



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2020 No: 13

BETWEEN:

THE QUEEN

And

CALVIN TROTT

RULING ON SENTENCE

Section 426(1)(a) of the Criminal Code (Arson)
Section 448(1) of the Criminal Code (Wilful Damage)

Sentencing Hearing Dates: Wednesday 25 May 2022

Date of Ruling on Sentence: Friday 3 June 2022

Counsel for the Crown: Ms. Cindy Clarke, Director of Public Prosecutions

Counsel for the Accused: Ms. Auralee Cassidy, Kairos Philanthropy

RULING of Shade Subair Williams J

Introduction

1. The Accused, Mr. Calvin Trott, appears before the Court for sentence, upon his guilty pleas entered on 11 March 2022, to Counts 1 and 2 on Indictment No. 13 of 2020 charging him with arson, contrary to section 426(1)(a) of the Criminal Code and willful damage, contrary to section 448(1) of the Criminal Code.

Summary of the Facts

2. On Friday 28 February 2020 at approximately 12:31pm, the Complainant left home to take his son to school. His 74 year old ill mother remained on his property which consisted of various family units. His car, which was not serviced, had been parked in the yard for the past three years.
3. Not long thereafter, the Complainant learned from a friend that his car was on fire. He immediately called his mother who at the time was hyperventilating and in a state of distress, stating; *“He’s pouring gas”*.
4. Upon the Complainant’s return to the property he discovered emergency personnel tending to the car which was engulfed in flames and that the fire had spread to the garage attached to one of the units which was a one bedroom cottage. The car was a complete write-off. The garage was also severely damaged. The garage door had melted and the rafters in the roof had been burned with all of its contents of the garage destroyed. The damage to the garage door was worth \$3000.00 and the content damage narrowly exceeded \$11,000.00.
5. The Accused, with the assistance of CCTV footage, was seen to enter the property with a red gas container. He opened the gas container causing the nozzle to fall to the ground. He then handled a ball of paper which was lit on fire. He threw that paper onto the roof of the car, which was consequently ignited.
6. Investigations revealed that the Accused had been dismissed from his employment with E & M Construction earlier that same day at approximately 7:30am. When arrested and detained on Friday 6 March 2020, the Accused denied his involvement. However the following day, the Accused stated the following when asked if he wished to be interviewed; *“I know I have been quiet but I got something to tell you guys. I don’t know his name but someone from his neighbourhood came up my job and showed me where his house is and gave me a couple of hundred dollars and bought the gas for me and I did it”*.

7. The Accused also admitted to having consumed alcohol prior to the commission of the offence and stated that the man who hired him to start the fire in exchange for \$300.00 provided him with the gasoline and its container. (That man was not before this Court in these proceedings.)

Analysis:

Maximum Penalty

8. The offence of arson carries a maximum penalty of 10 years imprisonment.
9. The offence of wilful damage (where the injury done exceeds \$60.00) carries a maximum penalty of two years on indictment unless the offence is committed at night, in which case the maximum sentence is 3 years.

Part IV (Sections 53-55) of the Criminal Code

10. Part IV of the Criminal Code requires this Court to have regard to the purpose and principles of sentencing. I have considered the objectives of sentencing under section 53 and the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
11. This Court is duty bound to have regard to and to give proper weight to the nature and seriousness of the offence, including any physical or emotional harm done to a victim. In this case, a Victim Impact Statement was produced and I have had particular regard to the emotional and financial harm caused to the Complainant and his elderly mother who suffered as a result of the Accused's callous conduct.
12. I must also take into consideration the fact that the Accused was one of at least two perpetrators in the commission of these offences. The scheme was clearly constructed by another person who is not before this Court. However, this does not lessen the responsibility that the Accused has for the execution of the act of arson.
13. It is also of note that the Accused has a significant criminal history of violent offences. He has 11 previous convictions on his antecedent record from 1987, the most recent conviction having been recorded in the year 2000 where he was sentenced to 22 years' imprisonment for counts of robbery and sexual assault, for which he was released from prison on 31 December 2015.
14. Further, a clear message of deterrence must be sent to all potential offenders who would seek to use their alcoholism or drug abuse as a crutch or excuse for their criminal behavior. In this case, the Accused is said to suffer from alcohol dependency and his urine tested positive for cocaine on 9 March 2020, according to the Social Inquiry Report (SIR) before this Court. However, there was no suggestion from the Accused or his Counsel that he has sought

professional assistance for his substance abuse. Where an Accused person fails or refuses to seek professional guidance and treatment for his addictions, he must be called upon to answer to the full consequences of that inaction. In my judgment, the Accused's assertions that he continues to consume alcoholic beverages (beers) is cause for concern that he poses a real risk of reoffending.

The Expert Reports before the Court

15. My concerns of the Accused's reoffending are reinforced by the SIR where Mr. Norville Furbert of the Department of Court Services states that the Accused attributed his offending behavior to his alcohol abuse in combination with other factors such as his anger. He accepted that these factors make him susceptible to reoffending. Mr. Furbert also reported the Accused level of risk and need for professional services to be high.
16. Mr. Furbert also reported that the Accused was determined to be suitable for a Probation Order importing the conditions under both section 70A and 70B of the Criminal Code.
17. Ms. Cassidy pointed this Court to a 15 March 2021 psychiatric assessment from Dr. Henagulph in referring the Accused's alcohol dependency. In the Bermuda Assessment Referral Centre (BARC) report, dated 29 April 2022, Ms. Aria Bean and Mrs. Mariko Aguiar, concluded that the Accused met the criteria for "303.90 Moderate Alcohol Use Disorder". They also recommended as a treatment plan that the Accused engage in a further assessment for detoxification services followed by an Intensive Outpatient Treatment Program at the Turning Point Substance Abuse Treatment Program.

Mitigation

18. In sentencing the Accused, I necessarily had regard to his guilty plea and his expressions of remorse for which I credited him the full portion of the ordinary 30% discount. He was also eligible for an additional discount under the temporary sentencing discount policy I issued on Monday 25 April 2022 under Court Circular No.6 of 2022. That temporary discount entitles offenders to a discount which may go up to an additional 30%. In this case, I applied the full 30%, as was agreed upon by the DPP.
19. I have also taken into consideration the endorsement of support the Accused has had from Reverend Gavin Tyte.
20. As a matter of statutory obligation, I considered all lawful sanctions other than imprisonment as the Court is required to do under section 55 of the Criminal Code. However, only a custodial sentence was appropriate in this case. On my assessment the facts of this case together with the mitigation available to the Accused this case falls within the higher of seriousness for offence of wilful damage and the mid to upper range of seriousness for arson.

21. The DPP, having referred to previous case law, submitted that the appropriate range of sentence for an offence of arson following a trial is 5-7 years imprisonment. No challenge or issue was taken with the correctness of this submission. From that basis, the DPP argued that the Accused should be sentenced to a fixed term of imprisonment for a period of between 2 and 4 years imprisonment on Count 1 (arson) and 6 months imprisonment on Count 2.
22. Ms. Cassidy, on the other hand suggested in her submissions that the correct range of sentence for the arson committed (after having applied to the discounts) would fall between 18 months and 2 years imprisonment. Her suggested range for Count 2 doubled the period recommended by the DPP.

Conclusion

23. In my judgment, the Accused would have likely been sentenced to a period closer to 6 years of imprisonment had this matter proceeded by trial. Applying the 60% discount for his guilty plea (which includes the additional temporary discount of 30%) he would be entitled to a sentence of 3 ½ years imprisonment.
24. Given that these offences occurred some 2 ½ years ago and the Accused has shown a willingness to comply with a Probation Order, I find it appropriate to sentence him to 2 years imprisonment to be followed by 3 years of probation pursuant to conditions under section 70A and 70B of the Criminal Code.

Dated this 3rd day of June 2022

**THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE**