

STATE OF TASMANIA v FRANK ANDREW MARK BUCHANAN 26 MARCH 2020
COMMENTS ON PASSING SENTENCE PEARCE J

Frank Buchanan, you have pleaded guilty to two separate crimes: unlawfully injuring property and arson. Both crimes were committed while you were an inmate of the maximum security section of the Risdon Prison. On 28 April 2020, following report of a disturbance in your cell, the dedicated response team, comprising a number of prison officers, was sent to find out what was going on. You were holding a metal bar which you had broken from the frame of one of the beds in the cell. You were agitated and threatening. The officers tried unsuccessfully to enter the cell. They managed to enter a few minutes later. You were restrained and removed. You had caused a considerable amount of damage to the cell. As well as damaging the bed frame, you broke timber shelves, a window and the security dome. The damage has probably now been repaired. I do not have details of the actual cost, but the estimate was many thousands of dollars. I am not dealing with any charge other than the one to which you have pleaded guilty, relating to that damage.

The second crime occurred about three months later, on 21 July 2020. From about 12.45 pm you had been locked in your cell because you and others had been flooding the cells with water. At about 2.40 pm you put a metal object in the active and neutral points of the power point in your cell, turned it on and used another metal object to create a spark. You ignited paper and bedding and gradually added other objects as fuel to the fire. The fire was extinguished by a special team of prison officers equipped with breathing apparatus. They achieved this by putting a hose through the viewing door of the cell while you were still inside. However it was not before the fire caused considerable damage to the cell: the floor, the paint on the walls and ceiling, the lighting and electrical components, as well as the bedding and mattress. The entire unit of the prison filled with smoke from the fire and the staff and all eight prisoners, including you, had to be evacuated. You were taken to the hospital by ambulance for assessment. Again, the damage has most likely already been repaired. I only have the estimated cost which was more than \$12,000.

You are aged 25. You have two children from a former relationship. You come from a difficult and deprived background. You were subject to violence. You were educated to year 10 and have held employment from time to time but you also have a history of abuse of alcohol and drugs which began when you were 15 after having witnessed the violent murder of a friend. You have a record for violence and offences against authority. In 2014 you were given community service for offences including threatening and resisting police. In 2016 and 2017 you were fined and given probation for numerous breaches of a police family violence order. On 26 June 2018 you were sentenced to imprisonment for three years and four months from 17 April 2018 for aggravated armed robbery, aggravated burglary, two counts of arson, attempted carjacking, and an attempted aggravated armed robbery. Part of that criminal conduct involved you setting fire to two homes, including the one you had been living in with your family. You were given an additional three month term for offences committed before you went to prison, including three counts of unlawfully setting fire to property and numerous counts of burglary and stealing. You became eligible for parole in March 2020 but it has not been granted. Your sentence will conclude on 16 November 2021 or, if you are granted remission, on 16 August 2021. I take into account the length of time you have already spent in prison, but the new offences involve separate criminality. I have little doubt that these offences have already affected whether you have applied for or been granted parole. However you brought that on yourself.

It was put that prior to going into custody you suffered difficulties with your mental health, from the past trauma. The problems continued when in custody and led to self-harm. Since the incident in which you lit the fire you have successfully sought treatment, and the medication you are now prescribed has stabilised your mental health. I accept these matters provide context to your offending, but in the absence of evidence to establish a causal link between a mental condition or disorder and the crimes you committed, they do not lessen the need for punishment or deterrence. It is in your favour that you have entered early pleas of guilty, although there was hardly any prospect of acquittal. The pleas have facilitated justice and are some indication of an acceptance of responsibility and remorse. You have resolved to, following your release, continue your abstinence from drugs, try to resume contact with your children and continue with some form of training or education.

I will make compensation orders for the cost of the damage you caused in each case, but there is little chance you will ever be able to pay it. The arson is the most serious crime for a number of obvious reasons. Firstly it was committed after you had been charged for the earlier damage and demonstrates a contempt for the law and for authority. It caused considerable loss and disruption. Most importantly, arson is the most serious property crime. You not only caused serious property damage, but you put prison officers and fellow prisoners at considerable risk of injury or even death.

Both crimes require a term of imprisonment to make clear to you and others of the consequences of such actions in the hope of reducing the chance that it will happen again. Prisoners who damage or set fire to their cells must understand that punishment will follow. Because both are prison offences within the meaning of that term in the *Corrections Act 1997*, the sentences must be served cumulatively on any uncompleted sentence of imprisonment that you are serving or liable to serve. There are no exceptional circumstances here which warrant departing from that requirement. However I will allow some eligibility for parole.

Frank Buchanan, you are convicted on complaints 8287/2020 and 9616/2020. On both counts, I make a compensation order in favour of the Risdon Prison Services and adjourn the further terms of those orders to a date to be fixed. On complaint 8287/2020, unlawfully injuring property, you are sentenced to imprisonment for three months, cumulative to any term of imprisonment you are serving or liable to serve. I order that you not be eligible for parole in respect to that sentence. On complaint 9616/2020 you are sentenced to a term of 18 months cumulative to the sentence just imposed. I order that you not be eligible for parole until you have served half of that term. The result is a total term of 21 months cumulative to the term you are currently serving with eligibility to apply for parole after 12 months.