



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2019 No: 24

BETWEEN:

THE QUEEN

And

JUSTIS IRIS

RULING ON SENTENCE

Section 448(1) of the Criminal Code (Wilful Damage)

Sentencing Hearing Dates: Wednesday 25 May 2022

Date of Ruling on Sentence: Wednesday 25 May 2022

Counsel for the Crown: Mr. Javone Rogers for the Director of Public Prosecutions

Counsel for the Accused: Mr. Vaughan Caines, Forensica Legal

RULING of Shade Subair Williams J

Introduction

1. The Accused, Mr. Justis Iris, appears before the Court for sentence, upon his guilty pleas entered 13 March 2022, to Counts 2 and 3 on Indictment No. 24 of 2019 charging him with willful damage, contrary to section 448(1) of the Criminal Code. The Crown did not proceed with Count 1 (arson) which was left on the file.
2. In this case, the Crown sought a fixed term of imprisonment of between 3-9 months to be to be suspended for 2 years together with 2 years' probation. The Defence agreed with this sentence range.
3. Having heard the sentencing submissions of Mr. Javone Rogers for the DPP and Mr. Vaughan Caines on behalf of the Accused in addition to the allocutus of the Accused himself, I passed a sentence of 9 months imprisonment suspended for 2 years with 2 years' probation for the reasons outlined further below.

Summary of the Facts

4. On Thursday 27 June 2019 Ms. Rhonda Jennings parked her motor car at the residence of Mr. Stuart Hollis, who had been home all day. His motor car was also parked at his residence some 6 feet from his kitchen door which was positioned only 3 feet from 2 gas cylinders connected to the kitchen stove.
5. At approximately 3:00am on Friday 28 June 2019 Mr. Hollis discovered that his car was engulfed in flames. So he ran back inside to get his family out of the house given the proximity of the gas cylinders. Ms. Jennings, too, came to find her own car on fire. Several persons attended the scene and made efforts to extinguish the flames.
6. After the flames were controlled, Ms. Jennings noticed a white rag, smelling strongly of gasoline, which was placed on the right side of the windshield of her car. A similar rag smelling of gasoline had been affixed to Mr. Hollis' vehicle.
7. The damage to Ms. Jennings Kia Cerato motor car totaled \$6,101.00 and Mr. Hollis' car damage left his car beyond repair. He estimates that his car was of a value of \$5,000.
8. At approximately 10:40am later that same morning, the Accused turned himself into the police station and admitted under caution interview to having set the two vehicles on fire.

Analysis:

Maximum Penalty

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.

The Social Inquiry Report

10. In this case, the Accused was said to suffer from Bipolar Disorder, according to the Social Inquiry Report (SIR) before the Court where it was also reported that the Accused was in search of his medication prior to the offences in order to calm his flare of emotion. This followed an incident where the Accused's residence had been burgled and vandalized. The Accused alleged that the perpetrator was his then estranged wife with whom he had had a very volatile history. (The Accused and his wife have since reconciled and have welcomed a young baby into their family.)
11. The residence where the burned cars were parked was the residence of a friend of the Accused's wife. Prior to the setting of the fires, the Accused reported to the police that his wife had broken into his house and vandalized his property. His Counsel explained that he set the flames to the Complainant's vehicle as a means of retaliation against his wife.
12. Ms. Bean of the Department of Court Services concluded in the SIR that Mr. Iris presented a very low risk of reoffending and that he was a suitable candidate for a community-based sentence.

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

13. In the circumstances of this case, I have had careful regard to Part IV of the Criminal Code as it relates 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.
14. 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. The fact that Mr. Hollis endured the stress of rushing his family to safety in the middle of the night is a fact not to be overlooked by this Court.
15. Clearly, the Accused is solely to blame for the commission of the offence. In a previous case (R v Tyshaun Brown [2022] SC (Bda) 24 Crim (6 April 2022) I stated that a clear message of deterrence must be sent to all potential offenders who might willingly turn a blind eye to their clear needs for mental health treatment. However, in this case, I accepted that the Accused made efforts to bring his mental health issues under the control of his regular medication.

16. Having examined the SIR in particular, I found that there is a minimal need for the community to be protected against this Accused given the unique circumstances of this case and the unlikelihood of his reoffending. I also acknowledged on this point that the offences in question occurred nearly three years ago without further criminal incident since which.

Mitigation

17. 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%.

18. The Accused also had a previous clean record for which he was entitled to a further credit.

19. I was also mindful of the Accused's youthful age (25 years) and the fact that he came before this Court as a new father of a young baby born only months prior in March 2022.

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 brought this case within the mid to upper range of seriousness for offences of wilful damage.

21. That said, I found that there was good reason to suspend a custodial sentence in this case. The Accused was the recent victim of a burgled home shortly prior to his commission of the offence. Searching for his medication, he sought to cool his passion which was aggravated by his mental disorder. However, he was unable to retrieve his medication and this Court accepted, without any controversy raised by the Crown, that it was entirely plausible that his medication had been maliciously moved during the course of the burglary. These unique factors constituted a good reason for suspending his sentence in my judgment.

Conclusion

22. Having had regard to all of the circumstances of the commission of the offence and the character and circumstances of the Accused, I directed that the Accused be sentenced to a term of 9 months imprisonment to be suspended for a 2 year period. This was to be served in

combination with a probation sentence of 2 years pursuant to section 70A of the Criminal Code. (The statutory obligations imposed on the Accused under section 70A were explained to the Accused at the conclusion of the hearing and the Accused agreed to be bound by those conditions.)

Dated this 25th day of May 2022

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE