The seriousness of this offending about which there cannot be any dispute. It is simply dreadful offending on any view of it. Having said this, I accept the seriousness of the offending by itself does not rule out a s 282 discharge. There was no dispute about that.
- (b) I must have regard to [the victim]'s views which I have specifically recorded. These are important. She wants a record of the offending noted against [PW]'s name so he will never forget what he has done, and to remind him of it so it will never happen again to anyone else. Having said this she has made clear she does not want to hold [PW] back from having positive goals and making good progress in his life.
- (c) A record of the offending is noted under s 283(a) so that relevant authorities or employers know what has occurred and therefore can incorporate what has happened into any future dealings they may have with [PW].

[71] The factors in favour of a s 282 order are these:

- (a) [PW]'s young age. He was 13 years at the time of the offending. He is now 15 and still at school.
- (b) There is the successful completion of a long family group conference plan. Normally plans in the Youth Court conclude between three and six months. This one has taken two years to complete.
- (c) [PW] has completed 200 hours' community work. In my long time as a Judge in the Youth Court this is the greatest number of hours that I have seen a young person complete. [Counsel for the Police], who is an experienced prosecutor, holds a similar view.

- (d) \$2,000 has been paid in reparation. It was a specific requirement this money needed to be personally earned by [PW] and not given to him to reflect this payment. The amount of reparation is significant, requiring many hours of paid work to be undertaken.
- (e) There were restrictive bail conditions which have been in place on [PW], including a 24-hour curfew which lasted some four months. 24-hour curfews are very difficult to sustain for any adult, and even harder for a child for any length of time. [PW] has succeeded. There are no bail breaches which have been recorded.
- (f) No further offending has occurred since the charge was laid. In my experience as a Youth Court Judge bail breaches and further offending are one of the most common problems the Court faces with young people who appear before us. The fact there has been no bail breaches and no further offending is a credit to [PW] and everybody else who has been involved with the plan and the supports around him.
- (g) [The psychologist]'s psychological opinion that [PW]'s risks of further offending and causing harm are assessed as being low.
- (h) I accept that [PW] has genuine remorse and regrets the offending which has occurred.
- (i) There was no previous offending prior to this offence nor had [PW] ever come to the attention of police and youth aid.
- (j) I have regard to the risk that proven offending on [PW]'s record may hold him back from future travel, career and employment opportunities. I have tasked both [counsel for the Police] and [the youth advocate] with this issue today. My sense is with the age limit of the Youth Court having been raised to 18 there seems to be an increasing tendency by employers and authorities in both applications and declaration forms not only to require disclosure of a history of prior convictions but also to include the requirement to disclose proven offending, which would

capture orders made under s 283. So a s 283(1)(a) disposition would capture [PW]'s offending if he honestly completed such a form.

[72] These are the facts for and against the discharge proposals each party has put before me. While every case has to be dealt with on its merits regard does need to be had for previously decided cases on similar facts so that there is some consistency about the court processes and outcomes.

Section 4A principles

[73] I need to apply all the factors I have mentioned against the s 4A(2) principles in the Oranga Tamariki Act. [Counsel for the Police] has referred to these in his submissions.

Section 4A(2)(a) - the well-being and best interests of the child or young person.

[74] My assessment of those factors I have mentioned favour a s 282 discharge apply to this provision.

Section 4A(2)(b) - the public interest (which includes public safety).

[75] In my view the public interest test requires an outcome which ensures this offending never happens again to anyone else, and [PW] is able to get on with his life in a meaningful and productive way. To do this he needs to complete his education, get a qualification or a trade and get on with his life in a law-abiding way. These factors, together with his completion of a lengthy FGC plan with all of its requirements and restrictions I have set out are in the public interest and favours a s 282 discharge.

[76] It is important to record the punitive and accountability aspect of [PW]'s offending has already been dealt with prior to this hearing, in the various tasks, goals and responsibilities [PW] has completed under the FGC plan. This is a record-keeping decision I am being required to make and there should be no element of there being any further punishment required as part of this decision. This was not disputed.

Section 4A(2)(c) - the interests of any victim.

[77] As I have already recorded, I have always tried to ensure that [the victim]'s voice is heard. She has been kept apprised of what is happening. As I have said, I do not underestimate for the moment the life changing significant impact this offending has had on her. She wants to have a s 283(a) discharge imposed for the reasons that I have outlined. I hear and respect her views about this.

Section 4A(2)(d) - the accountability of the child or young person for their behaviour.

[78] I agree with [the youth advocate]'s submission that the punitive and rehabilitative aspects of sentencing have already been completed. [PW] has been held accountable for what has occurred through the plan and plan review processes. These factors favour a s 282 discharge.

Applicable case law

[79] Before giving this decision, I have tasked both counsel with their results of the research into the case law for 13-year-olds facing a charge such as this. There is not much of it. There is the case of *Police v LS* dealt with by Judge McMeeken for a 13-year-old which resulted in a s 282 discharge.¹ This was a child who faced the same charge as [PW], although the facts seem less serious than in this case. There is another case I found of *R v [QK]* where a 14-year-old attacked the victim with a knife stabbing the victim in the stomach and in the hand.² Judge Courtenay granted him a s 282 discharge.

[80] Counsel can find no case where a s 283(a) discharge has been ordered against any 13-year-old facing any charge or charges under the Act since it was amended in 2010. This may possibly be explained by serious offending being dealt with by other s 283 orders at the outset or, alternatively, a transfer to the District Court for sentence.

[81] Finally, I refer to the case of *P v DX*, where Judge Taumaunu granted a discharge to a 16-year-old on a wounding charge. In his decision the Chief District Court Judge said this:³

¹ *Police v LS* [2015] NZYC 600.

² *R v [QK]* [2019] NZYC 287.

³ *P v DX* [2019] NZYC 279 at [28].

[28] Ultimately one of the questions here is the questions of whether a s 282 discharge adequately holds [the young person] to account for her offending. What needs to be recognised when considering accountability is the fact that [the young person] has gone through a lengthy process. She has been required to complete a number of tasks which she has done. Her family has also been required to assist her to complete any of these tasks, and ultimately the question of accountability does have to be viewed in the overall context of the case, and it is not simply whether or not a record is to be imposed as part of disposition. The accountability is much wider than that in terms of the way this process works in the Youth Court.

[82] I agree with this statement of principle.

Outcome and orders

[83] Having assessed all of these factors I have concluded by a fine margin that a s 282 discharge is the appropriate outcome. There will still be a record of what has happened kept on the court file. A record will also be kept with the police and with Oranga Tamariki. A copy of this decision will be typed up and released. It will be given to all of the main participants in the hearing today, [counsel for the Police], [the representative from Oranga Tamariki], [the youth advocate], and I am going to direct that a copy be specifically given to [PW's mother] so you will have access to the record of what has occurred and you and [PW] can refer to it as the need may arise. I am also going to direct a copy of my decision be sent to [the victim], so that she retains an accurate record of what has happened.

[84] Finally, [PW], you must never forget what has happened to [the victim], but as she said you cannot let what has happened to you define you, and you need to get on with your life. You have been helped through the court process by a lot of people, and I have recorded my thanks to many of them. There may be some that I have missed and I apologise for that.

[85] What I want you to do is to complete your education. If you want to be [profession deleted] then do this if it is the career choice which you want to pursue. If it is not, then I want you to get another qualification or a trade. I want you to look after your mother [PW's mother] to repay her for all of the support she has given you. I want you to live your life in a good way. Avoid the use of illegal drugs and excessive consumption of alcohol. Ask for help if you think you need it, and I do not want you to ever offend in this way or in any other way again.

[86] You are discharged under s 282 of the Act. You are free to go.

Judge RJ Russell

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 20/09/2022