

STATE OF TASMANIA v AYDEN TERRENCE NOLAN
COMMENTS ON PASSING SENTENCE

25 September 2023
JAGO J

Mr Nolan, you have been found guilty by a jury of one count of arson. The crime occurred in the early hours of the morning of 7 November 2020. You set fire to the house you were then living in as a tenant. The house and contents were destroyed with the total loss estimated at approximately \$550,000. It is my task to find facts for sentencing purposes consistent with the jury's verdict. I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities.

At the relevant time you were living in the house with a flat mate, Ms Muther. She gave evidence on the trial. I found her to be an impressive witness. Her evidence was that on 6 November 2020 she had been at work and returned to the house. You were there with another friend. You were consuming alcohol. She was aware that you had had some mental health difficulties in the week prior to this incident. On this night she thought you appeared "different" but also described you as intoxicated. She went to work at a local hotel at approximately 9.00pm. You and your friend travelled to that hotel with her when she went to work. Ms Muther said she observed you several times throughout the evening. Each time she saw you, you were becoming more and more distressed. She observed you crying with your head down and appearing upset. Eventually, she made arrangements to finish her shift early so she could take you home. She said by the time she took you, you were "hysterical" and had to be carried out of the hotel. It does not appear as though your hysteria was solely related to intoxication, although that may well have contributed to your emotional state. She took you back to the house and you were put to bed. She said you were still upset but calmed somewhat by the time she left. She returned to work. At approximately 1.30am on 7 November she decided to return to the house to check on you. As she drove up Mount Street in Burnie she observed the house on fire. When she arrived, she found you standing outside of the house. She described you as looking "blank" and unemotional. You were wearing only your underwear. When she spoke to you, you said words to the effect of "I told everyone months ago that I needed help....it's not your fault you didn't know better."

When police arrived, they observed you in a distressed state. You were taken to the North West Regional Hospital for a mental health assessment. You were placed into protective custody and remained at the Spencer Clinic for several days. I have had access to the medical reports from the Tasmanian Health Service for that admission. They indicate that you presented with suicidal ideation and note that you had tried to end your life by "throwing yourself" in a fire that you had caused. You presented with very low mood and were depressed and anxious. You had sustained some first degree burns in the fire. Police collected you from the Spencer Clinic on 11 November. You participated in a record of interview. You told police, amongst other things, that you had been struggling with mental health difficulties for quite some time, and had been trying to obtain appropriate psychiatric support. You told police you remembered being at the house by yourself, not wanting to live anymore and thinking that if people thought you had died in an accident it would be easier on them. You said you remembered being hot, and then being outside the burning house. You said you could not recall starting the fire.

I am satisfied you set fire to the house by splashing accelerant that you had taken from a petrol container, in at least three different places around the house and ignited it by using a mobile ignition source. I am satisfied that your intent at the time was to commit suicide by perishing

within the burning house. I am satisfied, given this intent and consistent with the jury verdict, that you must have foreseen, at the very least, the risk that the house would be set alight but proceeded regardless. You needed the fire to be significant to achieve the purpose of taking your life. Whilst your depressed state may have been the catalyst for your behaviour, there is nothing to suggest it obscured your ability to foresee the very obvious likelihood that the house would be set alight. I find you started the fire because of your sense of hopelessness and despair and not because of any vengeful or sinister motive. There is nothing to suggest you had any difficulties with your landlord, your flatmate or would gain financially from the fire. Indeed, you lost all your possessions in the fire.

It is necessary to consider the extent to which your mental health contributed to the offending behaviour and the extent to which this impairment should appropriately affect sentence. I do not have a report which specifically addresses this question. I am conscious of the need to be satisfied on a proper evidentiary basis as to the existence of the mental impairment and the connection between the impairment and the offending and any consequential reduction in moral culpability. I have had reference to other medical records filed as part of the Crown papers in this trial. It was agreed I do so for sentencing purposes. Those records indicate that you have a history of mental health difficulties, variously described as low mood, anxiety, and depressive symptoms. There is some limited reference to hallucinations. There is reference to suicidal ideation and previous attempts made by you to end your life. The records also describe an entrenched history of heavy alcohol consumption and illicit drug use. There appears to have been suggestions in the past that you may suffer with bi-polar disorder, but as far as I can tell from the records, this has never been formally diagnosed, largely because of complications associated with your presentation flowing from your excessive use of alcohol and illicit drugs. There is also reference to a family history of bi-polar disorder and mental health difficulties within the records.

You are now 27 years of age, you were 24 when the crime occurred. You have had a difficult upbringing. You had no relationship with your biological father until much later in your adult life. When you were able to make contact with him, you found it difficult to establish any meaningful relationship. You have a fractured relationship with your mother and siblings and have never really felt you had any familial support. It seems your childhood was quite transient and you had a fairly disjointed education. You found it difficult to make friends and endured bullying at school. Your mother has been in a series of violent relationships and you were frequently exposed to that violence as a child. When you were five years old, your mother's then partner, broke your jaw. One of your mother's partners, the only one with whom you formed a good relationship, committed suicide some nine years ago. This affected you badly. Despite these difficulties, you have obtained a number of qualifications in textile design, graphics and hospitality. You have been in constant employment since leaving school, predominately in the retail and hospitality sectors. At the time this crime occurred, you were working as the Bar Manager and DJ at a local hotel in Burnie. Following the fire, you experienced a period of unemployment, but in more recent times, you have returned to employment within the hospitality industry. I am told this has been a satisfying and settling experience for you.

You have struggled to obtain regular assistance for your mental health. For a period of time, you were seeing a counsellor, but this proved cost prohibitive. You had received some assistance from a psychologist in the lead up to this incident, but that came to an end when the COVID19 pandemic commenced. Since this incident, you have been able to engage with a clinical psychologist. You saw her regularly between December 2020 and February 2023. You

have an appointment to see a psychiatrist in October of this year. I am told that appointment was made some 18 months ago. I have no reason to doubt that. The reality is there is a paucity of mental health services on the North West Coast and such wait times are sadly not unusual. You are not in a position financially where you can travel to obtain such psychiatric services.

You have no relevant prior convictions. Indeed, the only matter on your record is a traffic infringement. You have not offended since the commission of this crime, nearly three years ago now. I am also told that since this crime occurred you have addressed your alcohol and illicit drug use. You have not consumed alcohol for two years now and have not used illicit drugs in over 12 months. There was a considerable delay in this matter being brought to trial. As noted, the arson occurred on 7 November 2020. For reasons that are not particularly clear, the indictment was not filed until September 2022. You entered a plea of not guilty when the matter was in the Magistrates Court. No preliminary proceedings were pursued and the matter has simply been awaiting a trial date. I accept the plea of not guilty was entered largely because you had no recall of the incident and there was an issue as to your state of mind which, of course, you were entitled to have considered by a jury. Equally, however, you could have elected to accept responsibility for the crime and enter a plea of guilty. As to the impact the delay has on sentencing, I am of the view that I should sentence you giving you full credit for the positive changes that you appear to have made since the crime occurred.

I am satisfied that the trigger for this crime was your depressive illness and your desire to take your own life. Whilst I do not have a report that specifically addresses the Verdins considerations, I have, as noted, had access to the medical records relevant to your admission immediately after the commission of the crime, and I heard the evidence as to the circumstances leading up to the incident. I am satisfied there is a causal link between your mental health issues and your offending behaviour and in my view, moral culpability is reduced somewhat as a consequence. Because you committed this crime in an endeavour to end your own life, considerations of general deterrence and denunciation, which would normally weigh heavily in the sentencing exercise, take on a slightly lesser significance. You are not an appropriate vehicle through which to convey messages of general deterrence.

This sentencing exercise necessitates the balancing of many considerations which do not necessarily sit comfortably together. On the one hand, this is a very serious crime. The damage caused to the property was considerable. I have no doubt your crime caused trauma and inconvenience for the property owners and your house mate, who lost all of her possessions in the fire. 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 houses. There is always a risk to fire fighters and emergency services when they have to attend to matters of this nature. On the other hand, the offending occurred in the context of what I am satisfied was a mental health episode, exacerbated no doubt by your alcohol consumption that evening, but even with that in mind, I remain satisfied that your mental health contributed to the offending. You have addressed your alcohol and illicit drug use, you have sought, and continue to seek, appropriate support for your mental health. You have resumed employment. You have not re-offended. You have solid prospects for successful, long term reform. The approach to sentencing in this case needs, in my view, to be an individualised one. The seriousness of the crime demands the imposition of a period of imprisonment, but because of the circumstances that were impacting upon you, I have determined it is appropriate to suspend the period of imprisonment and couple it with a community corrections order.

Mr Nolan, you are convicted of the crime of arson and sentenced to a term of imprisonment of two years. That sentence will be wholly 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 period of imprisonment just imposed.

I make a Community Corrections Order with an operational period of 12 months. The Court notes that s 24(5A) of the *Sentencing Act* applies to that order. In addition to the core conditions provided for by the *Sentencing Act*, the order shall also include the following special conditions:

- you must, during the operational period of the order, attend any educational and other programs as directed by the court or a probation officer;
- you must submit to the supervision of a probation officer as required by the probation officer;
- you must undergo assessment and treatment for drug dependency as directed by a probation officer,
- you must submit to testing for drug use as directed by a probation officer;
- you must undergo assessment and treatment for alcohol dependency as directed by a probation officer;
- you must submit to testing for alcohol use as directed by a probation officer; and
- you must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

I direct that you must report to Community Corrections, Devonport by close of business tomorrow.

I make a compensation order in favour of Matthew Robinson and Jane Hall and I adjourn the assessment of that compensation order sine die. I make a compensation order in favour of AAI Limited, trading as Vero, and I adjourn the assessment of that compensation order sine die. I make a compensation order in favour of Josephine Muther and I adjourn the assessment of that compensation order sine die.