



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 42 of 2023**
5
6
7

8 **R**
9

10 **V.**
11

12 **FERNANDO LOPEZ THOMPSON**
13
14

15 **Appearances:** **Mrs. Nicole Petit, Senior Crown Counsel, Office of the Director of**
16 **Public Prosecutions for the Prosecution**

17 **Mr. Crister Brady, Brady Attorneys-at-Law for the Defence**
18

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

20 **Submissions Heard:** **28th July 2023**
21

22 **Sentence Judgment:** **11th August 2023**
23
24

25 **HEADNOTE**
26

27 ***Criminal Law –Sentencing–Arson contrary to s.267 (1) (a) and 267 (3) of the Penal Code (2022***
28 ***Revision,) United Kingdom Sentencing Guidelines, Applicable principles. Harassment, Alarm or***
29 ***Distress contrary to s. 88 (B) (1) (a) of the Penal Code (2022 Revision), Cayman Islands***
30 ***Sentencing Guidelines, Applicable principles.***
31
32
33



SENTENCE JUDGMENT

- 1
2
3 1. The defendant is before the Court for sentencing following his guilty plea to two offences on the
4 Indictment. The first count charges him with the offence of Arson contrary to s.267(1) (a) and
5 267(3) of the *Penal Code* (2022 Revision). The particulars are that he on the 3rd day of May,
6 2023, at Kitty Lane, Newlands, Bodden Town, Grand Cayman, Cayman Islands, without lawful
7 excuse, damaged by fire a Jeep Wrangler, valued at \$2,500.00, being the property of Stephen
8 Porter, intending to destroy or damage the said property or being reckless as to whether the said
9 property would be destroyed or damaged.
10
- 11 2. Given the level of damage caused, the maximum sentence is five years imprisonment.
12
- 13 3. The second count charges him with the offence of Harassment, Alarm or Distress contrary to s.
14 88 (B) (1) (a) of the *Penal Code* (2022 Revision). The particulars are that he on the said day and
15 at the same place used threatening abusive or insulting words or behaviour, within the hearing or
16 sight of PC Haughton and PC Munroe who were likely to be caused harassment, alarm or distress.
17
- 18 4. The maximum sentence is three years imprisonment.
19
- 20 5. It is accepted that the defendant entered pleas at the earliest opportunity and is entitled to the full
21 one third discount.
22

THE FACTS

- 23
24
25 6. The prosecution has provided a summary of the facts which is not disputed by the defence. The
26 defendant and the victim Stephen Porter are neighbours. Over the years there have been many
27 quarrels and complaints between them. Mr. Porter states that he was at home on the afternoon of
28 Wednesday the 3rd May 2023. He heard when the defendant arrived home in a motor vehicle.
29 Then he heard a loud bang. When he went outside to see what was happening, he noticed that his
30 jeep motor vehicle was on fire. The estimated value of the vehicle is \$2,500.00. Mr. Porter has a
31 Closed-Circuit Television camera (CCTV camera), at his front door. When checked, the CCTV
32 footage showed that at 1:47 pm, the defendant went to the victim's front door and rang the



1 doorbell. He was cursing when he did so and had a lighter in his hand. The camera showed the
2 defendant at 1:48 pm standing at the rear of the jeep and at 2:07 pm the jeep was ablaze.

3
4 7. Officers from the Fire Department responded to reports of fire and conducted a cooling down
5 operation on the vehicle.

6
7 8. Police officers also responded to the scene. On their arrival the defendant was seen to walk
8 towards the burnt vehicle. He was overheard to be cursing at Mr. Porter and to say that Mr. Porter
9 needed to leave and return to where he came from. He also said to Mr. Porter *"All yuh house a
10 go up next time"* and *"I am going to get my gun and shoot yuh through yuh window over deh"*.
11 He then went into his house and when he came back outside, he went into a grey Honda CRV
12 motor vehicle and sat down.

13
14 9. At some stage, the defendant's sister arrived at the location and the defendant was heard saying
15 to her *"I light that s.. up and next time it will be their house"*. He also said *"make I go inside and
16 get my gun and shoot all a unno"*. This was said in the presence and hearing of PC Haughton
17 and PC Munroe. The defendant then got into his vehicle and as he attempted to leave, he hit the
18 rear of the fire truck and left the scene.

19
20 10. Having observed what occurred, PC Haughton and PC Munroe got into their police vehicle and
21 followed the defendant to the intersection of Hirst Road and Kitty Lane, where he stopped. He
22 exited his vehicle and was arrested without incident.

23
24 11. The defendant was then transported to the Detention Centre. While there, he refused to allow
25 officers to swab his clothing. He told the officers *"Do not touch me"*. *"The same people who
26 send you here, you go and search their yard and see how much money laundering they do. Go
27 and search their house instead of f.... with me. I smoke weed and I am not going to stop, tell the
28 f..... Judge that"*.



1 12. The following day a search of the defendant's home was conducted. Nothing of evidential value
2 was found.

3
4 13. On the 4th May 2023, the defendant was interviewed under caution, during which he was shown
5 the CCTV footage of the incident. He answered "no comment" to the questions put to him.

6
7 14. After the interview, the defendant said to the officers "*just like you warn me, I warning you.*
8 *Prison don't frighten me, custody don't frighten me. Them people up Newlands, I nah finished*
9 *with them, wait until I speak to Mr. at Lands. That video that you just showed me was*
10 *edited. I gave you a no comment because I will speak to the Judge.*"

11
12 **SOCIAL INQUIRY REPORT**

13
14 15. The Department of Community Rehabilitation ("DCR") has provided a Social Inquiry Report
15 ("SIR") dated 19th July 2023. The Court has read this report in its entirety and takes into account
16 everything said therein in favour of the defendant.

17
18 16. The defendant is forty-two years old. There were no major issues in his childhood. In his high
19 school years he began getting into trouble. Following his graduation from high school he began
20 to get into trouble with the law, mainly for drug related offences. He worked at a few jobs after
21 leaving school and thereafter worked with his father.

22
23 17. He was the victim of a stabbing in 2016 which led to a limitation in his physical capabilities as a
24 result of a wound to his left leg. He lost the sensation in that leg and was thereafter unable to
25 find steady employment. He worked with his father up until December 2021 when his father
26 passed away. He was financially dependent on his father. He is now dependent on his mother and
27 other family members for daily support.

28
29 18. In 2005 he had to undergo knee surgery due to a basketball injury. He reports that in June 2023
30 he was advised that he requires further surgery. This time it is to both knees and he will also
31 require surgery for a ligament in his shoulder. He is in pain from his injuries and uses ganja as a
32 coping mechanism. He has had a recent diagnosis of a medical illness.

33



1 19. He told the Probation Officer that he was heavily under the influence of alcohol when he
2 committed these offences. His alcohol use has increased since his fathers' death.

3
4 20. Under the heading Community Functioning, his mother reports that she has no trouble with him
5 except when he drinks. Under the heading Attitude Towards the Offence, the Probation Officer
6 records that the defendant reported that the neighbours are disrespectful towards him, invade his
7 privacy and call the police for unnecessary reasons. He says that he regrets what he did but that
8 they provoked him. The Officer says that he displayed a faulty belief system that vindicates pro-
9 criminal behaviour. He was assessed using the LS/CMI Risk /Need Assessment tool. His overall
10 risk of re-offending was assessed as very high with six of the eight criminogenic factors in the
11 very high or high category. He was enrolled in the Drug Rehabilitation Court programme for
12 three years but relapsed because of continued drug use.

13
14 21. It is said that he expressed some remorse but also justified his actions and minimised the fact that
15 his actions could have put other people and property in danger. He has had problems with
16 compliance with previous orders of the Court and is said by the Probation Officer to be in breach
17 of a Suspended Sentence Supervision Order. It is recommended that if a sentence of
18 imprisonment is imposed that he makes use of the rehabilitative services offered within the Prison
19 to address substance misuse issues, grief counselling and problem-solving deficits.

20
21 **ANTECEDENT HISTORY**

22
23 22. The defendant has an antecedent history of thirty-one previous convictions. The majority are for
24 drug use. He has convictions for Threatening Violence and Assault Occasioning Actual Bodily
25 Harm in 2006 and 2007 and Damage to Property in 2009 and 2014. His most recent conviction
26 is for Causing Harassment Alarm or Distress for which on the 27th April 2021 he was sentenced
27 to 16 months imprisonment.

28
29 23. The Probation Officer notes that the defendant was on bail for other offences when he committed
30 the current offences. DCR records indicate that the defendant graduated the Drug Rehabilitation
31 Court program in 2017. He has successfully completed some Probation Orders in the past. Most
32 recently he was placed on a two-year Probation Order in June 2020 but he breached that Order



1 in January 2021 when he committed another offence which resulted in him being sentenced to a
2 term of imprisonment.

3
4 **SENTENCING GUIDELINES**

5
6 24. In the absence of offence specific guidelines in the Cayman Islands, both Counsel referred the
7 Court to the *United Kingdom Sentencing Guidelines* for the offence of Arson. The United
8 Kingdom legislation does not appear to impose a maximum limit on the sentence depending on
9 the value of the property damaged as does the Cayman Islands legislation.

10
11 25. Under the *Guidelines* High Culpability (A) is characterised by the following: -

- 12
13 • High degree of planning or premeditation
14 • Revenge attack
15 • Use of accelerant
16 • Intention to cause very serious damage to property
17 • Intention to create a high risk of injury to persons

18
19 26. Medium Culpability (B) is characterised by the following:-

- 20 • Some planning
21 • Recklessness as to whether very serious damage caused to property
22 • Recklessness as to whether serious injury caused to persons
23 • Other cases that fall between categories A and C because:
24 • Factors are present in A and C which balance each other out and/or
25 • The offender's culpability falls between the factors described in A and C

26
27 27. Harm has three 3 categories:-

28
29 **Category 1**

- 30 • Serious physical and/or psychological harm caused
31 • Serious consequential economic or social impact of offence
32 • High value of damage caused



1 **Category 2**

- 2 • Harm that falls between categories 1 and 3

3

4 **Category 3**

- 5 • No or minimal physical and/or psychological harm caused
- 6 • Low value of damage caused

7

8 28. The prosecution submits that the culpability is at medium level (Culpability B) because there was

9 some planning.

10

11 29. The Harm is said to be at Category 2, being Harm that falls between 1 and 3. The starting point

12 for an offence of Category 2 B is 9 months imprisonment with a range of sentence of 6 months

13 to 1 year and 6 months custody.

14

15 30. Counsel for the defence submitted that step 2 of the **Guidelines** is of note. It provides in part as

16 follows:-

17

18 *“Where the offender is dependent on or has a propensity to misuse drugs or alcohol, which*

19 *is linked to the offending, a community order with a drug rehabilitation requirement under*

20 *part 10, or an alcohol treatment requirement under part 11 of Schedule 9 of the Sentencing*

21 *Code may be a proper alternative to a short or moderate custodial sentence.”*

22

23 31. Counsel submits that given the value of the vehicle involved which may well be lower than

24 estimated and the defendant’s drinking, the Court should consider that this offence is a Category

25 3 offence with a starting point of a high-level community order and a range of sentence of medium

26 level community order to 9 months custody. Counsel said that it is accepted that there are factors

27 increasing seriousness in this case. The defendant was on bail at the time of the offence albeit for

28 unrelated offences. Counsel submitted that this is not a hate crime, or one committed in a public

29 setting. No real damage was done to any property and there was no significant impact on the

30 wider community and that all the factors do not point to more than the offence itself.



1 **SUBMISSIONS IN MITIGATION**

2
3 32. Defence Counsel submitted in mitigation that there have been ongoing quarrels between the
4 neighbours. As a result, there have been several complaints and counter complaints made to the
5 police by both sides. The neighbours complain about the defendant having vehicles in the yard
6 and smoking ganja. There are cross complaints made by the defendant alleging the commission
7 of offences by the neighbours. There are complaints about the loud playing of music and of finger
8 pointing.

9
10 33. Counsel says that the defendant has confirmed that notwithstanding his threats at the scene he
11 had no intention of causing harm to the victims and that burning the vehicle had not been his
12 initial plan. When he went to confront the victim about the latest issue which had arisen that day,
13 he at first rang the doorbell to get their attention. He set fire to the vehicle in anger and under the
14 influence of alcohol. Counsel said that there was no significant impact on the wider community.

15
16 34. Counsel said that the defendant is remorseful and detailed the defendant's health concerns as set
17 out in the SIR. Counsel submitted that the defendant has a significant drinking problem which
18 is reflected in various traffic violations. Counsel said that the defendant accepts that he does have
19 this problem and sought to address it through the Drug Court programme which he successfully
20 completed. The loss of his father in 2021 with whom he was very close has also affected him. He
21 has not properly dealt with the grief of losing his father and may be using alcohol in a misguided
22 way in order to cope. Counsel submitted that the defendant while he has been in custody has had
23 time to reflect.

24
25 35. Counsel refers the Court to the case of *R v Susie McKinley*¹. Counsel said that in that case “*the*
26 *defendant, a chronic drug user burnt down the complainant's apartment in which she also lived*
27 *as a government assisted tenant when her request for money from the complainant, presumably*
28 *to buy drugs were not met. She was given a suspended sentence with conditions. She even failed*
29 *to abide by those conditions and was brought back for re-sentencing. Even then she was not given*
30 *a custodial sentence.*”

31
32

¹ Ind. 65/2018 Grand Court Unreported Judgment delivered 9th April 2020.



1 **THE SENTENCE**

2
3 36. In circumstances where this defendant was on bail for other unrelated offences at the time of this
4 offence, where he had been released from custody relatively recently and is in breach of a
5 suspended sentence supervision order for another offence, this Court does not accept that it would
6 be proper to consider another community sentence as an alternative to a sentence of
7 imprisonment.

8
9 37. It is plain from the defendant's history that he has trouble with compliance with Court orders in
10 the community and requires monitored intervention.

11
12 38. The Court accepts the submission of the prosecution that the offending may be characterised as
13 Medium Culpability for the reason that it falls between A and C. In the Court's view there must
14 also have been the factor of recklessness as to whether serious damage was caused to property.
15 The harm is at the level of Category 2, falling somewhere between Category 1 and 3. The car was
16 damaged which is not insignificant. The Court adopts a starting point of 9 months custody.

17
18 39. From this starting point the Court accepts that there are three aggravating factors:

- 19
20 1. Commission of the offence whilst on bail (6 months)
21 2. Previous convictions (4 months)
22 3. Commission of the offence while under the influence of alcohol (4 months)

23
24 40. The defendant has previous convictions for damage to property and his alcohol use is a continuing
25 problem.

26
27 41. The fourth factor suggested by the prosecution of failing to comply with current Court Orders is
28 not included. This is said to be a reference to breach of his conditions whilst on bail. These are
29 said to include several violations with respect to wearing his electronic monitor. This factor may
30 well be subsumed under the first factor and may be double counting.

31
32 42. The sentence of 9 months is increased as a result of the three factors by 14 months for a total of
33 23 months imprisonment. For the avoidance of doubt, the allocation is 6 months for the
34 commission of the offence whilst on bail and 4 months each for the other two factors.



1 43. In mitigation the Court takes into account everything said in the defendant's favour by the reports
2 and by his Counsel. These include, his serious health issues, his personal circumstances and grief
3 at the loss of his father, his remorse, and the fact that he has no previous offending for arson. The
4 sentence is reduced by 6 months to one of 17 months or 68 weeks.

5 44. He is to receive the full one third discount of 22.6 weeks for his guilty plea for a sentence of 45
6 weeks or 11 months.

7
8 45. For the offence of Harassment, Alarm and Distress the *Cayman Islands Sentencing Guidelines*
9 provide for two categories of harm. Category 2 is limited distress or harm caused to the victim.

10
11 46. Higher culpability is indicated where the conduct was intended to maximize fear or distress.
12 Clearly the words used were intended to achieve this objective. Additionally, they were said to
13 police officers engaged in their public duties.

14
15 47. The starting point for a category 2 A offence is 9 months custody. From this starting point the
16 same aggravating and mitigating factors are taken into account for a sentence of 11 months
17 imprisonment.

18
19 **CONCURRENT/CONSECUTIVE SENTENCES**

20
21 48. Applying the *Guidelines*, the two offences arose out of the same circumstances. It is appropriate
22 that the sentences run concurrently.

23
24 **CONCLUSION**

25
26 49. Much has been said about his intention at the material time but this Court notes that the following
27 day while in police custody and presumably after some time to sober up and reflect, he still
28 expressed a positive intention by saying that he was not finished with the people in Newlands.
29 This is clearly his decided and determined intent to continue the feud. He must learn to live in
30 peace with his neighbours and the neighbours with him. He must learn to control his temper. The
31 setting alight of the car is evidently an escalation in the pattern of offending and in his interactions
32 with his neighbors. The Court must treat this with the utmost seriousness and with the aim of
33 deterring the defendant from repeating or escalating such conduct.



1 50. The *Alternative Sentencing Act* (2008 Revision) provides in s.4 that: -

2
3 *“A court shall, in imposing a punishment under this Law, take into account the following*
4 *principles —*

5 *(a) that the fundamental purpose of punishment is to contribute, along with crime*
6 *prevention initiatives, to respect for the law and the maintenance of a just, peaceful and*
7 *safe society by imposing just sanctions that have one or more of the following objectives*

8 —

9
10 *(i) to denounce unlawful conduct;*

11 *(ii) to deter the convicted person and other persons from committing offences;*

12 *(iii) to separate convicted persons from society, where necessary;*

13 *(iv) to assist in rehabilitating convicted persons;*

14 *(v) to provide reparations for harm done to victims or to the community; and*

15 *(vi) to promote a sense of responsibility in convicted persons, and acknowledgment of*
16 *the harm done to victims and to the community;*

17
18 *(b) that a punishment must be proportionate to the gravity of the offence and the degree of*
19 *responsibility of the convicted person;”*

20
21 51. The Court considers that in the instant case the custody threshold is firmly passed and that given
22 his history and very high risk of re-offending there is nothing in his personal circumstances which
23 makes an immediate custodial sentence unavoidable. His illnesses have been considered but there
24 is nothing in them which would be life threatening with proper treatment and surgery.

25
26 52. The Court considers that the proposed sentence is proportionate to the totality of the offending.

1 53. The sentence of imprisonment is therefore 11 months on each count to run concurrently and any
2 time served is to be taken into account.

3

4 **Dated this the 11th day of August 2023**

5

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

6

7 **The Hon. Justice Cheryll Richards KC**
8 **Judge of the Grand Court**