

**STATE OF TASMANIA v DALLAS JOHN EAVES**  
**COMMENTS ON PASSING SENTENCE**

**17 FEBRUARY 2021**  
**BRETT J**

Mr Eaves, you have pleaded guilty to one count of unlawfully setting fire to property.

The crime was committed on 28 May 2019. At that time, you were in prison being held on remand. The prison was in lockdown and you were confined to your cell.

You started a fire in your cell by placing your blanket, mattress and clothing in a pile near the door and then using wires from your clock radio to create a spark. The material caught fire. It is clear from the CCTV that the fire took hold on the material and produced flames and a very large amount of black smoke. Correctional officers responded promptly and used a hose to extinguish the fire. One officer donned breathing apparatus and entered the cell to look for you. He found you sitting in the shower bay area and dragged you out of the cell. You and three custodial officers required hospital treatment for smoke inhalation, and the cell suffered significant damage. The cost of repair is \$14,282.39.

The commission by you of this crime constituted the breach of a suspended sentence imposed by the Magistrates Court on 1 May 2018 for the summary offences of attempted stealing and destroying property. You were sentenced to 3 weeks' imprisonment, which was wholly suspended for a period of two years. I am required to activate that sentence unless I am of the opinion that it will be unjust to do so. Your counsel has not submitted that it would be unjust to activate the sentence and, in any event, I am not of that opinion. Accordingly, the sentence must be activated.

You are 33 years of age and were 31 when you committed this crime. You have a lengthy criminal history which commences when you were 14 years of age. The offending contained in your history relates to various types of offences, and demonstrates a continuous pattern of offending, without any apparent deterrence from sentencing. It includes a number of serious matters, which have features of relevance to this case. In 2003, when you were a youth, you were dealt with for offences which included one of unlawfully setting fire to vegetation. In 2006, you were sentenced by this Court for various offences, which included 2 counts of unlawfully setting fire to motor vehicles. On 25 June 2010, you were sentenced to imprisonment by a judge for offences committed while you were in prison, which included a serious assault on a correctional officer, and injuring property. The property in question, of course, was prison property and your conduct included the attempted use of fire to damage this property. The sentence also related to a further and separate offence committed about 3 months later. This involved conduct very similar to the conduct in this case. You lit a fire in your cell because you were upset with actions taken by prison authorities. In 2011, you were sentenced for offences committed in prison and which arose out of a stand-off with prison authorities. Again, your offending involved the use of fire. It seems that this conduct was also related to your dissatisfaction with the attitude taken by prison authorities to your wishes. In 2015, you were sentenced to imprisonment for offences which involved considerable violence against people from whom you had stolen a motor vehicle.

Your counsel tells me that you have had a long-standing problem with depression and other mental health concerns. At the time of committing this crime, you were depressed and in despair. In that state, you committed this crime in an attempt to harm yourself. A number of circumstances contributed to your mental and emotional state, including the fact that a few days earlier you had been acquitted of a crime for which you had been held in custody for almost a year. You had also unsuccessfully sought leave to see your daughter, and had recently been told that your father had been taken into care. Your counsel does not suggest that your mental state reduces your moral culpability in the way referred to in the case of *Verdins*, but it does

provide context for your offending. I accept what I have been told. It is obvious, in any event, from the circumstances, that you were trying to harm yourself and were obviously in a vulnerable psychological and emotional state at the time.

Despite this, there are a number of serious aspects with respect to the crime committed by you. You set the fire in such a way that it was likely to cause significant damage. Your actions were extremely dangerous. The cells on either side of you were occupied and it was inevitable that prison officers would be required to take considerable risks to extinguish the fire and to rescue you. Further, you of course placed yourself in great peril. Some of these risks were actually realised because three of the correctional officers suffered smoke inhalation and required hospital treatment, as did you. The consequences could easily have been far worse. Finally, conduct such as this defies and repudiates the orderly operation and discipline of the prison, and this of course can have far-reaching adverse consequences. For these reasons, general deterrence is an important sentencing consideration.

Further, there are a number of factors which require a sentence which places emphasis on personal deterrence. These include your ongoing disregard of the law as demonstrated by your prior criminal history generally, the history of similar conduct, particularly the use of fire to damage property when you are in prison and when you do not get your own way, and the fact that you were subject to at least two suspended sentences when you committed this crime. One of those sentences has since been activated and the other is the subject of the breach application before me.

In mitigation, I take into account that you have pleaded guilty to this charge and this is relevant because it demonstrates a willingness to co-operate with the administration of justice and has practical benefits for the criminal justice system. I also take into account the principles of totality. In this regard, I note that you have been imprisoned since 31 July 2020. Having regard to the provisions of s 15(3) of the Sentencing Act, the sentence I impose for this crime should be served cumulatively upon any other sentence. In the circumstances, this would be an appropriate order in any event. However, as I have discussed with counsel, there is a complication to this. I am told that a significant portion of the lengthy period of time you spent in custody prior to committing this crime has not been taken into account in respect of any other sentence. It is relevant that during that period, you were held in custody without bail pending trial and you were subsequently acquitted of the charge at that trial. It seems to me that it is appropriate and just that this period, which amounts to 330 days, is taken into account in a way which will at least partially constitute some service of the punishment which I intend to impose. I have had regard to the cases of *Geale* and *Parker v Richardson*. I agree with what Blow J (as he then was) said in the latter case. Taking into account presentence custody is a matter of discretion in respect of custody which occurs prior to the commission of the crime, and is unrelated to the crime, and there are a number of factors which will be relevant to the exercise of that discretion. In this case, what I have been told about your reasons for committing the crime suggests that, in part, at least, you experienced a feeling of desperation arising from having been in prison for so long, including for so long throughout your life. Of course most of that was deserved, but the time spent on remand for a crime of which you were acquitted was not deserved. That time caused you suffering, and that suffering amounts to real punishment. You committed this crime very shortly after the conclusion of that period and in circumstances in which it cannot be suggested, is not suggested by the prosecutor, that you committed this crime in the belief that you could take advantage of that time. Rather, that period in custody, in my view, contributed to your state of mind which underpinned your decision to commit the crime. I observe that it was inherent in what you did that you would either harm yourself or at least place yourself at great risk of harm. I think it is unrealistic to suggest that you were motivated by a belief that you could utilise time ready served in respect of this crime, which I think was probably a factor in the case of *Parker v Richardson*. Accordingly, I conclude

that justice requires that time you have already spend in custody, as described, be taken into account in respect of this sentence by backdating this sentence in a way that takes into account the general requirement under the *Sentencing Act* that ordinarily sentences of this nature should commence at the expiration of any current sentence. I agree with that the views expressed by in *Geale*, in particular by Evans J., to the effect that, generally speaking, backdating will be the fairest and most transparent means of taking into account pre-custody time, although the backdating will not always reflect the entire period. I have been told that your earliest release date on your current sentence is 20 February 2021, and the latest release date is 30 April 2021. Because you have been permitted remissions, I accept what your counsel has said, that your current sentence will end on the earlier date, but I think the fairest way to take into account that pre-custody time is to fully count back for the purposes of pre-dating the sentence, 330 days, but to do that from the latter date, 30 April 2021. I think this properly allows for the fact that the crime was committed while you were in custody. It also takes account of the serious nature of the crime, and risks to custodial officers, and the harm caused to them, and gives effect to the underlying purpose behind s 15(3). I am satisfied that the existence of this time unallocated to a sentence amounts to an exceptional circumstance within the meaning of s 15(3), and I intend to backdate the sentence accordingly. To the extent that this period will overlap your service of other sentences, and you will be serving those sentences concurrently with this sentence.

On the other hand, given the fact that you committed this crime while in custody, and taking into account your prior history of offending, as already discussed by me, and what would seem to be an apparently recalcitrant attitude with respect to the offending of this type, I am of the view that it is not appropriate to permit your early release on parole. Accordingly, I will not be making an order for parole eligibility. I have also taken this into account in determining how the pre sentence custody should be taken into account.

The orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty;
- 2 The suspended sentence of three weeks' imprisonment imposed by the Magistrates Court on 1 May 2018 is activated. It will be backdated to 27 May 2020. You are not eligible for parole in respect of this sentence.
- 3 For the crime of unlawfully setting fire to property, you are sentenced to a term of 15 months' imprisonment which will be served cumulatively upon the activated suspended sentence. You are not eligible for parole in respect of this sentence.
- 4 For the purposes of s 92A(3) of the *Sentencing Act*, I specify that the total term of imprisonment which you are liable to serve in respect of both sentences is 15 months and three weeks. This period commences from 2 July 2020. You are not eligible for parole in respect of either sentence.

I make a compensation order in favour of the Department of Justice in the sum of \$14,282.39.