

**STATE OF TASMANIA v KIERAN SCOTT MITCHELL
STATE OF TASMANIA v BLAIR ANGUS CRAWFORD
COMMENTS ON PASSING SENTENCE**

2 DECEMBER 2021

JAGO J

Both defendants appear for sentence having pleaded guilty in the Magistrates Court to one count of unlawfully setting fire to property. Mr. Crawford has also pleaded guilty to a second count of unlawfully setting fire to property. The incident involving both defendants occurred on 5 May 2021. At that time both defendants were serving sentences of imprisonment at Risdon Prison and were housed in a medium security unit block. The unit block contained six cells and a common area. The unit block is monitored by a CCTV system. At the time Mr Mitchell was in cell 1 and Mr Crawford in cell 2. There were also two other inmates in the unit, housed in cells 4 and 5.

Around 7.30pm on that day, one of the inmates from cell 4 or 5 was in the common area of the unit block and heard a discussion between the two defendants indicating they were going to "burn the unit out". He saw the defendants take items, including toilet paper into cell 2. Shortly thereafter, the fire alarm and sprinkler system activated. When the CCTV footage was later reviewed it showed Mr Mitchell had ignited a piece of rolled up toilet paper in the unit common room microwave. He took the flaming item into cell 2 (Mr Crawford's cell). Mr Crawford had piled up bedding and a mattress which were in the cell and Mr Mitchell placed the flame under the items.

Both defendants then left the cell and entered cell 5. Shortly after water could be seen coming from underneath the door of cell 2, and also from above the door of cell 2 as a result of the sprinkler system being activated.

At 7.30pm Mr Mitchell opened the cell door and a plume of black smoke billowed into the common room, of such thickness that it obscured any further recording on the CCTV system for the next 15 minutes.

At 7.56pm members of the Prison Tactical Response Group attended, unlocked the unit and removed all inmates. Tasmania Fire Service attended and extinguished the fire. A fire investigation report concluded the fire originated under a desk in cell 2 where textile and other combustible items had been placed and ignited. The fire in the unit caused damage valued at \$13,448.75. This related to damage to bedding, clothing and furnishings within the cell, damage to other items in the common room area and smoke, fire and water damage to areas within the unit.

On 6 May 2021, Mr Mitchell was interviewed. He admitted to police he had set items in cell 2 on fire. He said he did it because he was angry with the prison for the way prisoners had been treated. In particular, he said he was angry for the prison locking them down and confining them to the basketball court for their daily exercise. He also said he was angry because he did not get his "canteen" in the days leading up to the incident. He said he lit the fire by igniting an aluminium jam lid in the microwave to create a spark and then ignited toilet paper which he had rolled up as a wick.

Mr Crawford also participated in a video record of interview. When asked why he lit the fire he said "because I can". He also said he was cold.

Both defendants pleaded guilty at their second appearance in the Magistrates Court which was on 14 September 2021. It is an early plea.

The second incident to which Mr Crawford has pleaded guilty occurred on 18 July 2021. On this date Mr Crawford was an inmate of Risdon Prison, housed in the maximum security facility known as Apsley Unit. The unit contains ten, two bed cells and a common area, including a kitchenette and yard. Mr Crawford was housed in cell 10 with another inmate.

During the afternoon of 18 July 2021 all inmates were locked in their cells. At approximately 4.25pm a fire alarm went off in the Apsley Unit. Correctional Officers inspected and observed smoke billowing from cell 10. Correctional Officers donned appropriate safety attire and entered the main area of the unit. The Commanding Officer began hosing down the door of cell 10 and directing the water into the cell grate and under the cell door. When Correctional Officers opened the cell door, Mr Crawford was hiding at the back of the cell. He was directed to come to the front of the cell but ran out of the cell, charging towards officers. He was not compliant with directions to get on the ground. Correctional Officers had to take him to the ground. His behaviour was described as combative and aggressive.

Within cell 10 Correctional Officers observed a mattress and a number of other items burning on the bottom bunk. The fire was extinguished at approximately 4.45pm.

A subsequent fire investigation report provided by Tasmania Fire Service suggested the fire had started on the mattress on the bottom bunk bed. It was determined the fire had started via human intervention as no electrical fault or natural cause could be found. Tasmania Fire Service were unable to determine a specific cause of the fire.

The fire in cell 10 caused approximately \$25,575 worth of damage.

It is aggravating that Mr Crawford lit a second cell fire within such a short time of the first. The damage and unrest caused by the first fire should have been apparent to him.

At the time of the respective offending both defendants were serving sentences of imprisonment. Mr Mitchell is serving a sentence with an earliest release date of 15 May 2024 but with eligibility to apply for parole on 29 December 2022. Mr Crawford concluded his sentence and was released from custody on 18 August 2021, but was returned to custody on unrelated matters on 15 October 2021.

Mr Mitchell was 18 years of age at the time of the incident. He is now 19. He has a long history of offending, particularly for crimes of violence. On 16 March 2021 he was sentenced by Brett J to imprisonment for a period of 2 years and 9 months for one count of wounding. That is the sentence he is currently serving. In his comments on passing sentence Brett J noted:

"You have a shocking prior record for crimes of violence, all of which have been committed as a youth. A repeated feature of your criminal behaviour is the violent use of a knife. The last sentence was imposed on 16 August 2019 by me, for the crime of aggravated armed robbery. In my sentencing comments I summarised your earlier offending as follows: 'Your serious offending commenced when you were 14 years of age. On 6 July 2017 you were sentenced to a partially suspended detention order and probation for an attempted aggravated robbery and other offences. On 4 September 2017, you were sentenced by me for a serious armed robbery which related to you using a large knife to threaten a service station attendant, so that you

could rob him. I dealt with you leniently on that occasion, imposing a wholly suspended detention order and community service. Two months later, you committed an extremely serious aggravated armed robbery which involved a home invasion and again used a weapon, a machete this time, to threaten the home owner for the purpose of stealing from him. You were sentenced by Pearce J on 24 April for this crime. His Honour imposed a detention order which was partially suspended. It seems that on that day you were sentenced, you committed this crime of wounding, and you subsequently received a further sentence for this."

On 30 May 2019, Mr Mitchell was convicted of one count of unlawfully injuring property and one count of unlawfully destroying property. He was sentenced to a 4 month detention order, and a 3 month detention order cumulatively, in respect to those matters. Mr Mitchell has been subject to suspended detention orders, which he has breached. He has been subject to probation orders under the *Youth Justice Act*, which he has also breached. It is apparent from sentences previously imposed upon him that there have been a number of endeavours to encourage his rehabilitation with little success.

Mr Mitchell grew up with the benefit of a supportive family, but experienced many difficulties with his education. He had learning difficulties and was bullied at school. He has been diagnosed with Attention Deficit Hyperactive Disorder and Oppositional Defiance Disorder. He suffers from a mild intellectual disability which I am told has rendered him susceptible to the influence of others and often results in him acting impulsively. From an early age Mr Mitchell has experienced difficulties with drug use and in particular methyl-amphetamine. He has found difficulty in abstaining from drug use and accepts his ongoing drug use has contributed substantially to his offending in the past. I am told Mr Mitchell has been finding his time at Risdon Prison most difficult. His parents have been very limited in their capacity to visit him at Risdon prison, whereas during previous periods of remand served at Ashley Detention centre, visits from his parents were most regular. It can only be hoped that the harsher reality of the adult prison environment may persuade him that further offending is not in his interests. I am told Mr Mitchell found the long lockdowns and limitations on movement that were imposed on prisoners most onerous. The frequency of these lockdowns coupled with the defendant being denied the opportunity to receive his "canteen" was the catalyst for his involvement in the lighting of the fire. I am told Mr Mitchell now appreciates it was a futile endeavour which achieved little. He appreciates he placed others in danger by virtue of his actions. Following the fire Mr Mitchell was sent to maximum security for a period of time before being returned to a medium security unit. His time in the maximum security unit was difficult.

I take into account Mr Mitchell's early plea of guilty. It has a utilitarian value. I also take into account the defendant's age. He is obviously still a young man. Even though Mr Mitchell has a very poor criminal history for his age, and there is little by way of evidence to suggest he has made any genuine commitment to reform, having regard to the fact he is only 18, rehabilitation must, in my view, remain a valid sentencing consideration. I will also take into account the principle of totality. Mr Mitchell has spent much of his teenage years and early adulthood in custody. He was sentenced on 16 March 2021 to a substantial period of imprisonment. Because this is a prison offence I have to make any term of imprisonment imposed cumulative to his present term, unless there are exceptional circumstances. I can identify no exceptional circumstances. Nevertheless, I will bear in mind that I must not impose a sentence which when taken with the sentence currently being served, is crushing having regard to his age and prospects of rehabilitation. I will adjust the length of the head sentence to take this into account.

Mr Crawford is 18 years of age. The period of imprisonment he was serving at the time of the offending was the first period of imprisonment he has served as an adult. He has, however, a poor history of offending as a youth. In February 2019 he pleaded guilty to a large number of matters involving driving a motor vehicle (including evading police in aggravated circumstances and reckless driving), motor vehicle stealing, unlawfully setting fire to property - a motor vehicle - and several offences of dishonesty. He was not convicted but received a 9 month probation order pursuant to the provisions of the *Youth Justice Act*. In May 2019 there were further offences involving dishonesty and driving for which Mr Crawford was not convicted, but ordered to serve 80 hours of community service. In October 2019 a further order to perform 70 hours of community service was imposed, without conviction, for further offences of dishonesty, motor vehicle stealing, offences committed against police, bail offences and computer related fraud. In February 2020 he was sentenced to a 6 month detention order commencing 28 November 2019, with the balance suspended on condition for 12 months he commit no offence which, if committed by an adult, would be punishable by imprisonment. This partially suspended detention order was imposed for offences of motor vehicle stealing, dishonesty and driving offences. On 20 February 2020, Mr Crawford was resentenced following breach of previously imposed probation orders. On 15 September 2020 Mr Crawford was sentenced to a 15 month detention order, 5 months of which was suspended for aggravated robbery and was also resentenced on the matters for which he had received the suspended detention order. He has had the benefit of sentencing orders directed towards encouraging his rehabilitation. Many of these have been breached, and do not appear, to date at least, to have achieved much by way of his reform. Nevertheless, as with Mr Mitchell, rehabilitation remains an important sentencing consideration.

As an adult, Mr Crawford was sentenced on 13 May 2021 to two separate periods of imprisonment - a 6 month period of imprisonment commencing 19 February 2021 and a 12 month period of imprisonment also commencing 19 February 2021, 6 months of which was suspended on condition for 2 years he not commit any offence punishable by imprisonment. This sentence was imposed for a large number of offences of dishonesty and three counts of unlawfully setting fire to property, all of which involved motor vehicles. It was this period of imprisonment that Mr Crawford was serving when he committed these offences. Relevantly, Mr Crawford has three prior convictions for unlawfully setting fire to property and one prior matter of destroying property. The offence committed on 18 July 2021 places Mr Crawford in breach of the partially suspended sentence imposed on 13 May 2021. No application in respect of that is made before this Court. I am told that application will be pursued in the Magistrates Court where Mr Crawford has a number of unrelated matters pending.

Mr Crawford has had a very disadvantaged upbringing. He was raised by his father who had significant drug, alcohol and mental health issues and pursued a criminal lifestyle. Mr Crawford has never known his mother. He left school in grade 6. His upbringing was marred by neglect, inappropriate discipline, and exposure to violence, drug taking and crime. There were many notifications made to Child Safety Services, without it seems, much positive intervention. He experienced substantial periods of homelessness. When there was stable accommodation it was often inadequate and overcrowded. From an early age he developed a significant substance abuse problem. His constant resort to drugs has resulted in much of his offending. He is hopeful that he may be eligible for participation in the Court Mandated Drug Diversion Program in respect to the outstanding matters that are before the Magistrates Court. I am told his father has previously been a participant in that program and was able to successfully graduate. Mr Crawford considers that motivation for him to do likewise.

Mr Crawford says he committed these offences because he was frustrated by the large number of extended prison lockdowns he was experiencing. In effect, his behaviour was a protest against the manner in which he and other prisoners were being treated. I am told he now recognises that what he did was not an appropriate way in which to deal with his grievances.

Setting fire to mattresses, bedding and the like in prison cells creates a risk for prison officers and other inmates, as well as emergency personnel who are required to attend. These sorts of events are unfortunately not uncommon. They disrupt orderly prison management and can encourage others to behave in a similarly destructive and rebellious manner. Whilst a level of frustration may be understandable given the various lockdowns that were occurring, conduct of this nature is never acceptable and must be condemned. Attempting to deter others from similar behaviour is an important sentencing consideration. I take into account the early pleas of guilty in respect to both defendants. I also take into account their young ages.

Mr Mitchell, you are convicted and sentenced to 5 months' imprisonment cumulative to the term presently being served. I think it appropriate to make provision for parole given your young age and the length of the sentence to which you are presently subject. I order that you not be eligible for parole until you have served 3 months of that sentence.

Mr Crawford, you are convicted I impose one sentence. You are sentenced to 10 months' imprisonment, backdated to commence on 15 October 2021 when you were taken into custody. Given your age and the fact you are endeavouring to be sentenced into the Court Mandated Drug Diversion Program, I think it appropriate to make provision for parole. I order that you not be eligible for parole until you have served 6 months of that sentence.

I make a compensation order in favour of the State of Tasmania in the form of the Tasmanian State Prison Services in the following amounts:

- (a) \$13,488.75 against both defendants.
- (b) Against Mr Crawford alone, in an amount to be assessed.