

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CRIMINAL)
A.D. 2020**

CLAIM NO. AXAHCR 2020/0002

BETWEEN:

REGINA

v

SCOTT VANTERPOOL

Appearances:

Ms. Yanique L. Stewart, Fontaine & Associates, amicus curiae
Mrs. Nakishma Rogers-Hull, Senior Crown Counsel, Attorney General's Chambers
for the Crown

Sentencing – Arson – Section 311(1) Criminal Code – Degree of criminal culpability – Defendant suffering from psychological disorder – Whether psychological disorder reducing degree of criminal culpability – Guilty plea – ECSC Sentencing Guidelines – Discount for early guilty plea – Permissible aims of sentencing – Rehabilitation – Likelihood of risk to the public from harm from defendant – Whether incarceration necessary to protect public from harm from defendant – Whether incarceration likely to achieve permissible aims of rehabilitation and deterrence or whether same can be achieved by means of alternative sentencing

2020: July 21, 30.

JUDGMENT ON SENTENCING

- [1] **INNOCENT, J.:** The defendant, Mr. Scott Vanterpool ('Mr. Vanterpool') stood indicted for the offence of Arson contrary to section 311(1) of the Criminal Code. Upon his arraignment he entered a plea of guilty.
- [2] A Pre-Sentence Report ('PSR') and a Psychological Assessment Report ('PAR') were ordered. The PSR and the PAR formed the substantial basis for determining the manner in which the court will deal with this offender. This is particularly the case, since the PSR and the PAR have assisted the court in its assessment of Mr.

Vanterpool's degree of criminal culpability in the commission of the offence and the type of punishment to be imposed given the subjective factors that may have influenced him in the commission of the subject offence.

- [3] Mr. Vanterpool is 26 years old and was 24 years old at the time of the commission of the subject offence. He has been remanded in custody at Her Majesty's Prisons since 31st January 2019.

The Basis of the Plea

- [4] On 28th January 2019 Mr. Vanterpool went to the virtual complainant's home. After threatening one of the occupants of the house, he proceeded to ignite by fire a wooden storage shed located on the property. The entire storage shed and its contents, which had an estimated value of US\$20,000, were completely destroyed.
- [5] For all intents and purposes the acts committed by the defendant were retaliatory and motivated by revenge. Accordingly, the acts committed by Mr. Vanterpool were intentional and without any lawful excuse or justification.
- [6] It appears from the record of proceedings, that Mr. Vanterpool cooperated with the police authorities and admitted his wrongdoing at the first available opportunity.

Approach to Sentencing

- [7] In constructing the appropriate sentence, that is, one that is commensurate with the degree of harm and the degree of criminal culpability in the commission of the offence, the court must first determine the starting point sentence. In arriving at a suitable starting point, the court will have regard to the degree of harm and the degree of criminal culpability in the commission of the offence.
- [8] Having arrived at a suitable starting point, the court will then consider the appropriate notional sentence by making an assessment of the aggravating and mitigating factors present in the case. The starting point sentence will be scaled

upward or downward based on the weighing of the aggravating and mitigating factors.

[9] Once the notional sentence has been established, the court will then consider whether any deduction from the notional sentence is necessary to take account of the defendant's guilty plea or any other factor which the court considers would necessitate a discount from the notional sentence.

[10] In the present case, the court has also given due consideration to the question of whether, given the subjective factors that might have influenced the defendant in the commission of the offence, the employment of an alternative means of sentencing, distinct from incarceration, would achieve the permissible aims of punishment.

[11] In determining the appropriate sentence, the court was mindful of the fact that the starting point is not necessarily the statutory maximum sentence prescribed by statute for the commission of the offence. The court has the discretion to impose a sentence or penalty that is less than that prescribed by statute. Ultimately, the court's task is to arrive at a sentence that is proportionate in all the circumstances of the case. The penalty prescribed by section 311(4) of the Criminal Code for the commission of the offence of arson is life imprisonment.¹

Seriousness – Degree of Harm

[12] The court is of the view that the degree of harm associated with the commission of the offence is moderate. In arriving at this conclusion the court has taken the following factors into account: -

- (a) The commission of the offence did not result in injury, loss or endangerment of life.
- (b) The commission of the offence resulted in the loss and destruction of property belonging to another.

¹ (4) A person convicted of arson under this section is liable to imprisonment for life.

In considering the degree of harm the court has given consideration to the matters contained in the victim impact statement.

Seriousness – Degree of Culpability

[13] At a first glance, the circumstances surrounding the commission of the offence connotes a high degree of culpability. The court was able to distill the following matters that places Mr. Vanterpool's culpability at the higher end of the spectrum.

(a) The manner and execution of the offence. The offending conduct was preceded by threats to the virtual complainant and another.

(b) The commission of the offence was actuated by revenge and was intentional. It involved a deliberate and calculated act on the part of the defendant who admitted to the police the manner in which he ignited the fire. Therefore, the commission of the offence was attended by some degree of planning and for all intents and purposes was deliberate.

(c) Use of an accelerant.

[14] It may very well be, that Mr. Vanterpool's degree of criminal culpability may be whittled down by the view which the court takes of the psychological impairment suffered by Mr. Vanterpool. The question for the court being, whether Mr. Vanterpool's degree of criminal culpability in the commission of the offence was lessened by his mental impairment or whether his mental impairment is a factor that ought to go to mitigation. The answer to this will depend on the court's assessment based on the expert evidence presented to the court in the form of the PAR.

[15] It appears from the material before the court, that Mr. Vanterpool's mental responsibility in the commission of the subject offence may have been substantially or otherwise impaired by an active or otherwise underlying mental or psychological disorder.

[16] In determining the extent by which Mr. Vanterpool's degree of criminal culpability may have been lessened, the court has paid regard to the following matters: -

- (a) The extent to which, if any, Mr. Vanterpool's mental or psychological illness diminished his degree of culpability in the commission of the offence.
- (b) The recognition that the higher the level of diminished mental capacity or alternatively, the greater the extent to which Mr. Vanterpool's mental or psychological illness contributed to the commission of the offence, the lesser his degree of criminal culpability.
- (c) Whether the expert evidence available in the present case coupled with the manner and execution of the offence and the factual matrix forming the basis of the plea, that the defendant's mental or psychological illness placed him at lesser range of criminal responsibility although the element of criminal responsibility may not altogether be extinguished.

[17] It appears from the PSR that Mr. Vanterpool's psychological challenges were first chronicled on or about 26th July 2018.² He was seen and examined by Doctor Oluwakemi Linda Banks, a clinical psychologist, who prepared a report of even date. According to Doctor Banks:

"Scott presents as a very angry young man who feels that the world is against him. His early experience of being traumatized by losing his baby sister and having his mother seriously burned has seriously scarred him. It does not appear that he has ever received any psychological help with dealing with this trauma when he was at the vulnerable age of five years.

His reaction to this trauma has lead to a cycle of rejection. He has rejected his mother who has also rejected him. He has acted out in ways that has perpetuated rejection from other family members, the community and the school system.

Scott requires intervention to manage his anger, to deal with his post-traumatic stress, to help him develop interpersonal skills, heal family and community relationships and become more accepting of himself..."

² PSR at para. 2.11

[18] Having been alerted to the psychological challenges presented by Mr. Vanterpool, the court ordered that he be examined by a psychiatrist. He was examined by Doctor June Samuel and a PAR be submitted to the court. Doctor Samuel states in her report:

“There are no features of an active acute psychosis, but his impulse control is poor and his judgment can be impaired. There is no evidence of a cognitive impairment...”

Doctor Samuel, in the PAR made the following diagnosis and recommendations, she stated:

“Mr. Vanterpool meets criteria for an Intermittent Explosive Disorder with concurrent Substance Abuse disorder – alcohol and cannabis. He may also meet criteria for a Mood disorder, but this needs further exploration.

Persons with Intermittent Explosive Disorder engage in aggressive behaviours which they may periodically be unable to restrain and which cause subjective distress or impairment in psychosocial functioning. While the underlying causes are complicated based both in brain abnormality and environmental triggers and experiences, treatment approaches usually involve both psychological therapeutic and medical treatment.

Addressing underlying substance use or mood disorders would also be important to increase the chances of overall improvement in behaviours.

Prognosis and outcome is guarded in this instance. So far Mr. Vanterpool has refused medication intervention. He would need to engage in active treatment to address all the factors associated with his previous traumatic history and supports to improve his overall psychosocial functioning.”

[19] In light of the psychological and psychiatric evidence presented to the court, it would not be unreasonable to conclude that Mr. Vanterpool’s culpability in the commission of the offence may have been lessened by the characteristics associated with his underlying psychosocial malfunctioning. In the circumstances, the court has formed the view that his degree of criminal culpability is at the moderate level.

[20] In arriving at the starting point sentence, the court unfortunately was unassisted by the unavailability of sentencing guidelines in this jurisdiction for this offence.

However, to achieve consistency in sentencing the court has sought guidance from the UK Sentencing Guidelines³ decided cases from the jurisdiction.

- [21] The UK Sentencing Guidelines would place the offence at Category 2 with respect to harm and at band C with respect to culpability which would equate a starting point of a High level community order with a category range of a medium level community order to 9 months custody.
- [22] It appears from the decided cases that the commission of this offence would attract sentences ranging from 4 years to 10 years imprisonment.
- [23] The court is of the view, that notwithstanding Mr. Vanterpool's psychological challenges, his degree of culpability has not been lessened to the extent that no term of imprisonment should be imposed. In the circumstances, the court will adopt a starting point of 6 years imprisonment.

Notional Sentence

- [24] In arriving at a notional sentence the court is required to weigh the aggravating and mitigating factors present in the case.

Aggravating Factors

- [25] The aggravating factors present in the case have already been explored in determining Mr. Vanterpool's culpability and the degree of harm in the commission of the offence. Therefore, to consider them again as aggravating factors would amount to double counting.

Mitigating Factors

- [26] The chronicles of Mr. Vanterpool's life may best be described as a tale of woe. This is quite evident from the PSR. The only discernible mitigating factor present in the case relates to Mr. Vanterpool's psychosocial impairment. Again, this has

³ Sentencing Council Arson (criminal damage by fire) 1st October 2019

already been considered in the determination of his criminal culpability. Hence, to take this into account as a mitigating factor would amount to double counting.

- [27] In the circumstances, the court sees no reason to depart from the starting point of 6 years imprisonment.

Discount for Guilty Plea

- [28] Mr. Vanterpool is entitled to full credit for his early guilty plea. Therefore, a period of one-third which equates to 2 years imprisonment will be discounted from the notional sentence.

Discount for Time on Remand

- [29] Mr. Vanterpool has been remanded in custody from 31st January 2019 to the date of sentence. Mr. Vanterpool has spent a total of 540 days. This period will be discounted from the notional sentence.

Factors Requiring Further Discount

- [30] The court has taken into account Mr. Vanterpool's cooperation with the police in their investigation. Therefore, a period of 1 month imprisonment will be discounted from the notional sentence to take this into account. Apart from this the court sees no other factor that warrants any further discount from the notional sentence.

Compensation

- [31] Section 312 of the Criminal Code empowers the court to order a defendant to pay compensation in respect of any loss, damage or injury arising from the offence.⁴ However, in light of Mr. Vanterpool's peculiar circumstances and impecuniosity it would be entirely superfluous for the court to make such an order. This is indeed unfortunate. The court notes that despite the representation made with respect to the value of the loss sustained by the virtual complainant, no evidence has been

⁴ **312.** On conviction of any person of an offence of destroying or damaging the property of another under section 311, the court may make a compensation order requiring him to pay compensation in respect of any injury, loss or damage arising from the offence.

presented to substantiate such loss. The court is of the view that a compensation order would not be appropriate in the present case.

Sentence

- [32] Mr. Vanterpool's mental status is not only relevant to the commission of the offence, but also relevant at the time of sentencing. Therefore, the PAR will inform the court's assessment of the following issues, namely, (1) the likelihood of risk to the public of harm from the defendant (2) rehabilitation and treatment and (3) ultimately whether any additional period of incarceration is required to take into account the matters listed at (1) and (2) above.
- [33] The court has formed the view, that based on the findings contained in the PAR, the Court cannot come to the conclusion and any further period of detention is required to protect the public from harm from Mr. Vanterpool, or to achieve the permissible aim of deterrence. Therefore, it would be contrary to the principle of proportionality for the court to impose an indeterminate sentence or one that is more than commensurate with the seriousness of the offence.
- [34] However, the court in passing sentence is mindful of the fact that during his period of incarceration some intervention is required to achieve the permissible aim of rehabilitation if one adopts the findings contained in the PAR.
- [35] Essentially, the court has made such determinations based on the expert opinion and cannot substitute its own findings based on its own opinions in relation to the mental state of the defendant. The PAR gives no indication of the likelihood of the risk of the defendant reoffending or reverting to the use of narcotics that is likely to result in the exacerbation of any existing mental issues.
- [36] The power to impose an indeterminate term of incarceration or incarceration beyond the period that is commensurate with the seriousness of the offence does

not arise by implication or pursuant to statute. The sentencing judge cannot ascribe onto himself a power that he does not possess.

- [37] In the present case, the court can only sentence the defendant to a determinate term of imprisonment. The court therefore does not retain a supervisory jurisdiction over him. In other words, the defendant's release cannot be made conditional on the fact that he no longer poses a risk to the public. The court cannot detain him for a further period, in view of the fact that the likelihood of risk cannot or has not or is incapable of being determined.
- [38] Once the defendant has served that part of the sentence that is punitive there appears no factual or statutory basis for detaining him beyond that time. Therefore, the decision to release him will no longer lie within the power of the sentencing Court.
- [39] In the event that the court was to sentence the defendant to a term of conditional release, the sentencing judge cannot be said to be exercising his powers pursuant any other power conferred by statute. To do so the Court would have had to fix a term beyond that which was punitive to deal with the likelihood of risk of danger to the public. Such a term would have had to be fixed as a matter of judicial discretion. In the absence of the application of such statutory discretion delaying the defendant's detention indefinitely other than for any fixed or discernable period would amount to an arbitrary exercise of the court's powers. The court can only exercise such a power based on expert, scientific or empirical evidence.
- [40] To invoke such a power not expressly or properly conferred by statute or any other law, the defendant's indefinite detention would become unconstitutional in terms of the constitutional guarantee as to liberty and the due process of law being observed in relation to him. It is submitted that the court's power to delay a defendant's release based on the court's supervisory jurisdiction over sentencing would have to be triggered by a finding as to 'unsoundness of mind'. In the present

case, there is no finding of 'unsoundness of mind' or a continuing 'unsoundness of mind'.

- [41] Although the need for treatment and psychological intervention is evident and needs to be fulfilled as appears by the PAR, continued detention beyond the punitive period serves no lawful purpose and would therefore be unconstitutional and without any jurisdictional authority. There is no legislative framework authorizing the court to continue his detention indefinitely. Such a power must derive from statute and cannot be derived from any inherent or discretionary power.
- [42] Unlike cases involving defendants of unsound mind, where the court has the jurisdiction by statute to detain a person for an indefinite period and where the law provides for a mechanism to review that person's condition with a view to obtaining their release, the situation is markedly different in the case of someone whose soundness of mind has not been determined by judicial inquiry in accordance with statute.
- [43] Therefore, the court is of the view that different considerations would apply in the case of the present defendant. The sentence capable of being passed by the court does not involve detention at the court's pleasure in the same way as a defendant who was determined to be of unsound mind.
- [44] Condemning the defendant to an indefinite term of imprisonment without showing the need or requirement for commitment is likely to deprive him of equal treatment before the law or the operation of the due process of law in relation to him.
- [45] To compound the situation further, no conclusive independent expert evidence of dangerousness has been presented to the court by the Crown to support the contention that the defendant's detention for an indeterminate period or beyond that commensurate with the seriousness of the offence is required as a matter of law.

- [46] In determining dangerousness there must of necessity be applied a rule of “reasonableness”. Without an empirical finding of dangerousness a person committed and liable for release can only be further detained only for a reasonable period of time necessary to determine whether there is a substantial chance of him not being dangerous. If the chances are slight or if the defendant shows no sign of dangerousness he must be released. He should also be released if the State or the institution is incapable of making that determination.
- [47] Therefore, the court is of the view that unless a definitive and reasonable determination as to dangerousness can be made the defendant’s detention beyond that required to make the sentence commensurate with the seriousness of the offence serves no meaningful purpose and would amount to cruel and unusual punishment.
- [48] There has been no judicial finding as to the defendant’s unsoundness of mind. In fact, the material before the court suggest explicitly that the defendant is presently either not suffering from any mental illness or any psychotic features. It seems that the sentencing court’s apprehensions regarding the likelihood of danger may be likely arise from the evidence of the defendant’s substance abuse in the past that is likely to cause him to become dangerous if not abated or if resumed.
- [49] Therefore, it is the court’s considered view that in the absence of any judicial finding as to the defendant’s unsoundness of mind conclusive of the issue of dangerousness, then his detention for any indeterminate period beyond that which is purely punitive would be arbitrary and not authorized by any legislation in force empowering the court to countenance the same. No one should be dispossessed of his liberty in an arbitrary manner. There must be no element of arbitrariness.
- [50] No one may be confined as a person of unsound mind in the absence of medical evidence establishing that his mental state is such as to justify compulsory detention. The defendant must reliably be shown to be of unsound mind. The nature of what has to be established is a true mental disorder – which calls for objective medical expertise. In addition, the mental disorder must be of a kind or

degree warranting compulsory confinement. What is more, the validity of continued confinement depends upon the persistence of such a disorder.

- [51] The court is fortified in its view by what is contained in the PAR prepared by Doctor Olufunmike Banks-Devonish, where she stated:

“There have been no indications of risk for self-harm or suicide. However, his risk of violence towards others is somewhat unpredictable because Scott still holds a lot of anger about the incident that has occurred; especially as he has continued to be taunted about it by the assailant and his associates. Scott is unlikely to engage in violent behaviors except towards the assailant and his associates if provoked.”

- [52] Doctor Banks-Devonish stated further that:

“Scott has faced a number of challenges in his life which include a lack of positive interpersonal relationships, financial hardship, bullying and severe trauma. These challenges have made him more susceptible to developing mental health difficulties. Although I have no knowledge of a preexisting formal diagnosis, my own assessment reveals that this predisposition may have manifested into a battle with remaining psychologically well amidst ongoing challenges and traumatic experiences. His level of insight and intellectual functioning also impact his ability to make rational decisions and increase his risk of violence, especially when substances are used. However, Scott’s violent attitude is very focused on his assailant. He has not made any threats to anyone else and does not seem to have the intention of doing so. I have noticed a slight reduction in his violent ideation, and think that he would benefit from continued psychological support.”

- [53] Therefore, based on the foregoing, it appears that this is a case that requires rehabilitative therapy and psychological intervention. Unfortunately, this is an exercise that will have to be undertaken within the prison environment. The court laments the fact that Anguilla possesses no state institution that can serve as a rehabilitative center for offenders of this kind that can serve as an alternative to the prison environment.

Order

- [54] In the circumstances, the court’s order is as follows: -

1. The defendant, Scott Vanterpool is sentenced to 2 years and 5 months imprisonment.
2. During this period of incarceration Scott Vanterpool shall be required to undergo psychological therapy at the Psychiatric Clinic maintained and operated at Her Majesty's Prison.
3. Scott Vanterpool shall also participate in a programme of substance abuse counselling and anger management during his period of incarceration.
4. A Psychological Assessment Report shall be submitted to the Court annually regarding Scott Vanterpool's mental and psychological status and any progress that he has made during his incarceration.
5. A Psychological Assessment Report and a Report on Mr. Vanterpool's substance abuse rehabilitation shall be submitted to the Court 1 month prior to his release from prison.

Shawn Innocent
High Court Judge

By the Court

Registrar