

STATE OF TASMANIA v TRENT MERVYN LEONARD
COMMENTS ON PASSING SENTENCE

30 MAY 2022
BLOW CJ

Mr Leonard has pleaded guilty to a charge of unlawfully setting fire to property. On 21 October 2020, when he was serving a sentence for dangerous driving at the Risdon Prison, he set fire to his mattress. The fire caused substantial damage to his cell. The cost of the damage has been estimated at \$10,750.

Mr Leonard was 23 years old at the time and is now 24. He had an unfortunate childhood and adolescence, and started getting into trouble with the police after leaving school at the age of 16. He had been diagnosed as suffering from attention deficit hyperactivity disorder, and had been given medication for that condition. When he was 16 he left school, his father died, he started self-medicating with illegal drugs in place of his ADHD medication, and he started associating with an anti-social group of peers. He has spent much of his adult life in prison. He has many convictions for driving offences and offences of dishonesty, as well as five convictions for setting fire to cars. When he committed this crime in October 2020, he had been in prison for a little over 2 ½ years, was eligible for parole but had not been paroled, and was serving the last of four sentences that had been imposed for a variety of offences – a sentence of 26 months' imprisonment for dangerous driving.

He had committed other offences during that period of imprisonment. In November 2019 he assaulted a man named Cook by throwing hot water over his face. In August 2020 he assaulted a correctional officer. He had not been sentenced for those assaults at the time of the fire.

Mr Leonard suffers from depression. I was provided with a thorough report by an experienced forensic psychiatrist, Dr Michael Jordan. It is clear that Mr Leonard's mental state deteriorated significantly during the days and weeks leading up to the fire as the result of a number of factors. Mr Leonard had been very close to his uncle, but was informed on 19 August 2020 that his uncle had died. At that time he was having to share a cell with another prisoner because of a crowding problem. He wanted to move into a single cell so that he could grieve in private. He asked if he could be moved to the Tamar Unit, which is used for solitary confinement purposes, but that was refused. He struck a prison officer in the hope that he would be moved to the Tamar Unit, and he was. By the day of the fire, he had been there for more than two months.

That was a challenging period because of the COVID-19 pandemic. There were multiple lockdowns. As a general rule, prisoners in the Tamar Unit have no access to television, and substantial restrictions on family visits and communications. As a general rule, they are allowed out of their cells for exercise and fresh air for only one hour per day. By the day of the fire, Mr Leonard had not been permitted to see or communicate with family members for over two months following the death of his uncle, and had not been allowed out of his cell for four days because of lockdowns. He reported to Dr Jordan that during the days leading up to the fire he began to hear voices, which he described as a whispering, with a number of voices all trying to talk at the same time. He had been trying to get help because of his mental state, without success. He had no recollection of starting the fire, but did remember coming out of the cell dry, as a result of the sprinkler having failed.

According to Dr Jordan the report of hearing voices was evidence that he might have been suffering from a reactive psychosis as a consequence of a combination of his depressed mood and the restrictions and lack of stimuli within his cell. In Dr Jordan's words, "It would appear

most likely that Mr Leonard's stress tolerance had been surmounted in the period leading up to the fire setting incident and in his highly charged emotional state he was unable to recall actions that he had completed himself".

Mr Leonard's counsel has provided me with a copy of the annual report of the Custodial Inspector for the year ended 30 June 2021. In that report, The Custodial Inspector said this:

"I am increasingly concerned that the conditions in the Tamar unit have reverted to an inhumane environment with prisoners being held under unduly restrictive conditions, with too much time in solitary confinement, and insufficient access to exercise, sunlight and fresh air."

It should come as no surprise that the incarceration of prisoners in such conditions for months on end might lead to one or more of them experiencing a significant deterioration in mental health, and misbehaving as a result. Dr Jordan noted that Mr Leonard had self-harmed by lacerating his arm approximately two weeks before the fire. Subsequent requests for access to therapeutic services were denied, apparently because of problems encountered during the COVID-19 pandemic.

The fire was more than 18 months ago. Since then Mr Leonard has completed serving the sentence for dangerous driving, been bailed on the charge that I am dealing with, committed further offences during a few months of freedom, gone back into custody, been sentenced to imprisonment by a magistrate, and been released again. I will go into more detail about all of that, but the important point is that the charge relating to the fire is now a stale charge. That is not the fault of the Crown or defence counsel or Mr Leonard. I accept that the Crown has been ready to proceed with a plea of guilty to this charge since early December of last year, before Mr Leonard went back into custody and before he was sentenced to imprisonment by the magistrate.

Mr Leonard was bailed in relation to the fire charge on 21 May 2021. He appears to have stayed out of trouble for several weeks, but was caught speeding and driving whilst disqualified on 5 July. There was another episode of offending on 27 July, involving driving while disqualified, drink driving, and motor vehicle stealing. He committed more driving offences and breaches of bail during September. At some stage in or around early October he was taken back into custody. On 27 November his brother was killed in a car accident. He applied for bail so that he could attend the funeral. On 3 December a judge granted bail on very strict conditions. Mr Leonard was required to live at the home of his mother and grandfather, and not leave their residence unless he was accompanied by one of them. He attended the funeral, stayed out of trouble, and complied with his strict bail conditions for about 11 weeks. During February he felt that his mental health was deteriorating, had difficulty getting appropriate treatment, and thought he might stand a better chance of getting appropriate treatment if he was taken back into custody. It later turned out that he was wrong about that. However he breached his bail on 20 February, went out unaccompanied, went to a police station, got himself arrested for breaching his bail conditions, and was remanded in custody.

On 17 March he appeared before a magistrate and was sentenced on pleas of guilty in relation to the two assaults committed in the prison, the summary offences that he committed in July and September of last year, and the breach of bail of 20 February. The magistrate imposed two sentences – a sentence of 6 months' imprisonment backdated to 1 December 2021, with two months thereof suspended, and a concurrent sentence of 4 months' imprisonment, similarly

backdated. Thus he was dealt with for all outstanding charges except the one that I am now concerned with. The magistrate could not deal with that charge because the amount of damage that the fire had caused made it necessary for the prosecuting authorities to charge him under the *Criminal Code*, and the magistrate had no jurisdiction in the matter. To the best of my knowledge he was released from custody on or about 31 March.

Since then he has been out of custody and out of trouble for about two months. He is living with his mother and looking for work. He has become involved with a local football club, and is being paid to attend two training sessions and one game each week. He has never been involved in football before, but has always been interested in physical fitness and is a talented boxer. He has been drug-free since his release, and has a good relationship with his family.

If I had been able to sentence Mr Leonard for this crime during his last period of imprisonment, I would have imposed a sentence of imprisonment that was concurrent with the magistrate's sentences. Section 15(3) of the *Sentencing Act* 1997 requires a sentence of imprisonment for a prison offence to be a cumulative sentence unless there are exceptional circumstances. In Mr Leonard's case there were exceptional circumstances because of his deteriorating mental health, the unavailability of the treatment that he was seeking for it, the inhumane conditions in the Tamar Unit, and in particular the COVID-related lockdowns day after day.

I accept that this crime involved a serious breach of prison discipline, and that prison fires can involve risks to correctional officers and uninvolved inmates. I will therefore impose a prison sentence but, because of the exceptional circumstances, I will backdate it so that the entire sentence is concurrent with the sentences imposed by the magistrate in March.

Trent Mervyn Leonard, I convict you and sentence you to 1 month's imprisonment with effect from 20 February 2022, to operate concurrently with the sentences imposed on you by a magistrate on 17 March 2022. I order you to pay the Director of Corrective Services compensation for the damage caused by you and adjourn the assessment of that compensation sine die.