

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 2022/0014

REX

V

OSWALD MURRAINE

**APPEARANCES**

Mr Oris Sullivan, the DPP, for the Crown.

The defendant represented himself.

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**2022: DECEMBER 05**

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**SENTENCE**

**For arson, plus breach of a suspended sentence and breach of probation**

- 1 **Morley J:** The defendant Oswald Murraine aged 26 (dob 31.03.96) falls to be sentenced for arson on 07.11.22, being arrested that day, charged swiftly by police, then processed by the magistrate immediately for the case to come to the High Court, the file being sent on 14.11.22, the case being first heard at the High Court on 21.11.22, to consider sufficiency of evidence, which was conceded by Murraine, so that a filed indictment was then put on 23.11.22, to which he pleaded guilty, he did not want a social inquiry report as he is well known to the court, the facts were opened on 29.11.22, with mitigation offered, and sentence has been adjourned to today, 05.12.22, for remarks to be in writing.
- 2 As part of the sentencing exercise, on 29.11.22 he accepted the arson of 07.11.22 means he falls to be considered for breach of a 2yr suspended sentence passed by this judge at the

High Court on 13.10.22 for criminal damage on 10.07.22, and for breach of a 2yr probation order passed by the Chief Magistrate on 14.10.22 for 'twoc'ing<sup>1</sup> a government car on 05.08.22, while on bail for the criminal damage.

- 3 From offence on 07.11.22 to sentence at the High Court on 05.12.22 will have been less than a month.
- 4 This court has much experience of the slow pace of cases on other islands, the instant judge having sat since 2016 also on cases in Antigua, St Kitts, and Anguilla. By way of opening remarks, obiter, I wish to promote the process adopted by Montserrat in recent legislation which takes indictable cases quickly out of the Magistrates Court, so that there is no delay created by the Magistrate having to conduct a preliminary inquiry or paper committal, during both of which there has to be presented a prima facie case. The preparation and presentation of a prima facie case as either evidence or paperwork takes time, often regionally far too much. Instead, on Montserrat, similar to the process now in the UK Crown Court, the High Court examines on the file presented by the ODPP<sup>2</sup> whether there is a prima facie case on the charges, or any indictable offence, and if there is, proceeds to order an indictment swiftly filed and tried. Absent some delays created by covid, High Court cases on Montserrat are being dealt with fast.
- 5 Elsewhere it is not uncommon for cases to take two years, or sometimes three or more, to progress through the Magistrates Court. The swifter updated Montserrat process, which this court hopes may be of wider interest within the nine-island jurisdiction of the ECSC<sup>3</sup>, is to be found in the island's **Criminal Procedure Code 2019** cap 4.01, generally, and in particular at s69.
- 6 Turning to the offending, there is at Annex A a most helpful sentencing note, dealing with the arson, criminal damage and 'twoc'. The note is fully set out to encourage other regional ODPPs to embrace its style. Like at annex in the recent sentence of **R v Elvis Aymer 2022**<sup>4</sup>, also setting out a similar note, the preparation of such a sentencing note represents the benchmark for good prosecution practice.

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<sup>1</sup> The term 'twoc' is shorthand for 'taking a vehicle without consent', and joyriding in it, without an intention to permanently deprive the owner of it, which would otherwise make the offence theft.

<sup>2</sup> Office of the Director of Public Prosecutions.

<sup>3</sup> Eastern Caribbean Supreme Court.

<sup>4</sup> From 22.11.22 – see <https://www.eccourts.org/rex-v-elvis-aymer/>

- 7 Murraine has been in and out of prison, and on his most recent release was given government housing. He occupied a generous, spacious, spartan modern building all to himself. He has long smoked too much cannabis, also drinking too much, and when intoxicated becomes delinquent, committing what have been to date relatively minor offences, in part meriting imprisonment measured in multiple months. Intoxicated, on 07.11.22, he deliberately set the house on fire because he was bored, packed his bags and walked out.
- a. With this offence of arson, as discussed during hearing on 29.11.22, he accepts he has graduated from delinquent to villain, inviting sentence to be measured in years, as no longer minor offending, evolving likely into a recidivist seeing a revolving prison door.
  - b. This is most disappointing as he has had the encouragement of the probation service and this court since his release in 2021, trying to go straight he used to wave to the judge who would drive past him, and he has now profoundly let himself down, as he will admit. When interviewed previously for the criminal damage by Probation Officer Stanford Kelly, in his report as recently on 16.09.22, Murraine was tearful he had fallen back into criminal behaviour, having been out of trouble a year.
  - c. His challenge has been he cannot control becoming intoxicated, and by this offence of arson, it seems has given up trying, looking to the court to jail him, as he asks, saying he will settle into a routine, relax, and will feel less under self-imposed pressure to go straight when always failing. It is clear to this court he thinks jail will clear his head, even suggesting he should get at least 8 years. With all this in mind, jail it will be.

8 His previous convictions are set out as follows:

|            |                                                                                                                                                                                                                        |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2013       | Theft – 12 months probation and ordered to pay compensation.                                                                                                                                                           |
| 2015       | Assault - ordered to pay a fine and compensation.                                                                                                                                                                      |
| 2015       | Criminal Damage - 4 months imprisonment                                                                                                                                                                                |
| 2015       | Burglary – 5 months imprisonment                                                                                                                                                                                       |
| 2016       | Handlings Stolen Goods - Ordered to undergo drug rehabilitation initially, but then sentenced to 2yrs imprisonment suspended for 2yrs on 07.03.17, owing to unavailability of a placement.                             |
| 2018       | Wounding and Throwing Missiles - sentenced to 6 months and 2 months, to run concurrently.                                                                                                                              |
| 2019-12.03 | Burglary – 28 months imprisonment, plus 2 months to run consecutively for possession of forged currency notes. In addition, 2yrs concurrently for handling stolen property. Total sentence being 30 months, or 2.5yrs. |
| 2022-13.10 | Criminal Damage – sentenced to 2yrs prison suspended for 2yrs, (as above).                                                                                                                                             |
| 2022-14.10 | Taking Conveyance – 2yrs probation order, (as above).                                                                                                                                                                  |

- 9      Considering the arson, from looking at the police pictures, the house would have wholly burnt down if it had not been made entirely of concrete. He set a fire with accelerant on his bed in the front room, the bed was completely consumed leaving only the metal springs in the mattress, the flames rose all around the walls, blistering their surface, and causing smoke damage in adjoining rooms. He had packed his bags, and having set the fire, he left, and was found in long grass nearby watching the spectacle of the arriving police and fire brigade. Eventually in interview he made full admissions to starting the fire, intending the damage, saying: *Me want to bun up everything in a di house....cause me did bored*. The value of the damage is \$55000ec.
- 10     The maximum sentence on Montserrat for arson is life imprisonment, usually calculated as 30 years during a sentencing exercise. Here there was an intention to cause fire damage, rather than merely recklessness, as the fire was set deliberately. The damage was considerable. I remind myself the maximum for endangerment of life by arson is the same, whether intentional or reckless, but which does not arise here, as only affecting property, and so this offence is less serious.
- a.    There are no ECSC sentencing guidelines for arson.
  - b.    However, if one imagines it is akin to stealing with force, meaning robbery, in the sense Murraine has forcibly usurped the government's ownership of the house by setting it alight, though no one was there, causing significant harm with some degree of planning the starting point would be as category 2B at 40% of 30 years, being 12 years.
  - c.    Alternatively, recalling no one was threatened as none there, only property was damaged, reflecting therefore on Murraine merely stealing from the government to the value of \$55000ec, abusing its trust in having placed him in the house, the category for theft would be 2A, with a starting point of 50% of the maximum, being 15 years.
  - d.    While not directly applicable, these reference points suggest the lower starting point of 40%, being 12 years, would not be unreasonable, in so quiet a community as Montserrat, unused to arsonists burning down government buildings, and would be consistent with

the sentencing principles offered in the well-known case of **Baptiste et al v Regina 2003**<sup>5</sup>, namely:

- [a] to punish the offender to an extent and in a manner which is just in all the circumstances; or
- [b] to deter the offender or other persons from committing offences of the same or a similar character; or
- [c] to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or
- [d] to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or
- [e] to protect the community from the offender, or
- [f] a combination of two or more of those purposes.

Weighing *Baptiste*, it can be noted, here jail is inevitable as punishment owing to his unsuccessful previous non-custodial sentencing and so such option is expended, this offending requires denunciation, the community requires protection, and there should be deterrence of others.

- 11 As sentencing step one, in weighing the circumstances of the offence, which merits a starting point of 12 years, I then adjust it downward by one year owing to his full cooperation, to 11 years, or 132 months.
- 12 Turning to step two, weighing the circumstances of the offender, on the one hand he has a series of convictions, for violence and abusing others' property; and on the other, none for arson, his problem is intoxication, he did not get the rehab ordered in 2016, and he is palpably upset with himself for his falling back into crime, giving up on himself. He knows he has failed, and I consider this merits a neutral approach to his convictions, so that I neither increase nor lessen.
- 13 Turning to step three, he gets full credit for his plea, being one-third off, meaning the sentence reduces to 88 months, or 7 years 4 months.
- 14 Concerning the criminal damage of 10.07.22, Murraine was drunk in Little Bay, was accosted by the mother of a child he was feeding chicken, there followed a row with others involved, and in a loss of temper he slapped a woman and punched his fist through the windows of

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<sup>5</sup> High Court Criminal Appeal no. 8,10,16,22, 25,26,29, 35 37, 46 and 47 of 2003 (consolidated)

two cars. I can see no reason the suspended sentence should not be activated, of 2 years, imposed only 25 days before the arson, to be consecutive, making a total of 9 years 4 months.

- 15 Concerning the probation order of 14.10.22, for the twoc on 05.08.22, breached by the arson of 07.11.22, the twoc occurred when Murraine was intoxicated and found a government car unlocked and so drove off for a joyride, being quickly apprehended. For this, noting it was while on bail for the criminal damage less than a month earlier, there shall be a sentence of 2 months consecutively, making a total of 9 years 6 months.
- 16 Turning to step four, considering totality, in my judgment 9 years 6 months is too high weighing the overall criminality, and so I will reduce it by 6 months, to 9 years as a total. I shall effect this change, by making the twoc concurrent, and by reducing the arson by 4 months to 7 years.
- 17 The sentence in total shall therefore be 9 years, as 7 years for the arson, 2 years consecutively for the breached suspended sentence, and the 2 months for the twoc will run concurrently.
- 18 Time on remand shall count, but will be of no effect concerning the twoc, as that sentence is subsumed by the other two.
- 19 There shall be no order for compensation as Murraine is indigent.
- 20 *Oswald Murraine, please stand up.* For the reasons I have explained, the sentence for the arson on 07.11.22 shall be 7 years imprisonment; the breached 2 year suspended sentence of 13.10.22 for the criminal damage on 10.07.22 shall be fully activated consecutively, and for the breached probation order of 14.10.22 for the twoc on 05.08.22 there shall be two months concurrently to the sentences passed, making a total of 9 years. Time on remand, for the arson and for the criminal damage shall count, though not the twoc as its sentence has been subsumed by the two other sentences. You shall be eligible for release having served two-thirds, if of good behavior. You may go with the gaoler.

**The Hon. Mr. Justice Iain Morley KC**

**High Court Judge**

**5 December 2022**

## **ANNEX A**

**MONTSERRAT**  
**IN THE HIGH COURT OF JUSTICE**  
(Criminal)

**Case No. MNIHCR2022/0011**

**R. v OSWALD MURRAINE**

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**PROSECUTION SENTENCING NOTE**

*[this note is only to assist the court / defence and  
may be subject to change at any time]*

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### **BRIEF OVERVIEW**

- 1 The defendant Oswald Murraine is 26 years of age (DOB: 31<sup>st</sup> March 1996) with a record of antecedents. He has been remanded in custody on this matter since October 2022.
- 2 The case before the court relates to a fire at a dwelling at Lookout owned by the Government of Montserrat and entrusted to the accused by Social Services. The fire was on the 7<sup>th</sup> November 2022. The offence was committed whilst subject to a 2-year probation Order imposed by the High Court on the 13<sup>th</sup> October 2022 and a 2-year suspended sentence imposed by the Chief Magistrate (ag) on the 14<sup>th</sup> October 2022. The Indictment contains a single count of causing damage to property by fire (Arson). The maximum penalty for Arson, per s.293(4) of the Penal Code, is life imprisonment.

### **INDICTMENT**

- 3 The count for which the accused falls to be sentence is as follow: -

**COUNT ONE**

**STATEMENT OF OFFENCE**

**ARSON:** *Contrary to section 293 (1) of the Penal Code, Cap 04:02.*

**PARTICULARS OF OFFENCE**

**OSWALD MURRAIN** on the 07<sup>th</sup> day of November, 2022 at Lookout in the Overseas Territory of Montserrat, without lawful excuse, did damage by fire a dwelling house belonging to the Government of Montserrat, without lawful excuse, with the use of fire, damaged a, a single –story dwelling house the damaged being valued at fifty-five thousand dollars Eastern Caribbean Currency (\$55,000.00), the property of the Government of Montserrat, intending to damage the said dwelling house or being reckless as to whether such property would be damaged.

- 4 The maximum sentence is life imprisonment, per s293 Penal Code - Destroying or damaging property.
  - (1) Any person who, without lawful excuse, destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence...
  - (3) Any offence committed under this section by destroying or damaging property by fire shall be charged as arson.
  - (4) A person convicted of arson under subsection (1)...shall be liable to imprisonment for life...

**FACTS**

- 5 On Monday 7<sup>th</sup> November 2022, a report of a house fire was made to Brades Police Station. Fire Fighters and Police Officers attended the scene. When the Police attended the scene, the Fire was already put out by Fire Officers.
- 6 Upon investigation, the following facts were revealed;
  - a. The house is a Government owned property which was occupied by the accused Oswald Murraine. He was put in occupation of the property

around the 20<sup>th</sup> June 2021 upon his release from prison. This accommodation houses the mentally challenged.

- b. On entering the building, it was noted by the investigators, led by Pc McPherson that there was extensive damage to the interior of the house which included damage to the walls and the living room area, cracking of the roof and plastering falling from the sidewalls as a result of the extreme heat, damage to the walls on the veranda, damage to aluminium windows and doors and other structural damage which includes damage to floor tiles in the building and several electrical outlets.
  - c. Further investigation showed destruction of a bedframe, mattress, couch and cushions. Minimal damage was done to the bedroom, bathroom and kitchen, despite scorch marks been observed in those areas.
  - d. On the outside of the house, the investigators found a packed suitcase containing personal items of the accused. These were said to be removed from the building soon after the fire was set.
  - e. The property is managed by an employee of the Government of Montserrat Housing Unit, Cecil Lake, who after an assessment of the damage, estimated that the cost of repair would be around XCD\$55,000. An additional XCD\$1,495 is required to replace the refrigerator.
- 7 Investigations led to the accused Oswald Murraine being taken into custody and interviewed. In an interview spanning some 36 minutes, he made some admissions to the police, among which he admitted starting the fire on a bed...

*Page 4*

*" me deh the house a cool out and me did a do supmn an afterwards me been a smoke one cigarette and then after me rest um down and come outside and me been outside a relax lil bit and then the fire starts and everything bun up (laughs). Me tell the man how the thing go....But that a wa happen boy. Me deh thing me put down the cigarette and all the sobm them together. The cigarette ketch the sheet, fire start. That's it and me just go outside foo sit down and relax. That's all, foo true, me nar tell no lie...*

*Page 6*

*Question DC Charles... So after the fire started, where did you go, did you try to out the fire or anything?*

*Answer Oswald Murraine... Outside, outside me go lyme.*

*DC Charles: So before you left the house, did you move any of your personal belongings from the house?*

*Oswald Murraine: Well, to be honest, I was already pack to leave right before the fire start because me call the police station and tell them that me need two officers over ya, but nobody show up.*

*Page 9*

*DC Charles; So you are saying you intentionally light the fire or which one?*

*Oswald Murraine: Well me nuh intentionally light um bro. Well if you want to say. Me intentionally light um.*

*DC Charles: Why*

*Oswald Murraine: Me want to bun up everything in a di house.*

*DC Charles: Why?*

*Oswald Murraine: Cause me did bored.*

- 8 Investigations by the Police led to the arrest of Murraine. He was found in the nearby bushes and taken into custody on the 7<sup>th</sup> November 2022. He was searched and found with Ganja. He has been in custody since. He was remanded in custody by the Chief Magistrate on the 11<sup>th</sup> November 2022.

### **Other matters for the court – Criminal Damage**

- 9 On October 13<sup>th</sup> 2022, he appeared before the High Court on 2 counts of criminal Damage. He pleaded guilty and was given a sentence of 2 years imprisonment suspended for 2 years.
- 10 On the 10<sup>th</sup> July 2022, in the early hours, around 1-2 am, all of the parties were at Little Bay. Sasha Samms, a Jamaican national drove her car to little bay after watching a basketball game nearby. She went there for food and left her 6yr old son in the car with her friend Jahtora Weekes. The accused and Samms knew each other, albeit not particularly well.
- 11 Samms and Weekes left the children in the came and went to get food. Upon return to the vehicle, they found the accused sitting in the front seat and facing backwards with a box of food in his hand. He was talking to the 6yr old and offered him some food. He was ordered to leave the car by Samms and

told if he wanted to speak to the 6yr old he must do that through the vehicle window.

- 12 It seems as this infuriated the accused and he used his fist and smashed the right-side car trunk glass and the glass on the opposite side of the trunk, damage estimated around XCD\$3,600. He went to the next vehicle for no apparent reason and punched through the glass window, a vehicle owned by Billy Darroux and not connected to the incident. That damage costed XCD\$600. He then slapped Jahtora Weekes in the face. These offences were the subject of the 2yr probation order.

### **Other matters for the court – Taking a conveyance without authority**

- 13 The very next day, on October 14<sup>th</sup> 2022, he pleaded guilty before the Chief Magistrate on a charge of taking conveyance. He was then given a two-year probation order (in the knowledge of the suspended sentence passed the day before).

- 14 The Charge had been:

*For that you between the 5<sup>th</sup> and 6<sup>th</sup> August 2022, at Forgarthy in the British Overseas territory of Montserrat, drove motor vehicle (jeep) G1252, belonging to the government of Montserrat for your own use and without having the consent and the lawful authority to drive the said vehicle. Contrary to section 245 (1) of the Penal Code, Cap 4.02 as revised.*

- 15 Kenneth Silcott, the Director of the Montserrat Arts Council reported that the accused (who he referred to as Carmelita's son) took up a vehicle owned by the Arts Council/GoM and went on a joy ride around Montserrat.

- 16 On 6<sup>th</sup> August 2022 around 8.40 am, after a short chase by the Police, the accused was pursued in the missing vehicle and stopped at Lawyers Mountain in G1252. He was taken into custody and charged with taking conveyance. The vehicle is commonly used by the Arts Council and kept at Little Bay. He had some items in the vehicle, including a black suitcase. On being cautioned, he said "*I just want to be arrested and taken to prison*". No damage was done to the vehicle.

## **ANTECEDENTS**

17 The accused has a poor record and has served several sentences of imprisonment. His antecedents are as follows;

-2013- Theft - 1yr probation and ordered to pay compensation.

-2015 – Assault - ordered to pay a fine and compensation.

-2015 – Criminal Damage- 4 months imprisonment

-2015 – Burglary – 5 months imprisonment

-2016 – Handlings Stolen Goods - Ordered to undergo drug rehabilitation initially, but then sentenced to 2yrs imprisonment suspended for 2yrs on 7/3/2017.

-2018 – Wounding and Throwing Missiles - sentenced to 6 months and 2 months respectively, to run concurrently.

-12/3/2019 – Burglary – 28months imprisonment, plus 2 months to run consecutively for possession of forged currency notes. In addition, 2yrs for handlings stolen property. Total sentence being 30 months.

-13/10/2022- Criminal Damage – sentenced to 2yrs prison suspended for 2yrs, as above.

-14/10/2022 – Taking Conveyance – 2 year probation order, as above.

## **SENTENCING**

18 The accused falls to be sentenced on a single count of Arson. There are no sentencing guidelines for Arson. The principles as set out in the case of ***Desmond Baptiste et al v the Queen***<sup>6</sup> the dicta of Byron CJ applies:

“The only purpose for which sentences may be imposed are...espousing comprehensive and useful goals that sentencing is supposed to fulfil:

[a] punish the offender to an extent and in a manner which is just in all the circumstances; or

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<sup>6</sup> High Court Criminal Appeal no. 8,10,16,22, 25,26,29, 35 37, 46 and 47 of 2003 (consolidated)

[b] to deter the offender or other persons from committing offences of the same or a similar character; or  
[c] to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or  
[d] to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or  
[e] to protect the community from the offender, or  
[f] a combination of two or more of those purposes.”

*Oris Sullivan*

*Director of Public Prosecution*

*29<sup>th</sup> November 2022*