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**IN THE YOUTH COURT
AT WAITAKERE**

**I TE KŌTI TAIOHI
KI WAITĀKERE**

**CRI-2020-244-000050
[2022] NZYC 146**

**NEW ZEALAND POLICE
Prosecutor**

v

**[UA]
Young Person**

Hearing: 12 April 2022

Appearances: Senior Constable S Wanden for the Prosecutor
H Bowen for the Young Person
R Black for the Chief Executive
[Name deleted] as Social Worker

Judgment: 12 April 2022

NOTES OF JUDGE O CASSIDY ON SENTENCING

[1] Tēnā koe [UA]. Tēnā koutou ko tō whānau kua tae mai nei ki te tautoko i a koe. I want to start by acknowledging you first, [UA], and your whānau, your mother and her partner, who have come to support you this morning. E tika ana ka mihi atu ki a koe me ō maunga, [two mountain names deleted]. I acknowledge your whakapapa and your connection to your ancestral maunga on both sides of your whakapapa, [the two mountains].

[2] Ka mihi atu ki ō awa, [two river names deleted]. I acknowledge the flowing rivers of [the two rivers]. Ka mihi hoki ki ō iwi, [two iwi names deleted]. I acknowledge your iwi, because you are a descendent of the great tribes of [the two iwi].

[3] You are here before me today for disposition, or for the Court to decide what is going to happen for you and the Youth Court charges that you face. You have 19 charges before the Youth Court. A number of these charges are car related and driving offending. The most serious charges are three burglary charges. They have a maximum penalty of 10 years' imprisonment.

[4] You have one charge of theft; one charge of theft ex car; two charges of unlawfully taking a motor vehicle; two charges of unlawfully using a motor vehicle, two charges of unlawfully getting into a motor vehicle, three charges of dangerous driving; two charges of failing to stop; a charge of escaping lawful custody; and one charge of possession of instruments for conversion.

[5] The first group of offending occurred back in January 2020, the second set in September and October 2020 and the last lot of offending in June 2021. I note that you have not offended since that time.

[6] By way of background there have been several family group conferences held over the last year and a half. The last family group conference was held on 4 December 2021. The conference could not reach an agreement about how they would deal with your charges. Your matter was before me on 6 December 2021 and I directed your

social worker to file a report and plan. Your social worker, [name deleted], filed a report dated 14 December 2021.

[7] The last time that I saw you was on 18 January of this year. On that date there was some discussion and concern raised about the lack of knowledge and consultation with the paternal side of your whakapapa. Oranga Tamariki were not clear about your hapū or iwi on your paternal side. Ms Shelley Turner appeared via VMR on that date as she had been engaged for the purpose of writing and submitting a cultural report to the Youth Court.

[8] Ms Turner advised the court that after meeting with you and your whānau on the first occasion, she was able to ascertain your whakapapa on your paternal side; something that Oranga Tamariki were not able to do after working with you for a number of years. I asked Oranga Tamariki to follow up on what they had done to consult and engage with hapū and iwi as they are required to do under the Act in terms of your plan moving forward.

[9] A further report was filed by your social worker and Mr Black on 18 March 2022. In that report Oranga Tamariki said they consulted with your whānau but conceded that they did not consult with hapū or iwi.

[10] The earlier social worker's report sets out the background and context to your offending. You are just a young man, but you have faced many challenges for someone so young. There has been significant history for you and your sisters over the years with Oranga Tamariki, including notifications around exposure to family violence, emotional and physical abuse, neglect and exposure to alcohol and drug abuse.

[11] You are the pōtiki in your whānau. You are the youngest and you are the only boy. You have [two older sisters], and you are also an uncle. You lived with your mother for the early part of your life. She struggled in the early years, but she did reach out for help. Your father was in prison for the first four years of your life and he has been in and out of prison for most of your life.

[12] What I do note is when you were younger and in your mother's care, there were flags going off which called for some formal intervention. But, for whatever reasons, no formal steps or orders were made.

[13] I know that you also spent some time with your mum's [cousin]. You attended primary and intermediate, but you had ongoing challenges at school. You were either suspended or stood down and you left the formal education system with no qualifications when you were 15 years of age.

[14] You have a close relationship with your paternal grandmother, [DM], and your father. [DM] is your father's whāngai mother. She is your nan. She has had a significant presence in your life because you lived with her for almost seven years. During that time, you also spent periods of time with your father when he was bailed to her address or on parole.

[15] I have no doubt it would have been hard for you as a young boy to see your father come and go in and out of your life. You started getting into trouble. When you were in your early teens you were taking drugs. You were associating with the wrong people. You joined [a gang].

[16] You found yourself coming to the attention of the police, and eventually the Youth Court. I do note here at this point that you were granted a s 282 discharge in 2020.

[17] In reference back to the cultural report that has been filed with the Court dated 12 February 2022, you told Ms Turner that your offending, was a result or a response to your dad's absence in your life and his return to prison. At paragraph 48 of the report Ms Turner states that your life derailed again with the sudden absence of your father when he was imprisoned. She quotes verbatim from you:

The only thing that f-ed it up was my dad not being able to be with me. That's where everything fell off. The first two weeks of him being gone I tried to pick myself up, keep my mana, stay solid, keep my head down and carry on. But the third week after work at 8.30 pm I walked inside expecting Dad to be there and I started pouring my eyes out. I didn't say hello to my nan. I couldn't speak to her, I was just shattered. I couldn't find the words. I thought he was gone for a few years for robbery, but he got off lucky as.

I was just gutted. I thought you're barely ever there for my birthdays, I've only had birthdays with him my whole 17 years, my 16th. No, I've only had one with Dad.

[18] As set out previously, there have been numerous family group conferences and a number of supports have been put in place for you, [UA]. According to your social worker, there were clear patterns of you engaging and doing well with your plan. There were also times when you would disengage or actively evade people, professionals and services, and then find yourself back in trouble and re-offending.

[19] There were positives. You successfully completed the Supported Bail Programme and you engaged in the tikanga Maori[programme name deleted]. I am told that you were one of the first participants on that programme. You developed a positive relationship with [the programme] and you attended a number of activities, and because of those connections you gained employment at [business name deleted]. You also participated in and completed [another] programme.

[20] You were enrolled at [a training course] and attended. Initially, you were doing well but things seemed to drop off last year. I also note the impact of COVID-19 on all young people, including yourself [UA], which affected your ability to participate in and engage with some of those programmes. As a consequence, you really fell between the gaps. You also had the opportunity to apologise to some of your victims at family group conferences and you expressed real remorse for your actions.

[21] I acknowledge the support of your mother today. She has acknowledged that she had her own issues, her own stuff that she had to deal with, and that has made your childhood and upbringing hard. She expressed sadness, but also support for you. Your mother loves you and only wants the best for you.

[22] She supports you getting help, including you learning ways to manage your emotions when things do not go your way. Your mother believes that you have been in the youth justice system for far too long.

[23] Your social worker notes the lengthy time that you have spent before the Youth Court, the views, and attitudes of your whānau and your willingness to pay

reparation which was previously agreed to at a family group conference. Your social worker says that you are ready to move on from the Youth Court and she believes that you have developed resilience and a changed mindset with the support of your mum and your whānau. Your social worker believes that you will be able to make better choices for your future. Your social worker is recommending a further s 282 discharge, together with the making of a reparation order.

[24] I have also had an update from your social worker today advising that when you did agree to pay reparation you were working but you are currently unemployed.

[25] I turn now to the recent report filed by Oranga Tamariki dated 18 March 2022. It sets out their consultation with whānau, hapū and iwi. Oranga Tamariki submits that they did consult with your whānau, but they accept that they did not consult with hapū or iwi. Oranga Tamariki became involved with you when you were living with your grandmother, [DM], and the report says that [DM] was the first point of contact for you.

[26] During the time that Oranga Tamariki worked with you, your social worker only spoken once with your father on the phone. Your social worker said he showed little interest in engaging with her or the youth justice process. Oranga Tamariki said that it was difficult to contact your grandmother and that whenever they needed to contact her, it required a personal visit to the home. A phone was purchased for your nan in an attempt to support her in communicating and engaging with Oranga Tamariki and the professionals, but that was not successful.

[27] It is not unusual for many whānau, Māori in particular, who are disconnected from their ancestral tūrangawaewae, who are disconnected from their hapū and iwi and who have experienced intergenerational trauma, to have a distrust of professionals and to have a distrust of the State and agencies of the State, including Oranga Tamariki.

[28] I have no doubt that like your mother, your father and your nan love you very much. I have no doubt that they wanted to support you at that time, but for whatever reasons unknown to the Court, they chose not to engage with your social worker or Oranga Tamariki. Your nan only attended one of the family group conferences.

[29] However, the question must be posed: Was there some point during the engagement by Oranga Tamariki and the holding of family group conferences where things could have been done better, where things could have been done differently?

[30] Would Oranga Tamariki have been assisted by other resourcing, the kairaranga, the lay advocate, the assistance of other Māori NGOs, or organisations in the community to help communicate and engage with the paternal whānau in a way that was more culturally appropriate, or a way that could get through to them in order to make a real difference for you? This could have included kōrero not just with your maternal whakapapa, but the paternal side of your whakapapa, understanding their story, where they have come from and their kōrero in order to better understand you, [UA].

[31] What is clear is there is a background for you and your whānau [UA]. It is intergenerational. It spans generations and time. A history of trauma, of sadness, of grief, of abandonment, of distrust, and these barriers have impacted on you and the ability of your whānau to engage with each other and with Oranga Tamariki.

[32] You now live with your mum. You have been with her since June of last year and your mum has attended a number of family group conferences in support of you. She has supported you all the way through the process and is here again in person today to support you. Her partner has also offered support in terms of learning more about your culture through whakairo and carving.

[33] When we look to the principles of the Oranga Tamariki Act 1989 under ss 4, 4A and 5, and the obligations of Oranga Tamariki pursuant to s 7AA, it is clear that maintaining and enhancing [UA]'s mana includes recognising his whakapapa; both maternal and paternal; and the whanaungatanga responsibilities of his whānau, hapū and iwi. The definition of mana tamaiti is set out under the Act. It means the intrinsic value and inherent dignity derived from a young person's whakapapa and belonging to their whānau, hapū and iwi in accordance with tikanga Māori.

[34] When [UA] came before me in January of this year it was clear that Oranga Tamariki did not know [UA]'s paternal whakapapa. However, Ms Turner was

able to advise the Court of [UA]'s paternal whakapapa after her first meeting with [UA] and his whānau.

[35] If one is to act in a way that is mana-enhancing, it is imperative, it is crucial that they understand where the young person comes from, their identity and their turangawaewae. Once that is established, then everything flows from that foundation; his connection to them and their whanaungatanga. I accept the submissions put forward by Ms Bowen that Oranga Tamariki failed in their statutory obligation to uphold the mana of this young man, which included making sure that whānau, hapū and iwi were actively involved and participated in the decision-making for him.

[36] The reality is that more steps could have been taken to engage both the paternal whānau and maternal whānau. Despite requests from professionals, Oranga Tamariki did not invite hapū or iwi to any of the family group conferences.

[37] The police do not agree to a s 282 discharge for you, [UA]. The police say that you have not fully engaged with all the supports that were offered to you in your plan. The police say that the more recent family group conferences specifically addressed your need for tikanga Māori and that was at the forefront of all decision-making and, therefore, you had been well-resourced with professional supports.

[38] The police submit that you did not embrace the opportunities you had and that you demonstrated minimal effort. The police also said that your accountability has been impacted by the lengthy and drawn-out time that you have been before the Youth Court. The police note that you received a s 282 discharge for offending back in September 2020 and you continued to offend.

[39] They do acknowledge some of the efforts that you have made, but today they are asking for matters to be disposed or completed for you pursuant to s 283(b) of the Act. They are seeking reparation for the sum of \$2,644 for those victims that have suffered because of your offending. They are also seeking for you to be disqualified from driving for six months.

[40] The police also raise concerns about the public interest and the importance of holding you accountable and to deter you from this type of offending.

[41] As I have already set out previously, I accept your lawyer's submission that there has been a systemic failure on behalf of Oranga Tamariki to fulfil their obligations under the Act. She tells me that there have been some things that you have done really well; that you have completed a number of tasks that were set out in your family group conference plan, but for various reasons you were unable to complete them.

[42] Your lawyer submits that Oranga Tamariki failed to engage with hapū and iwi and to invite them to your family group conferences. I have also noted that a number of family group conferences took place without any input or involvement from your father or your grandmother.

[43] Oranga Tamariki do accept that they are at fault in this regard, and that has been conceded today. Mr Black has alluded to the fact that Oranga Tamariki is on a journey; that there will need to be more discussion and collaborative discussion with partners, with whānau, hapū and iwi in order to make sure that life is given to a number of the sections set out under the Act, and in particular s7AA.

[44] The charges that you face before the Court are serious. That is accepted. You have been before the Youth Court for a long time and at different times you have done well on your plan. At other times you have disengaged. I have read the cultural report and you have had a turbulent upbringing. You have been separated from your parents at different times in your short life, exposed to a whole lot of trauma, violence, substance abuse and state intervention. At times you have felt abandoned, unloved, hurt and let down.

[45] Ms Turner states in her report that you identify as Māori, but you have been severely deprived of your culture. You have had limited access to your marae and wider whānau, hapū and iwi. Ms Turner states that you carry a lot of mamae, a lot of pain, to do with attachment and abandonment. She says that your father's absence, due to imprisonment, triggered your offending spree.

[46] In my view, there is a link between your background and upbringing, which has had a causative impact on your offending. Despite all of that, [UA], you are a resilient young man. You just keeping bouncing back. You have not reoffended since June of last year. You have not come to the attention of the police. You completed a number of tasks in your plan and at one point you were even working and making your own money.

[47] I accept that it would have been hard for you to stay on track and stay motivated when your father went back into prison. This upset you at the time and you clearly needed extra support and aroha wrapped around you.

[48] As I have already set out, in my view Oranga Tamariki did not engage fully with your whānau. I highlight again the fact that there are two sides to a young person's whakapapa, and they are of equal importance. It is not unusual for Māori to have experienced distrust of state services, including Oranga Tamariki and its predecessors. Oranga Tamariki needs to develop strategies and ways of dealing with these types of situations and these whānau, because it is not unusual for whānau to not want to engage.

[49] Perhaps Oranga Tamariki could have approached engagement with your father and grandmother in a different way. It is also about Oranga Tamariki recognising that they do not have all the answers or the resources and that this will take a collaborative approach.

[50] The principles of the Act are clear in terms of the need to engage and consult with the wider whānau, hapū and iwi and give true meaning and intent to the changes. Whānau, hapū and iwi need to be at the table and involved in that decision-making. At the end of the day the young person and the whānau will decide, but the hapū and iwi must first be present. The need for this was highlighted in the seminal report of *Puao-Te-Ata-Tu* in 1988, where it was stated, "at the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with whānau, hapū and iwi."

[51] Having taken everything into account today, [UA], including submissions from your lawyer, lay advocate and the police, the views of the victims, reports from Oranga Tamariki and the cultural report, and also having regard to ss 4, 4A, 5, 7AA and 284, I grant you a s 282 discharge on all of these charges.

[52] I do not make a reparation order. While I understand that there has been harm caused to these victims, the reality is you are a young man who is not in a position to pay reparation and I am not going to place that burden on you moving forward.

[53] [UA], I want you to walk out of Youth Court this afternoon with your head held high and your mana intact, knowing what is right and what is wrong and walking the path that you need to walk in the light of your ancestors and your iwi. You do not need to be another statistic in this country in terms of Māori men incarcerated in prison. Today is the start of a new day for you. There will be no disqualification.

[54] I end with a well-know whakataukī, [UA]. It is a saying. I want you to remember this whakatauki during times when things get really hard because there will still be hard times ahead of you.

[55] Hē kākano koe i ruia mai i Rangiātea. You are a seed born of greatness. Do not ever forget that. The seed is within you by virtue of your whakapapa. You go out and you live your life in the right way. I do not ever, ever want to see you before this Court again. Do you understand me? [Yes Judge.]

Judge O Cassidy

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 16/05/2022