

Mr Treloar, you have pleaded guilty to one count of arson.

You committed the crime on 22 December 2018. On that day, you entered an unoccupied dwelling in Prospect in company with an unidentified person. The building was in a poor state of repair, and the doors and windows were not secured, so it was relatively easy for you to make entry. You and your companion gathered loose items into a pile in a corner of the front room of the dwelling. Each of you then set fire to the gathered items with cigarette lighters. After the material started to burn, you both fled from the house. Passers-by alerted the fire brigade, which attended and extinguished the fire, but the house suffered significant damage and was substantially destroyed. The value of the damage has been estimated at \$100,000.

The house was heritage listed, but, as I have said, was in a very poor state of repair. It had been used by squatters for some time and there is evidence that it was being so used at the time of the offending. Having said that, it is accepted that no one else was actually in the home when you set the fire.

You were 19 years of age at the time you committed this crime and are now 21. There are a significant number of offences on your criminal record, which were committed before you turned 18. However, there is nothing as serious as this, although in 2016, you committed the offence of unlawfully setting fire to property which related to a stolen motor vehicle. You were sentenced for that offence after you committed this crime. There is no suggestion on your record that you have committed any offences since this crime.

I have been provided with a psychological assessment. You have a very low level of intellectual functioning, described by the psychologist as being "on the cusp of a mild intellectual disability". This assessment is relevant to sentencing in a number of ways. Firstly, the prosecution accepts that your actions were unplanned and impulsive. You claim that your intention when you set fire to the material was not to set fire to the house. However, you concede that you consciously averted to the possibility that the house might catch fire and proceeded to commit the crime notwithstanding that risk. In the circumstances of this case, there is little material distinction between the two states of mind, and your limited cognitive capacity and the consequent limitations on your judgment and ability to think through the consequences of your actions is consistent with this being an act of spontaneous vandalism. I think the distinction between the mental states would have more significance in terms of moral culpability if setting fire to the house was a planned and premeditated act. Accordingly, your cognitive capacity has some effect on your moral culpability, although I think that its significance is relatively modest. It is obvious that, although you did not think about the consequences of your actions or their impact on other people, you certainly knew what you were doing, you knew that it was wrong, and you acted deliberately. I will proceed on the basis that you and your companion were simply engaged in thoughtless and pointless destruction, presumably in an attempt to obtain some kind of thrill.

Secondly, I accept that your level of cognitive functioning is relevant to the type of experience you would have if sent to prison. It is also relevant to my assessment of your prospects of rehabilitation, and the emphasis that should be placed on that consideration in sentencing. However, I do not accept your counsel's submission that your intellectual capacity affects the emphasis that should be placed on general deterrence or for that matter specific deterrence. I

think that the type of person who would commit a crime of this nature for no apparent reason other than a short-term thrill, and who has no regard for the consequences of his or her actions on other people, might in fact be motivated to think twice if aware that the personal consequence of acting in this way might be severe punishment. I think general deterrence is an important sentencing consideration and is not affected by the assessment of your intellectual capacity.

Objectively, there are some serious aspects to the commission of this crime. The building was a residential dwelling located in an urban area. Although it was unoccupied at the time, and was in a poor state of repair, it was occupied by squatters from time to time. There were considerable risks involved in lighting this fire, including that someone may have been in the house unknown to you, that the fire might have spread to other buildings, and, of course, the ever present risk to firefighters and emergency services. Further, your actions have caused significant loss to the owner or the owner's insurance company. Although your actions were unplanned and impulsive, they have had severe consequences and caused significant risk.

There is no question that the objective seriousness of the crime and the need for general deterrence requires the imposition of a sentence of imprisonment. The only real question in your case is whether that sentence should be wholly or partly suspended. In the circumstances, I have decided that the objectives of sentencing in this case can be adequately met by the imposition of a wholly suspended sentence. In deciding to take this course, I have placed emphasis on your personal circumstances, in particular your age, your relatively modest history of prior offending, at least as an adult, the fact that you have not been to prison before, and your cognitive capacity. I have also taken into account that you seem to have made a decision to improve your life and your behaviour and, in this regard, I note what I have been told about the fact that you have given up the use of methylamphetamine, although you are still using cannabis, and I also note that you have moved home to live with your parents and have not committed any further offences after doing that. I suspect that you were surprised by the serious consequences of your actions, and the fact that the house was destroyed, and I hope this has been a wake-up call for you. However, you should not underestimate the seriousness of this sentence. It is, in fact, a sentence of imprisonment, although it is suspended, and if you do not comply with the conditions of suspension, and in particular if you commit any more offences, then it is highly likely that you will have to serve the sentence in prison. However, if you do comply with the conditions of suspension and take up the opportunity of the support that will be offered to you and, in particular, decide that you are not going to act in his way again, or commit any other criminal conduct, or get involved with people who commit criminal conduct, then there is a good chance that you will not have to serve this sentence. In accordance with the recommendation of Community Corrections, I will make the suspension of sentence conditional upon probation supervision, and this should provide you with some support and, in particular, help you to stop using drugs.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 You are sentenced to a global term of 18 months' imprisonment, The whole sentence will be suspended for a period of 18 months on the following conditions:
 - (a) That you are not to commit another offence punishable by imprisonment during that period.

- (b) That you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 18 months. That period will commence from today. The Court notes that the conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within three clear days of today. In addition to the core conditions the order shall also include the following special conditions:
- (i) you must, during the operational period of the order, attend educational and other programs as directed by the Court or a probation officer;
 - (ii) you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer;
 - (iii) you must, during the operational period of the order, undergo assessment and treatment for drug dependency as directed by a probation officer;
 - (iv) you must, during the operational period of the order, submit to testing for drug use as directed by a probation officer;
 - (v) you must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

- 3 I make a compensation order in favour of Tony John Pasakarnis in a sum to be assessed and I adjourn assessment of that sum sine die.