

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

4 **INDICTMENT NO: 104 of 2024**



8 **R**

10 **V.**

12 **ROMARIO DESMOND BROWN**

15 **Appearances:** **Mr. Orrett Brown, Crown Counsel, Office of the Director of**  
16 **Public Prosecutions for the Prosecution**

18 **Mr. Crister Brady of Brady Law for the Defence**

20 **Before:** **The Hon. Justice Cheryll Richards KC**

22 **Submissions Heard:** **6<sup>th</sup> June 2024**

24 **Sentence Judgment:** **6<sup>th</sup> June 2024**

29 ***Criminal Law – Sentencing - Arson – Section 267 of the Penal Code (2022 Revision) Principles***  
30 ***on Sentencing, Offence Committed While a Serving Prisoner, Consecutive/Concurrent Sentences.***  
31



## SENTENCE JUDGMENT

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2  
3 1. The defendant is before the Court for sentencing following his guilty plea to Count 2 of  
4 the Indictment. This charges him with Arson contrary to section 267 (1) and (3) of the  
5 *Penal Code* (2022) Revision.  
6
- 7 2. The particulars are that he on the 14<sup>th</sup> day of March 2023 at His Majesty's Prison  
8 ("HMP") Northward, Northward Road, Bodden Town, within the Cayman Islands,  
9 without lawful excuse, destroyed or damaged by fire, a mattress and pillow belonging to  
10 the Cayman Islands Government, intending to destroy or damage such property or being  
11 reckless as to whether such property would be destroyed or damaged. The estimated  
12 value of the damage caused is \$125.00.  
13
- 14 3. The maximum penalty is life imprisonment because it is a case of Arson pursuant to s.267  
15 (3) of the *Act*.  
16
- 17 4. The plea to Count 2 is acceptable to the prosecution. The prosecution has indicated that  
18 they will not proceed on Count 1. A formal verdict of not guilty is entered on that Count  
19 and the defendant is discharged thereon.  
20
- 21 5. The defendant first appeared before the Grand Court on the 8<sup>th</sup> December 2023. There  
22 were adjournments for legal aid arrangements to be finalised and to await a psychiatric  
23 report. The defendant was arraigned on the 15<sup>th</sup> March 2024 and pleaded guilty. It is  
24 agreed by Counsel that his plea was entered at the first reasonable opportunity and that  
25 he is entitled to full credit.  
26
- 27 6. Defence Counsel indicated that a Social Inquiry Report is not required because there have  
28 been several other reports done in relation to the defendant.  
29



1   **THE FACTS**

- 2
- 3   7.    The incident took place in the Alpha Wing at HMP Northward where the defendant is a  
4       serving prisoner. He is serving a sentence of 5 years and 4 months for Aggravated  
5       Burglary.
- 6
- 7   8.    At about 1:44pm on Monday 13<sup>th</sup> March 2023, Prison Officer Shawn Rankine was on  
8       duty when he observed dark smoke coming from cell number 9 on that Wing. This was  
9       the cell of another serving prisoner. The cell was unoccupied at the time. Prison Officer  
10      Rankine quickly got a bucket with water and with the assistance of one of the inmates  
11      extinguished the fire which had engulfed the mattress and bed frame in the unit. Other  
12      inmates left their cells, and the doors were opened to allow the smoke to escape. The  
13      inmate whose cell it was, attended the wing after the smoke had subsided and retrieved  
14      his belongings.
- 15
- 16   9.    Closed Circuit Television (“CCTV”) cameras were viewed. These showed the defendant  
17      going into his cell and coming out with a piece of white paper towel in his hand. He lit  
18      the towel on fire, threw it into cell number 9 and walked away.
- 19
- 20   10.   Photographs were taken of the damaged cell which showed burnt clothing as well as the  
21      burnt mattress inside.
- 22
- 23   11.   The fire investigator classified the fire as an incendiary fire.
- 24
- 25   12.   The defendant was interviewed under caution on the 28<sup>th</sup> July 2023 in the presence of his  
26      attorney. He admitted that he had set the fire to the cell which he had once shared with  
27      Shane Connor by using a cigarette to light a piece of tissue which he placed on the  
28      mattress.
- 29

1 13. He said that he had been forced into a cell with Mr. Connor, that Mr. Connor had a  
2 vendetta against him due to his sentencing for burglary. Mr. Connor had received a higher  
3 sentence for a similar crime.

4  
5 14. The defendant said it was provocation and not intentionally done. He said that he got  
6 angry and stressed as Mr. Connor provokes him. Mr. Connor blocks him from getting  
7 inside the cell, steals his cigarettes, things, and canteen, and rubbed something in his head  
8 which caused a part of his hair not to grow. He had complained about the provocation to  
9 his Prison supervisors, and nothing was done.

10  
11 **PSYCHIATRIC REPORT**



12  
13 15. Dr. Arline McGill has provided a psychiatric report dated 25<sup>th</sup> April 2024. Dr. McGill  
14 states that she is uncertain of the defendant's fitness to plea based on his presentation. Dr  
15 states: -

16  
17 *"Mr. Brown showed a pattern of responses suggestive of neurological deficit with*  
18 *vulnerability to psychosis. His main defence mechanism seemed to be denial and he*  
19 *has poor judgment concerning his limitations. He, at times, seemed grandiose but it*  
20 *was not in keeping with a diagnosable mood disorder. He displayed significant*  
21 *impulsivity in answers and past behaviour e.g., poor judgment. His decision making*  
22 *overall seemed unrealistic and driven by impulses and fantasy.*

23 *Based on his presentation at the interview I am uncertain of his fitness to plead.*  
24 *Despite not receiving any history of suicidal behaviour I am wary of saying that he*  
25 *has minor risk of suicide. His pattern of extreme and unrealistic decisions suggests*  
26 *that under severe frustration he could attempt to self-harm.*

27 *Any odd behaviour might be related to his severe obsessive tendencies and paranoia.*

1 16. A Case Status Report from the Department of Rehabilitation dated 21<sup>st</sup> May 2024  
2 recommends that prior to sentencing the defendant continues to receive psychiatric care  
3 and that sentencing be delayed for a further three months. The Probation Officer records  
4 the great concern that the defendant shows paranoia which is affecting his eating habits  
5 at the Prison.  
6

7 17. This Court considered further adjourning the sentencing hearing. However, defence  
8 Counsel asked that the matter not be delayed any further. Counsel submitted that the  
9 unsettled nature of the matter before the Court is adversely affecting the defendant.  
10 Counsel said that the defendant is anxious for the case to be concluded. He is not eating,  
11 and further delay will make things worse. Counsel stated in written submissions: -  
12

13 *“There were concerns as to his mental state and a report has been available to the*  
14 *Court. While there are concerns as to the contents of the report, counsel’s*  
15 *interaction with the defendant which has spanned some 7 years leads counsel to*  
16 *conclude that the unsettled nature of his matters before the court, and the constant*  
17 *exposure to abuse has had an even more mentally draining impact on the*  
18 *defendant.”*

19  
20 **ANTECEDENT HISTORY**  
21



22 18. The defendant is 24 years old. He has an antecedent history of thirty-two previous  
23 convictions, four of which are for damage to property.  
24

25 **THE SUBMISSIONS**  
26

27 19. In the absence of offence specific guidelines in this jurisdiction, prosecuting Counsel  
28 referred the Court to the *United Kingdom Sentencing Council Guidelines* for the offence  
29 of Arson.

1 20. Counsel submits that under those *Guidelines* this offending would fall into category B 3  
2 or C 3.

3  
4 21. Category B Culpability factors include “recklessness as to whether serious injury is  
5 caused to persons”. Counsel noted that the CCTV footage shows that there were a number  
6 of persons present on the cell block at the time that the fire was set. Additionally, the  
7 entire cell block became engulfed in smoke.

8  
9 22. Category C factors include a reduction in the level of culpability by reason of mental  
10 disorder. This Court proposes to consider mental health factors in mitigation which is the  
11 recommended approach in the Cayman Islands.

12  
13 23. Prosecuting Counsel submits that the Harm factors which are present would place this  
14 offending into Category 3. There is no evidence of physical or psychological harm caused  
15 to any person and the value of the damage is low.

16  
17 24. Defence Counsel submitted in writing that the conduct is more in line with Culpability  
18 B. The starting point for Category B 3 is a high level community order with a range of  
19 sentence of a medium level community order to 9 months custody.

20  
21 **AGGRAVATING FACTORS**



22  
23 25. The prosecution submits that there are three potential aggravating factors. These are: -

- 24  
25 i. The offence was committed inside HMP Northward-a confined public facility;  
26 ii. The defendant committed this offence while he is imprisoned for offences  
27 including Aggravated Burglary; and  
28 iii. The defendant has previous convictions for damage to property.  
29



1 **SUBMISSIONS IN MITIGATION**

2  
3 26. In mitigation, defence Counsel submitted that the defendant is remorseful and upset with  
4 himself for succumbing to the pressure from Mr. Connor. The defendant's level of  
5 maturity is not consistent with his chronological age of 24 years. His problem-solving  
6 skills are less than average.

7  
8 27. Counsel submitted that the defendant has offered to assist the prosecution with the other  
9 persons involved in the burglary for which he is serving his sentence and has been  
10 awaiting the outcome of this offer for some time. He has grown frustrated.

11  
12 28. Counsel submitted that the defendant is aware of the seriousness of his offending and the  
13 potential human loss that could have been caused. He is relieved that more harm was not  
14 caused. Counsel states that the defendant never intended harm to any inmate. Instead, he  
15 hoped that it would cause the removal of the prisoner Mr. Connor or cause himself to be  
16 removed from the constant threats and abuse from Mr. Connor.

17  
18 29. Counsel submits that the act of the defendant was impulsive and opportunistic and there  
19 was little planning. It is said that the defendant pleads for leniency and mercy and asks  
20 the Court to consider all the circumstances which have led him to this point.

21  
22 **THE SENTENCE**

23  
24 30. The Court considers that the circumstances of this offending are serious. The defendant  
25 is correct that the damage and the injury to life could have been so much worse. But for  
26 the quick action of the Prison Officer who did not wait to find a fire extinguisher, and  
27 instead grabbed the nearest bucket and water, the fire could have easily spread in the  
28 confined space of the Prison. The possible impact and risk to life and property was very  
29 high. In the Court's view the custody threshold is firmly passed.

1 31. The frustration of the defendant and the provocation which he says he has had to endure  
2 cannot justify the doing of such a seriously dangerous act. The fact that it was done in a  
3 prison context where the defendant ought to have been on his best behaviour makes it  
4 even more serious.

5  
6 32. Having regard to the *UK Sentencing Guidelines*, a starting point of a high-level  
7 community order, (Category B 3) is applied. From this starting point, the Court considers  
8 the three aggravating factors which have been put forward by the prosecution. In the  
9 Court's view some care has to be taken to avoid double counting and it appears that the  
10 fact that the offence was committed inside a confined prison facility overlaps with the  
11 fact that the defendant committed the offence while imprisoned for Aggravated Burglary.  
12 The Court therefore proposes to take these two factors together as a single factor. This  
13 serves to increase the sentence by 9 months. The sentence is further aggravated by the  
14 significant factor that the defendant has four previous convictions for damage to property.  
15 That factor serves to increase the sentence by an additional 9 months for a total sentence  
16 of 18 months imprisonment from the starting point of a high-level community order.

17  
18 33. In mitigation account is taken of everything said and written in the defendant's favour.  
19 These include that he is genuinely remorseful. He intended to assist the prosecution and  
20 that intention continues. The circumstances of the offending and the reasons advanced  
21 by him for that offending. The Court also takes into account the significant factor of his  
22 possible mental state as recorded by Dr. McGill and as submitted by his Counsel who has  
23 known him over a period of some seven years. The sentence is reduced by reason of all  
24 the circumstances from 18 months to 12 months custody.

25  
26 34. The defendant is given full credit for his guilty plea of one third. The sentence is therefore  
27 further reduced to one of 8 months imprisonment.



1 35. Consideration has been given to whether the proposed sentence is proportionate to the  
2 offending and to whether as defence Counsel requested, it or a part of it should run  
3 concurrently to the sentence now being served.  
4

5 36. The Court notes the serious nature of the offending and that it is entirely different from  
6 the offending for which the defendant is now serving a sentence.  
7

8 37. The Court considers that there must be a deterrent factor. This defendant must know that  
9 he cannot set fire to property within the Prison. Other prisoners must know that they  
10 cannot set fire to property within the Prison no matter how frustrated one gets.  
11

12 38. Having considered all the submissions and the circumstances, given the seriousness of  
13 the offending, the sentence of 8 months imprisonment is to run consecutively to the  
14 sentence which the defendant is now serving. For the avoidance of doubt, time served is  
15 not to be taken into account because the time which is being served relates to the offence  
16 of Aggravated Burglary for which the defendant is incarcerated and is not in relation to  
17 this offence.

18 **Dated this the 6<sup>th</sup> June 2024**

A handwritten signature in blue ink, appearing to read 'Cheryll Richards', is written over the signature line.

19  
20 **The Hon. Justice Cheryll Richards KC**  
21 **Judge of the Grand Court**