

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0050/12**

6
7 **THE QUEEN**

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9 **V**

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11 **SHANEEKE JULANIE WELLINGTON**



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14 **Appearances:**

Mr. Michael Snape for the Crown

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16 **Mr. Morris Garcia for the Defendant**

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18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Submissions heard:**

5th April 2013

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21 **SENTENCE RULING**
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- 23 1. On the 6th July 2012 the Defendant pleaded guilty to one Count of Arson
24 contrary to s.267(2) of the Penal Code (2010 Revision). The particulars of
25 the offence were that the Defendant, on the 17th day of June 2012 in George
26 Town Grand Cayman without lawful excuse, damaged by fire, property
27 belonging to Fletcher Ebanks, namely a building at 9 Oakmill Street,
28 Windsor Park, intending to damage or destroy property or being reckless as
29 to whether any property would be destroyed or damaged and intending by the
30 destruction to endanger the life of another, or being reckless as to whether
31 the life of another would thereby be endangered.

1 to the Defendant when she arrived as he and a few others were going to the
2 petrol station to purchase cigarettes.

3 7. Mr. Ebanks stated that when he returned to the Park the Defendant became
4 irate – demanding to know where he had been and who he had been cheating
5 with.

6 8. Mr. Ebanks stated that there was an exchange of blows. The Defence claims
7 that the Defendant was knocked to the ground in this exchange.

8 9. Mr. Ebanks said the Defendant left the Park immediately after the altercation
9 and he left the Park about 10 minutes later and walked to his home. He said
10 that on approaching, he smelled smoke. He made his way to the back of the
11 yard where his room is located and he noted the smell of smoke getting
12 stronger.

13 10. Mr. Ebanks noted that the key was still in the door and the door was not
14 locked. He opened it, saw the flames inside and noted that the fire was
15 concentrated near the AC. The chair and the bed were also on fire, along with
16 some clothes. He tried to contain the fire by pulling items out of the room
17 and dousing them with water. However, he was unsuccessful and, as a result
18 911 was called and the fire brigade arrived and eventually put the fire out.

19 11. When the police arrived Mr. Ebanks gave them the Defendant’s address. The
20 police then went to the Defendant’s house and confronted her regarding the
21 fire and she immediately admitted the offence and said

22 *“Yes I burn the house and I wish he was fucking there.”*



1 12. The Defendant told the police that Mr. Ebanks had left her for about an hour
2 and she had been trying to call him, without success. She said she then
3 walked to the park where she saw him. She said she slapped him and he
4 punched her and threw her to the ground, and it was then that she went to his
5 room and set it on fire.

6 13. The Defendant states that she was annoyed because she assumed that Mr.
7 Ebanks was cheating on her and therefore, after the altercation at the Park
8 she went to Mr. Ebanks' bedroom at #9 Oakmill Street in order to collect her
9 belongings. The Defendant said she was still angry because she believed that
10 Mr. Ebanks was cheating on her and because he had knocked her to the
11 ground.

12 14. Whilst collecting her belongings the Defendant then poured a bottle of rum
13 onto his bed. She then got four pieces of toilet paper, set fire to them and
14 placed them on the bed. She then left the room and closed the door behind
15 her.

16 15. The Defendant walked home. When she got there she borrowed her sister's
17 phone and sent a message to Mr. Ebanks stating that the house may be on
18 fire. The Defendant told the police that the text was sent about 20 minutes
19 after she set fire to the toilet paper and left Mr. Ebanks' premises.

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1 *THE CROWN'S SUBMISSIONS*

2 16. Crown counsel, Mr. Michael Snape, submits that, as the victim's room was
3 built on to the side of the house at 9 Oakmill Street, the fire destroyed the
4 victim's bedroom, its contents and also did significant damage to the main
5 house – amounting to a total of CI\$85,000.00.

6 17. The Crown submits that the fire could seriously have endangered life and
7 that the Defendant had been extremely reckless – with the offence having
8 very serious potential consequences.

9 18. The Crown also submits that after the row between the Defendant and Mr.
10 Ebanks there had been a 10 to 15-minute cooling off period. Despite that, the
11 Defendant carried her anger with her to Mr. Ebanks' house and set fire to Mr.
12 Ebanks' bed.

13 19. The Crown also points out that the Defendant knew Mr. Ebanks was not at
14 the house and therefore proceeded to walk to his house and carry out this
15 criminal act.



DEFENCE SUBMISSIONS

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20. Counsel on behalf of the Defendant, Mr. Morris Garcia, concedes that there are a number of aggravating features. Counsel accepts that the damage to the property was significant involving a sum of CI\$85,000.00 to restore it to its previous condition. Counsel for the Defendant concedes that, on any view, this is a substantial sum of money.

21. Counsel concedes that probably the most serious aggravating feature is the potential risk to life caused by the Defendant's arson, which necessitated the timely intervention of the Cayman Islands Fire Service.

22. Against that, counsel points out that the Defendant had been in an abusive relationship with the Complainant, Mr. Ebanks, who is a man some 10 years older than the Defendant.

23. On the night in question, the Complainant had left the Defendant to go elsewhere, resulting in a row, and the Defendant being knocked to the ground by her common law husband.

24. In addition, counsel points to the fact that the Defendant had consumed too much alcohol and would therefore ask the Court to accept that the Defendant never intended to endanger anyone's life, but was entirely reckless as the consequences of her serious action.



1 25. Most significantly, counsel for the Defendant submits that when the
2 Defendant was confronted by the police she admitted her guilt and gave the
3 police a full account of what had taken place. Defence counsel states that the
4 Defendant took full responsibility for her actions and pleaded guilty at the
5 earliest opportunity.

6 26. Defence counsel states that there is no evidence that the Defendant has any
7 predilection for setting fire to premises or for any crime of violence.

8 27. Counsel also points to the fact that the Defendant has no previous
9 convictions and her chances of reoffending are fairly low.

10 28. Mr. Garcia, states that the Defendant is working as a waitress and she works
11 7 days per week. Counsel submits further that, in accordance with the
12 recommendations in the Social Inquiry Report (SIR) the Defendant should be
13 made the subject of a Probation Order along with whatever conditions the
14 Court deems it fit to impose.

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CASE LAW

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29. The maximum sentence for arson is life imprisonment and offences of this kind inevitably attract sentences of immediate imprisonment.
30. Crown counsel has relied on the English Court of Appeal decision of *R v. Anthony Blackford* [2012] 1 Cr. App. R. (S). 111 in which the Court of Appeal sentenced a young offender of 20 years to 32 months' detention in a young offenders' institution for the arson of a church hall. This arson caused the destruction of the hall – with a replacement cost in excess of £500,000.00 – as well as great distress to the community. The Court of Appeal put the starting point at 4 years – with a 1/3 credit for a guilty plea.
31. The second case referenced by the Crown was *R v. Alan Leslie Birkett* [2010] 2 Cr. App. R. (S) 5. The Court of Appeal put the starting point for sentence at 4 ½ years after trial and, with credit for a guilty plea a sentence of 3 years was imposed. In this case there was evidence from a psychiatrist that the Defendant was suffering from depression and, in addition, the Defendant had an extremely bad record of previous convictions, which are absent in the case now before this Court.
32. Defence counsel cites the case of *R v. JB* [2001] EWCA Crim. 1479, the young mother of 23 years of age had a violent row with her husband. She demanded that her husband and the children leave the house and, a short time after she set fire to the home. In this case the Defendant had no previous convictions but had a vulnerable mental state. The Court accepted that there were exceptional circumstances – being the woman's young age, her good character, her small children, her vulnerable mental state coupled with the

1 possible devastating effect on the family of putting her in custody, all
2 amounted to exceptional circumstances. In this case, a community
3 rehabilitation order was imposed. The Court of Appeal quashed the original
4 sentence of 21 months' imprisonment and imposed a Community
5 Rehabilitation Order, which is very similar to our Probation Order.

6 33. I turn now to two very recent decisions of the English Court of Appeal which
7 provide important guidance on the proper sentence for offences of arson
8 intending to damage or destroy property and intending, by the destruction to
9 endanger the life of another or being reckless as to whether the life of another
10 would thereby be endangered.

11 34. In the English Court of Appeal case of *R v. Danielle Sheppey* [2011] EWCA
12 Crim 1117 the Court of Appeal dealt with a case which had very similar facts
13 to the case now before me. The Appellant had a volatile relationship with her
14 partner. On the night in question she had been drinking alcohol and suspected
15 that her partner was cheating on her. As a result she took a coat from the car
16 of the woman she suspected was seeing her partner and lit it with a cigarette
17 lighter, and then *Sheppey* threw the coat into the car, which caught fire. The
18 fire was so intense that it spread to the bungalow where the Defendant's
19 partner lived. The motor car was completely destroyed and the bungalow
20 sustained superficial damage as did the neighbour's property. The total cost
21 of the damage was less than in this case - £14,000.00. The Appellant
22 admitted complete responsibility. The Appellant had no previous
23 convictions. She had committed the offence under the influence of alcohol.
24 The Appellant was angry and intent on revenge on her partner, whom she
25 saw with another woman.



1 The Court of Appeal in *Sheppey* reviewed the case of the *Attorney General's*
2 *Reference* No. 84 of 1999 [1999] 2 Cr. App. R. (S) which is a case
3 concerning a similar type of offence arising out of the end of a relationship.
4 The intention was set fire to the accommodation of the victim, where petrol
5 was poured into the kitchen and caused £10,000.00 worth of damage. In that
6 case, a 3-year sentence was said by the Court of Appeal to be borderline and
7 unduly lenient on a plea of guilty.

8 In *Sheppey*, the Court of Appeal said that appropriate sentence after a trial
9 would have been one of 4 ½ years – giving rise, on a timely plea, to a
10 sentence of 3 years. The Court of Appeal quashed the sentence of 4 years
11 detention in a young offender's institution and substituted it for a sentence of
12 3 years' detention in a young offender's institution.

13 35. Even more recent is the English Court of Appeal decision of *R v. Joanne*
14 *Jones* [2012] EWCA Crim. 2506, which was handed down by the Court of
15 Appeal on the 16th August 2012. The Defendant in this case started a fire in
16 her flat by throwing a towel on the cooker (as she was feeling depressed) and
17 then throwing it into the hall. Again the fire brigade was called. However, by
18 the time the fire brigade arrived, the fire was put out. Consequently, there
19 was minimal damage to any property. The Defendant admitted responsibility
20 and pleaded guilty at the first opportunity. The Defendant, like in the case
21 now before this Court, was of good character. The sentencing judge had
22 taken into account the Defendant's remorse, her lack of previous convictions
23 and the fact that she had two young children and difficult circumstances. A
24 sentence of 2 years' imprisonment was imposed. In dismissing the
25 Appellant's appeal the Court of Appeal stated,



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“Two years imprisonment of itself for this type of offence in circumstances where a fire is set in a building where others are in flats surrounding it, is a lenient sentence.”



1 *ANALYSIS*

2 36. The Court cannot ignore the Defendant's responses to her act of arson as
3 follows:

4 (a) The SIR states that the Defendant told the Probation Officer,
5 "with a bright smile", that she sent Mr. Ebanks a blackberry
6 message stating,

7 *"I hope you liked how I decorated your house"*

8 and then laughed.

9 (b) When the police first went to the Defendant's house and
10 confronted her regarding the fire and she immediately admitted
11 the offence but said to the police:

12 *"Yes I burn the house and I wish he was fucking there."*

13 (c) Another of the Defendant's responses to the police was:

14 *"Yes I did it, I don't care."*

15 (d) The Defendant clearly disclosed her intention to set fire to the
16 building when she told the officers that she carried out the act:

17 *"...so that Mark would not have anywhere to sleep."*

18 (e) The Defendant admitted to police that **she knew that some of**
19 **the occupants of the adjoining side of the house would be**
20 **inside** but she did nothing to warn them of the possible danger.



1 (f) The SIR report states that the Defendant was seemingly
2 “forthright in her discussions with the undersigned officer and in
3 relating her feelings about the committal of the offence. Of note
4 is the fact that *she kept laughing* when relating her direct
5 actions that led to her transgressing the law.”

6 (g) The Probation Officer noted that, when expressing her remorse
7 for the arson, the Defendant’s gestures whilst recounting the
8 incident caused the Officer some concern. The SIR thus stated
9 that the Defendant “*does not seem to grasp the gravity*” of the
10 offence and the situation she now faces.

11 (h) The SIR records that the Defendant indicated to the Probation
12 Officer that she is upset that she lost control of herself in the
13 commission of this offence and the Defendant also expressed
14 concern that others might be upset with her.



15 Upon examination of the foregoing, coupled with the evidence that the
16 Defendant knew the Mr. Ebanks was not at his room adjoining the house, and
17 therefore she would not be impeded in carrying out her act of arson, I do not
18 accept the Defence’s submission that “too much alcohol” was the reason for
19 the Defendant having carried out the arson. It is not apparent that the
20 Defendant understands the seriousness of her act which, in the aftermath of
21 the offence she, by her own admissions, clearly intended to commit. I find
22 that the statements uttered at (h) above, by the Defendant, regrettably, do not
23 constitute remorse or personal horror for executing the act of arson. She
24 knew that others could have been in the building and knew (by her delayed

1 blackberry message to Mr. Ebanks) that the building would have been set on
2 fire for some 15 to 20 minutes.

3 37. The Court has also examined the Defendant's relationship with the
4 Complainant and her clear aggression towards the Complainant and notes:

5 (a) In the Psychiatric Report Dr. McGill says that the Defendant
6 shows "*an indication of passive aggressive type personality*
7 *traits demonstrated in her relationship with her consort.*"

8 (b) Dr. McGill states that based on the Defendant's history of her
9 relationship with the older man, Mr. Ebanks, [the Complainant]
10 much of the Defendant's "*extreme emotional reactions are in*
11 *response to her consort's behaviour.*"

12 (c) The Probation Officer's opinion is that, "*the union (with the*
13 *older man) has reportedly been plagued with interpersonal*
14 *differences, issues of infidelity, lack of trust, poor*
15 *communication, verbal and physical abuse from its inception.*"

16 38. The Court also notes the areas of forthrightness and acts of determination on
17 the part of the Defendant:

18 (a) The SIR report states that the Defendant was seemingly
19 "*forthright in her discussions with the undersigned officer.*"

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(b) By the Defendant’s own account to the Probation Officer, in a public place she “confronted” Mr. Ebanks about his whereabouts and when he was reluctant to answer any of her questions “she slapped him in his face and he in turn punched her.”

(c) Though being advised against the marriage Pastor Delisser states that they both insisted on going ahead with the purported wedding;

(d) Pastor Delisser reports that the Defendant, approximately three months after the marriage, came to his office, asked to see the marriage documents and tore them into pieces.

39. The Court notes Dr. McGill’s opinion is that the Defendant “has no history of psychiatric disorder or significant medical problems.”

40. The DCR conducted a Level of Service Case Management Inventory (LSCMI) in order to assess the Defendant’s risk of reoffending – the result of which was that the Defendant was of medium risk.





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CONCLUSION

41. Arson is a very serious offence and should rightly attract an immediate custodial sentence.

42. As has been said in the English Court of Appeal decision of *R v. Regan* [2007] EWCA 2343, the seriousness of the crime is the risk of danger to others. An act of arson, done out of spite or resentment against a particular person can endanger the life and property of not only the targeted person, but also the lives and properties of many others – neighbours, the fire service officers and all that have a duty to respond to a fire. It is for this reason that deterrent sentences must be passed for this crime.

43. In this case, the Defendant had time to consider her action and should never have poured the alcohol, which acted as an accelerant, over the bed and then set the fire. The Court must impose a prison sentence which reflects the gravity of the offence and the need for the protection of others.

44. I cannot find any special circumstances in relation to the offence or the Defendant in the case.

45. From my review of the case law I assess the starting point, based on a not guilty plea, after a trial, at 4 ½ years' imprisonment.

46. The Defendant immediately admitted the offence to the police, though showing little remorse. She pleaded guilty at the first opportunity. Accordingly, in light of the Defendant's guilty plea the Court will allow a 33 1/3% discount and impose a sentence of 3 years' imprisonment.

1 47. The Court takes into account that the Defendant is a young woman who, at
2 the time, was only 19 years of age. The Defendant has no previous
3 convictions and there is no evidence that she has any predilection for causing
4 this sort of offence or has any fascination with fire – even though, the
5 Defendant’s temper is clearly a cause for concern and must be addressed
6 during her time in custody.

7 48. In light of these factors I will suspend the second 18 months of this term of
8 imprisonment.

9 49. In addition, when the Defendant is released from Fairbanks Prison, the
10 Defendant is to follow the Probation Officer’s recommendations as follows:

11 i. Attend and actively participate in the Anger Management Group at the
12 Department of Community Rehabilitation (DCR);

13 ii. Attend and participate in the Interpersonal Relationship Enhancement
14 Awareness Programme at the DCR.

15 iii. Refrain from any verbal an physical altercation with the Complainant or
16 with anyone else.

17 iv. Perform 60 hours of community service.

18 50. Ms. Wellington, you have committed a very serious offence. You will have
19 time to consider the consequences of your actions. This Court hopes that
20 during the 18 months you will serve in custody you will avail yourself of all
21 the programmes and facilities at your disposal, and focus on educational
22 pursuits.



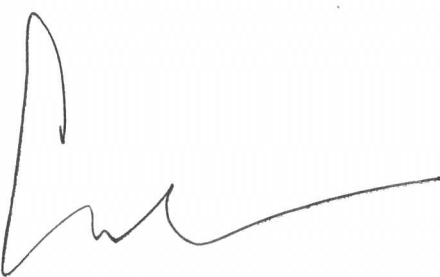
1 51. Understand that upon your release in 18 months, you will still be on a term of
2 18 months of imprisonment – though it will be suspended and you will not be
3 serving it in custody. During those 18 months, should you commit any
4 further criminal offence you will be liable to an immediate further term of
5 imprisonment of 18 months.

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8 **Dated this the 23rd April 2013**

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12 **Honourable Mr. Justice Charles Quin**
13 **Judge of the Grand Court**