

STATE OF TASMANIA v KRYSTAL MICHELLE PAYNE
COMMENTS ON PASSING SENTENCE

5 APRIL 2023
JAGO J

Ms Payne, you have pleaded guilty to one count of arson. The crime was committed on 9 February 2020. You set fire to the Housing Tasmania unit in which you lived. You had been residing there as a tenant for approximately nine months.

In the months and weeks leading up to the fire you had been experiencing a number of difficulties. You told police that your house had been burgled and that you had been the victim of sexual assaults within the home. These incidents had apparently been reported to police, but you did not consider they had been taken seriously. Additionally, about a month before the fire you had been told by Child Safety Services that your children, whom you believed were to be returned to your care, were not, in fact, to be returned to your care but instead would be returned to the care of their father. This news was devastating for you because you had been doing a considerable amount of work with Child Safety Services in an endeavour to be reunified with your children. These stressors had a particularly adverse impact upon you as you suffer from severe Borderline Personality Disorder and Polysubstance Use Disorder. In your case this disorder is characterised by paranoid ideation, intense anger, intense heightened emotions, irritability, impulsivity and self-destructive and destructive behaviours.

On the day of the fire it seems you were ruminating over the decision of Child Safety Services, together with a number of other injustices that you perceived had impacted your life. You became highly emotional and destructive. You initially smashed some windows within the home. This occurred around 1pm and was observed by a neighbour. Some hours later, probably around 3.30 to 4pm, you lit an unknown flammable material within the house and left the house. A fire took hold, ultimately destroying the house, which was valued at approximately \$130,000.00.

You were 34 when the crime was committed. You are now 36. You have a complicated personal and psychological history. You experienced a number of traumas throughout your childhood, including sexual, physical and emotional abuse. You turned to drug use from an early age as a means of coping with the trauma experienced throughout your childhood. This led you to early trouble with the law. You were appearing regularly in Youth Justice courts by the time you were 16. I am told that many offences committed by you as a youth were done so that you would be sent to detention as you saw it as a preferable option to your abusive home life. Sadly, you were the victim of further sexual abuse when you are a detainee at Ashley Youth Detention Centre. All of the trauma to which you were exposed as a child led to you developing the personality disorder and drug addiction conditions I have mentioned.

You have a long history of prior criminal offending. It includes offences against police, matters involving the destruction of property, matters of dishonesty, bail offences, driving offences, matters of violence, matters under the *Misuse of Drugs Act*, and offences against good order. Your offending has resulted in substantial periods of imprisonment being imposed upon you. Much of your prior offending is a reflection of the chaotic, drug affected lifestyle you have experienced in the past. There are no prior convictions relevant to fire setting.

I have received a report from Dr O'Donnell. It is her opinion that your Borderline Personality Disorder "contributed causally" to the commission of this crime. You told Dr O'Donnell you were "angry and upset", "everything was out of control", "I was hooked on Ice...I lost myself...I lost everything...I didn't care...I had a lot of hate in me". Dr O'Donnell is of the

opinion that your heightened emotional state, including feelings of anger and despair regarding the loss of your sons into State care, and your paranoid ideation towards government authorities in particular, whom you viewed as corrupt, led to your ability to exercise appropriate judgment and make calm and rational choices, being impaired. Dr O'Donnell is also of the view that your drug use contributed negatively to your situation. Dr O'Donnell opines that the first limb of Verdins is enlivened and your moral culpability is reduced because of the role your Borderline Personality Disorder played in the commission of the crime.

Objectively, there is no question your crime was very serious. The arson destroyed your Housing unit and the financial loss was significant. There were considerable risks involved in lighting the fire, not only for yourself but also for others who may have been in the area and harmed. There was a risk that the fire may have spread to neighbouring buildings. There is always a risk to fire fighters and emergency services when they have to attend to matters of this nature. Further, the crime resulted in the destruction of public housing, which is a scarce commodity and in great demand for the purpose of housing vulnerable and disadvantaged persons.

These factors suggest general deterrence is a significant sentencing consideration. The question which arises, however, is the extent to which your particular psychological presentation contributed to the offending behaviour, and the extent to which the impairment should appropriately affect sentence. I have already noted the opinion of Dr O'Donnell and her evaluation of the link between your personality disorder and your offending behaviour. Her opinion is based upon a solid foundation and consistent with previous mental health evaluations. It is not challenged by the State. I accept Dr O'Donnell's opinion, although I am also satisfied that the extent to which your Borderline Personality Disorder contributed to your impulsive and destructive behaviour was undoubtedly exacerbated by your illicit substance use. As noted, you have suffered with substance abuse since your teenage years. I have no doubt your drug abuse and Borderline Personality disorder are inextricably linked and operate in a cumulative fashion. It is very important to note Dr O'Donnell considers that despite your Borderline Personality Disorder you have the capacity to improve your coping skills and addressing your drug addiction difficulties are integral to this. I am told that in the past, you have successfully attended drug rehabilitation programmes, and have been able to stay out of trouble for quite extended periods of time, but tend towards relapse when confronted by a further crisis or difficulty.

I am satisfied that against a background of considerable emotional turmoil, the characteristics of your Borderline Personality Disorder manifested and you acted in an impulsive, destructive manner. That is not to say you did not appreciate the wrongfulness of your conduct. I am satisfied you did, but I am not satisfied you behaved in a vengeful manner, rather it was an act reflective of the level of hopelessness you felt. You gained nothing from the act. You needed the home if you were to have any chance of reunifying with your sons. Your personal possessions, including those of your sons, were lost in the fire. Your psychological condition makes this a case whereby your moral culpability is lessened and that justifies a tempering of the role general deterrence and denunciation ought to play in the sentencing process, but by no means does it eradicate them as sentencing objectives. In the circumstances, specific deterrence also remains, in my view, an important sentencing consideration. Indeed, Dr O'Donnell in her report opines that general and specific deterrence should not be eliminated.

I take into account the plea of guilty. Whilst it could not be said to be an early plea, I accept that there have been a number of reasons for the delay. It retains some mitigatory value.

As I have noted, in the past the defendant has demonstrated capacity to rehabilitate herself. As I read Dr O'Donnell's report there is nothing to indicate Ms Payne lacks capacity to be deterred by appropriate sentencing options, including the suspension of part of the sentence of imprisonment that must be imposed. Undoubtedly, the objective seriousness of the crime mandates the imposition of a sentence of imprisonment, but taking into account the entirety of the circumstances, including the role Ms Payne's personality disorder played in the commission of the crime, I am of the view it is appropriate to partially suspend the sentence. Hopefully, this will provide you, Ms Payne, with some incentive to refocus on the rehabilitative endeavours you have made in the past that have seen you able to control your conduct.

Ms Payne, you are convicted of the crime of arson and sentenced to a term of imprisonment of 20 months. This which will be backdated to commence on 15 January 2023 to take into account time spent in custody. The last 10 months of that sentence will be suspended for a period of two years, on condition that you are not to commit another offence punishable by imprisonment during that period. That means that if you commit any offence which is punishable by imprisonment, and that includes most offences on the statute books, within the next two year period, it is very likely that you will be required to serve the balance of the period of imprisonment imposed.

I make a compensation order in favour of Homes Tasmania in a sum to be assessed and I adjourn that assessment sine die.