

STATE OF TASMANIA v KYEL LEES
COMMENTS ON PASSING SENTENCE

9 AUGUST 2021
MARSHALL AJ

Mr Kyel Lees has pleaded guilty to one count of perverting justice under s 105 of the *Criminal Code*. Section 105 provides that any person who does any act or makes any omission with intent in any way whatsoever to obstruct, prevent, pervert or defeat the due course of justice or the administration of the law, is guilty of a crime.

The particulars of the charge allege that "On or about the 9th day of July at Devonport in Tasmania with the intention to obstruct, prevent, pervert or defeat the due course of justice or the administration of the law, Mr Lees falsely represented to Tasmania Police that he was responsible for setting fire to St Paul's Anglican Church in East Devonport."

At about 2pm on 9 July 2019, three youths lit a fire by setting fire to a pile of dry leaves located up against the outside of St Paul's Anglican Church. They sprayed it with a deodorant can. They later stomped on it and left the scene, believing that it had been extinguished. About 3pm that day, the youths returned to the church and found that the fire had increased in size, and that the roof of the church was ablaze. At about 3.45pm, witnesses contacted police to report the fire. At about 4.20pm Mr Lees became aware of the fire when he saw smoke coming from the church when he was at a nearby pharmacy. On the evening on 9 July 2019 one of the mothers of one of the youths contacted the mother of another youth, and told her that the youths had been responsible for the fire. Mr Lees became aware of what had happened and told one of the youths that he would claim that he accidentally caused the fire while smoking a cigarette. Mr Lees told the youth to repeat the story if asked about the fire. At about 10pm on 9 July 2019, Mr Lees called police and told them he was responsible for the fire. He told police that he was sitting on the steps of the church and flicked a cigarette, causing the church wall to go up in flames. He said he felt guilty because boys were taking the blame for it on Facebook.

After a police investigation, one of the youths was arrested and implicated the other two youths. The two youths were then interviewed and made admissions about their involvement with lighting the fire. One of them was subsequently convicted of arson and the other two received diversionary cautions through youth justice proceedings.

On 16 July 2019 when Mr Lees was in police custody on other matters, he told police that he thought at the time he was doing "the honourable thing" by protecting one of the youths. He said he wanted it to look like an accident so there would be no charge of arson. He admitted that he knew it was an offence to lie to the police.

Mr Lees is currently in custody on other matters unrelated to this matter. He is due to be released in February 2022, and then be subject to a community corrections order on release. Mr Lees committed this offence at a low period in his life, and he was under some influence from the mother of one of the youths involved to take the blame for what had happened. He was in a relationship with that lady at the time.

Mr Lees had a troubled childhood, having been abused by his father, and having left home with no support when aged 13, and then residing in youth refuges. He has some prior convictions, but as counsel for the State conceded, none of them have particular relevance to the current matter. He pleaded guilty at the earliest opportunity.

In ordinary circumstances I would have considered making enquiries with Community Corrections concerning Mr Lees' suitability for a community corrections order, but was informed by his counsel that he will be subject to such an order for 12 months after his release from prison, as a consequence of the sentence that resulted in him being incarcerated. I take into account general and specific deterrence, and the denunciation of conduct which strikes at the heart of the justice system. I also take into account recent penalties in like cases. I further take into account, but not to a great extent, that Mr Lees has been alcohol-free since July 2019, which is to his credit for the future.

I convict Mr Lees and sentence him to a term of imprisonment of six months, wholly suspended on the condition that Mr Lees not commit any offence punishable by imprisonment in the next 30 months.