

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CASE NO. DOMHCR2016/0047

BETWEEN:-

THE STATE

AND

ANTONY MINGO

Appearances:

Ms. Sherma Dalrymple for the State

Mr. Wayne Nordé for the defendant

.....
2017: January 10th
: March 17th
.....

JUDGMENT ON SENTENCING

[1] **CHARLES-CLARKE, J:** The offender was indicted on two counts of arson. The first count for unlawfully and maliciously setting fire to the dwelling house of Tony Mingo, on 10th January 2016 at Concord, in the parish of St. Andrew, contrary to Section 6 of the **Malicious Damage Act**¹ of the Dominica Revised Laws 1990; and on the second count on the same date and time aforesaid for unlawfully and maliciously setting fire to the dwelling house of Alison James. The offender was arraigned on 10th January, 2017 and pleaded guilty to both counts of arson.

¹ Chapter 10:32

- [2] At the sentence hearing the offender was unrepresented and Counsel Mr. Wayne Nordé graciously accepted the court's invitation to appear amicus curiae and made a plea in mitigation on behalf of the offender. He referred to the Social Enquiry Report prepared by Delia Giddings-Stedman.
- [3] The Social Enquiry Report was based on interviews conducted with the offender, some family members, community members and one of the victims.
- [4] The general assessment of the social welfare officer revealed that the offender was born from a marital union and sometimes experienced some hardship growing up. He does not share a close relationship with his brother, Tony Mingo one of the virtual complainants. The general view of his family is that he is psychotic. This view is also shared by members of the community. The common view is that he should receive a custodial sentence.
- [5] The Social Welfare Officer noted the seriousness of the offence committed by the offender and the effect on the life of the virtual complainant. Tony Mingo indicated that the offender's action had compromised his housing and living conditions. He has become fearful of the offender and wishes that he receives a custodial sentence.
- [6] The offender described himself to the social worker as a nice person who is very much in control of his temper. He was not remorseful for his actions. Instead he justifies his actions by stating that he was protecting his property and he claimed he was provoked.
- [7] The welfare officer expressed her view on the impact of arson as follows :

“the act of arson generally poses a negative impact emotionally, financially and socially, not only on the victim, but the extended family and the wider

society. In this case two homes were destroyed as a result negatively affecting a family's relationship and one of the victims is fearful for his life."

- [8] Mr. Nordé in his plea in mitigation on behalf of the offender referred to the social welfare report and emphasized the parts of the report which spoke to the mental status of the offender as a primary mitigating factor which the court should consider in passing the appropriate sentence.

THE LAW

- [9] Section 3 of the **Malicious Damage Act** provides that;

'Any person who unlawfully and maliciously sets fire to any dwelling house, any person being therein, is liable to imprisonment for ten years and if male with or without whipping'.

- [10] The classical principles of sentencing were set out in **R v Sargeant** and restated by Byron C.J in **Desmond Baptiste et al**² and restated as; **Deterrence, Prevention and Rehabilitation.**

- [11] These cases also considered other factors which will assist in determining the appropriate sentence such as:- the prevalence of that particular offence in society; the character and antecedents of the offender; the mitigating and aggravating factors. In determining an appropriate sentence the court will consider the peculiar circumstances of each case. In **Shaunlee Fahie case** – Creque J.A stated that:

"the sentencing scale will slide up or down depending on the peculiar circumstances of each case".

² SVG Crim. App. No. 8 of 2008

[12] Aggravating Factors:

- i. The seriousness of the offence;
- ii. The deliberate and intentional act of the offender to set fire to two dwelling houses;
- iii. The fact that the offender was acting out of revenge and anger;
- iv. The careless disregard for the property of Tony Mingo and Alison James (with whom he had no dispute at the time);
- v. The lack of remorse by the offender;
- vi. The emotional, psychological and financial loss caused to the victims;
- vii. The fear of the offender exhibited by the virtual complainant.
- viii. The danger posed to the victim the community- most of those interviewed felt he should receive a custodial sentence.

[13] Mitigating Factors

- i. The plea of guilty to both counts on the indictment;
- ii. The comorbid conditions of anti-social personality disorder of the Offender as indicated by the psychiatric report;

Principles of Sentencing

[14] I have applied the principles of sentencing based on the particular facts of this case:

- i) **Retribution** - It is clear that the offender acted out of anger and revenge. The offender was angry that his brother Tony Mingo had reported him for theft and he reacted by cutting the virtual complainant's dog and setting fire to his dwelling house. The action of the offender was deliberate and calculated to destroy the house by fire. In my view the manner and execution of this offence is one which would cause abhorrence to society.

- ii) **Deterrence and prevention** – The principles of deterrence and prevention are still relevant. The social welfare officer highlighted the effect of arson on its victims and the community. She stressed the financial, psychological, emotional and traumatic impact of the incident on Tony Mingo. The offender had shown no remorse although admitting to committing the offence.
- iii) The offence of arson is a very serious offence and carries a maximum penalty of ten years imprisonment. Cases of arson usually call for a custodial sentence. Therefore a clear warning about the severity of this offence must be sent to the offender and potential offenders. Also there is a need to deter the offender from repeating such conduct in the future and to protect society from an escalation of that type of offence.
- iv) **Rehabilitation** – The fact that the offender has two previous convictions for grievous bodily harm I believe is an indication of his propensity towards violence into which category the crime of arson falls. The Social Welfare Officer indicated that during the interview with the offender he appeared relatively calm and readily responded to the questions posed about his character. She noted some positive character traits existed during the offender's early childhood into his early adult years. However she found that the offender was not remorseful for his actions and this she felt could lead to the demonstration of negative social interactions and negative relations with his family.
- v) She also noted the concerns raised about his mental status and the fear by members of his family and the community that he may be psychotic. It was also indicated that he was an out-patient of Acute Psychiatric Unit at the Princess Margaret Hospital. Also his admission to being aggressive and violent when provoked is an indication of a need for attention.

Accordingly she felt there is need to address this health issue as his aggressive and violent behavior may pose a threat to others and himself.

vi) These factors must be taken into consideration in the process of rehabilitation although the prisoner has shown no remorse for his wrong doing.

vii) The court ordered a psychiatric report as part of the sentencing process which was prepared by Dr. Nadia Wallace MD, DM Consultant psychiatrist who gave evidence at the sentence hearing. She found that:

'on July 27th, 2016 a psychiatric report was presented to the Magistrate's court. At that time, the prisoner was diagnosed as suffering with comorbid conditions of substance abuse disorder and anti-social personality disorder. This is characterized by heavy use of marijuana, accompanied by a maladaptive pattern of behavior involving aggression and recurrent social and interpersonal problems as he ignored the likely impact on drug use on his disturbed personal family and social life.

Although Mr. Mingo appeared regretful for this court related incident, he has not accepted responsibility for his actions. He has no psychosis or cognitive impairment and was able to demonstrate clear understanding of the consequences of the court ruling guilt against him.

She noted that the prisoner has four children and no intimate relationship. Despite living on family property, he appeared to be isolated with limited family and social support. She found him to be mentally fit to be sentenced at this time'.

[16] She explained in evidence that the substance abuse disorder is characterized by the heavy persistent use of marijuana. She noted that the prisoner was in touch with reality and was aware of what he was happening around him and does not require anti-psychotic medication. She opined that even with the deprivation of marijuana the anti-personality disorder remains as he has had this behavior pattern for many years and had no intervention. She found that he lacks remorse and disobeys societal norms and rules.

[17] According to her the personality disorder can be treated with counselling and can be worse without intervention. When asked by the court if the offender can be considered a danger to society she stated:

‘With his condition if he continues to smoke marijuana his condition would persist and it would be easy for him to react in these situations’.

She believes that prolonged deprivation of marijuana and counselling can assist in improving his substance abuse and personality disorder. She indicated that the mental health team was able to provide therapy once per month.

Sentence

[18]The offence of arson carries a maximum penalty of ten years. The sentencing guidelines for arson as posited in **Blackstone’s Criminal Practice**³ indicate that:

“arson is a violent crime, and that in the absence of mitigation, a custodial sentence will generally be appropriate. Longer custodial sentences are appropriate where substantial damage has been caused, or where death or serious injury has been risked by the offender”.

[19] The sentences imposed have ranged from eight to four years. In **A.G’s Reference**⁴, a case of arson with intent to endanger life, the court held that a sentence within the range of eight to ten years following a trial -the maximum being life imprisonment- would have been appropriate in a case where the offender sets fire in a bungalow in which several members of the family were asleep. The fire was extinguished before much damage was done. Rose LJ said: *‘the offence showed clear evidence of intention and planning’.*

³ 2001 para B8.39 p. 454

⁴ No.66 of 1977) 2001 1 Cr. App R (S) 149

[20] In the **Queen v Terry Felix** the defendant was a repeat offender and according to the judge '*(his) unrestrained consumption of alcohol over the years has undoubtedly triggered his forays into criminal conduct*'. The judge further noted that 'the years of incarceration had not had the effect of rehabilitating him'. He was sentenced to four years imprisonment in order to allow him to receive treatment for his alcoholism and for him to be rehabilitated. In the case although there was no serious injury caused by the fire there was substantial damage to the property of Tony Mingo valued at EC\$65,000; and EC\$152,200.00. Based on decided cases a term of four years imprisonment is usually imposed where there is no loss of life or serious injury.

[21] In determining whether to impose a custodial sentence the court must first consider the aggravating and mitigating factors relative to the offence. I am of the view that an offence of that type, given the manner in which it was committed warrants a custodial sentence with a starting point of 8 years. A discount of one third will be given for the early guilty plea making it 5 years 4 months imprisonment. Given the fact that two houses were destroyed by fire and the prisoner has shown no remorse an additional 8 months will be added. There is no evidence that the prisoner was suffering from a psychotic condition at the time of commission of the offence. However the court will consider the evidence of the psychiatrist and the danger posed by the prisoner to the virtual complainant and members of the community who have expressed their fear of him and their belief that he is psychotic and apply the appropriate sentence.

[22] Accordingly the prisoner is sentenced to 6 years imprisonment on each count. The two terms shall run concurrently. The prisoner shall also receive treatment for his anti-social personality disorder and drug abuse and other relevant support by the community mental health team. The prisoner will be re-evaluated

by the psychiatrist who shall present a report to the court before his release from prison.

Victoria Charles-Clarke
High Court Judge

By The Court

Registrar