

Mr Moore has pleaded guilty to a charge of committing an unlawful act intended to cause bodily harm, contrary to s 170 of the *Criminal Code*. On 2 August 2021 he doused his brother with two-stroke fuel and set alight to it, causing terrible burns.

The complainant was 49 years old at the time of the crime. He suffered two strokes in 2019 and a third in 2020. The strokes left him with a disability affecting his use of the right side of his body. He had very limited mobility. He lived in Bridgewater. The accused sometimes stayed with him there. On the night of 1 August 2021 the accused became drunk. He was also affected by Ice. He went to the complainant's home at about midnight. The accused had had a partner for some years, but she had ended their relationship. Rightly or wrongly, he formed the view that the complainant had had sex with his former partner. In his intoxicated state, he decided to attack his brother.

About 30 minutes to an hour after the accused arrived at the residence, the complainant was on his bed in the lounge room. The accused was also in the lounge room. He had a can of fly spray and a cigarette lighter. He used the lighter to light the fly spray a number of times. Each time he got close to the complainant, but the flames did not make contact with him. He threatened the complainant, saying, "I'm going to burn you." The complainant was unable to get away because of his limited mobility.

The accused went and got a jerry can that contained two-stroke fuel from somewhere on the premises. He doused the complainant with the fuel and used the lighter and the fly spray to set fire to the fuel and his brother.

The complainant rolled onto the floor in an attempt to extinguish the flames. At this point the accused started to try to help his brother. He helped him to extinguish the flames. He undressed him, went next door, and asked a neighbour to phone for an ambulance. The neighbour phoned for both an ambulance and the police.

The police arrived first. The accused told them that he had set his brother alight. They seized a cigarette lighter from him and arrested him. He made a number of unpleasant comments including, "I found out he fucked me missus so I came here and assaulted him."

The police officers found the complainant sitting in the house, naked and groaning in pain. He had severe burns to the legs, groin and right arm. A burnt blanket with skin melted into it was on the floor. The complainant's burnt clothing was nearby.

The complainant was taken to hospital by ambulance. He had to have surgery on a number of occasions. The operations included a number of skin grafts. At first he had to have his dressings changed under a general anaesthetic. He spent the next seven weeks in an intensive care unit and a burns unit. On 21 September 2021 he was transferred to an acute rehabilitation unit. He was treated there by physiotherapists, occupational therapists and a psychologist, as well as a medical team. He was discharged from the rehabilitation unit on 29 November 2021 after nearly four months in hospital. He was lucky to survive.

He suffered burns to a third of his body surface. Most of the burns were full thickness burns. The worst burns were to his right thigh, left leg and right wrist. He will have permanent

scarring. He has been left with some restriction of movement in his right wrist. There is a chance that he will develop contractures to the right wrist which will reduce its function in the long term.

The complainant provided a victim impact statement. It is clear that his burns have had a terrible impact on him, both physically and psychologically. His mobility was restricted as a result of his strokes, but his mobility problems have been exacerbated. He is no longer able to walk any distance because the area of the burns to his legs starts to ache. He is barely able to walk next door, but used to be able to walk a lot further. And of course he was in excruciating pain for a very long time.

The attack occurred in a house where he had lived for 40 years. It had been his parents' home. He had grown up there. After the attack he did not want to go back to live there again because he did not want to be reminded of what had been done to him. He moved to a new place in a new area, leaving a lot of friends behind. He now sees only his immediate neighbours and his carers. They visit him five times per week to do his shopping and his housework. He used to be able to operate a vacuum cleaner but can no longer do so because of stiffness and pain caused by the burns and the scarring.

He now has trouble sleeping. He keeps thinking about the attack. He struggles with anxiety and depression. He and his brother have not spoken since the attack. The two men have a sister, and it upsets the complainant to see how much strain this attack has caused her.

The accused was 41 years old on the night in question and is now 42. He has not been to prison before. However he has a lot of prior convictions. He has been given wholly suspended sentences on six occasions in the past, as well as being ordered to perform community service on seven other occasions. He was fined for committing assaults in 1998, 2005 and 2007. As his counsel pointed out, there was a period when he stayed out of trouble from 2010 to 2017.

He has had drug and alcohol problems all his adult life. At times he has used cannabis, amphetamines, heroin and opioids. He has been admitted to hospital on multiple occasions as a result of drug-induced problems, including drug-induced psychosis. He has been given medication for depression since being in custody. He was receiving a disability support pension before his arrest because he suffers from emphysema and asthma.

He suffered from depression for several years before his arrest. His counsel told me of a number of events that led to his depressive symptoms. First his daughter was taken into care. Then his mother died. Then his partner had a miscarriage. Then his father died. Then his partner ended their relationship. As a result he was not able to retain the home where they had been living. He lost his accommodation and became homeless, staying with the complainant from time to time.

He has one child, an 18 year old daughter. She has a child of her own. His counsel told me that she continues to visit him, and is willing to have him live with her once he is released from custody.

He has an incomplete recollection of what he did on the night in question. He has accepted that he did everything that he has been accused of doing. He intended to harm his brother, and that was the result of his intoxication. There was a little planning involved in what he did, but only a little. His intoxication led him to have an irrational fixation about a belief that his brother had

had sex with his former partner. However he took steps to help his brother as soon as he realised what he had done. He made admissions to the police after he was arrested. He was originally charged with causing grievous bodily harm, and pleaded guilty to that charge in the Magistrates Court. The resolution of this case was delayed as a result of a decision to charge him with something more serious. However it has been clear from a very early stage that this matter was always going to be dealt with as a plea of guilty to an appropriate charge. There has never been any suggestion that the complainant might have to give evidence.

The accused has spent about 16 months as a remand prisoner. For much of that time the prison has been in lockdown. For more than half of that time the accused was the subject of protection arrangements because of difficulties concerning prisoners who knew his brother. Because of his emphysema and asthma he has been particularly fearful of the possible impact of a COVID infection and the risk of contracting one in the prison. He suffered burns himself when trying to put the fire out. He needed medical treatment for his burns, and has been left with no sensation in one of his fingers.

The Court of Criminal Appeal has observed on a number of occasions that most sentences for crimes against s 170 of the *Criminal Code* are in the range of three to seven years. However this is an unusually serious case, as s 170 cases go, for a number of reasons. First of all, this crime is committed when an offender has an intention to maim, disfigure, disable or cause grievous bodily harm to a victim. This crime was unusually bad because all four of those things happened to the victim. He was maimed, disfigured, disabled, and caused grievous bodily harm. Very serious injuries were caused, resulting in nearly four months in hospital. The victim was extremely vulnerable, being unable to flee from his assailant and unable to protect himself. The accused set fire to his brother knowing of that vulnerability. He did it in the man's own home, where he was a guest. His victim had allowed him to stay there because he was homeless, and he abused the victim's trust in him.

In my view those factors warrant a sentence that is unusually lengthy for a s 170 crime. However, because of Mr Moore's plea of guilty, his remorse, and the fact that he has never been to prison before, I will impose the shortest possible non-parole period.

Mathew John Moore, I convict you and sentence you to nine years' imprisonment with effect from 2 August 2021. You will not be eligible for parole until you have served 4 ½ years of this sentence.