

The defendant has pleaded guilty on Indictment to three counts of burglary and three counts of arson. Additionally, he has pleaded guilty to related summary offences, namely two counts of unlawfully setting fire to vegetation. The defendant was 17 years of age when he committed the two counts of unlawfully setting fire to vegetation, but they are not prescribed offences pursuant to the provisions of the *Youth Justice Act*.

On 16 January 2019, the defendant contacted Tasmania Fire Service and reported a vegetation fire at Tolosa Park. By the time the Tasmania Fire Service attended, the defendant had extinguished the fire using a shovel he was carrying. He later admitted to police that he had been responsible for lighting that fire. It was described as a small scrub fire. In a similar manner, on 30 January 2019, the defendant contacted Tasmania Fire Service and reported there was a vegetation fire at Tolosa Park. Tasmania Fire Service attended and extinguished the fire with water. The defendant later admitted lighting that fire also. It was again described as a small scrub fire.

In October 2021, the defendant was aged 20 and residing in a caravan at Rossarden. He was working as a volunteer fire fighter at Rossarden. He had previously undertaken volunteer firefighting duties at Glenorchy. At approximately 10pm on 21 October 2021, a fire occurred at 319 Storeys Creek Road, Rossarden. The property comprised a number of separate structures, including a dormitory shower and toilet block, mining museum, teacher's residence and a kitchen. The kitchen building was fully destroyed during the fire. The estimated cost to rebuild the kitchen is \$340,000.

Later that same night, a fire was reported at the Van Dieman Paving Factory in Lee Street, Rossarden. The building was unoccupied as the paving factory had ceased operation several years earlier. A neighbour observed the fire and forced entry to the property. He discovered that the office, which was a small demountable shed located adjacent to the main factory, was well alight with flames extending out of the windows. Utilising a nearby tractor, the neighbour was able to drag the demountable shed away from the main building thereby preventing the fire from spreading. Shortly after, Tasmania Fire Service arrived and extinguished the fire. A fire investigation disclosed the cause of the fire to be deliberate. The estimated cost of repair was \$25,000.

At approximately midnight on 14 November 2021, the defendant alerted his mother to a fire at an address at 6 Schell Street, Rossarden. This property was adjacent to where the defendant and his mother resided in caravans. The defendant instructed his mother to call emergency services. The defendant changed into his volunteer Tasmania Fire Service uniform and attended the fire. By this time the fire had spread to two sheds. The defendant assisted other Tasmania Fire Service personnel to extinguish the fire. The two sheds were totally destroyed. Again, an investigation by Tasmania Fire Service revealed the cause of the fires to be deliberate. Estimated cost of replacement of the two sheds and contents is \$50,000.

On 29 October 2021, prior to the Schell Street fire, the defendant participated in a record of interview with police. He denied responsibility for any of the fires he was questioned about. On 17 November 2021, police again spoke to the defendant in respect to the three fires which had occurred in the Rossarden area. On this occasion, the defendant admitted his involvement in each of the fires and admitted lighting them. He also made admissions to the two acts of

unlawfully setting fire to vegetation, which had occurred in 2019. The defendant told police he lit the fires at Rossarden so he could help fight them in his role as a volunteer fire fighter.

The defendant's behaviour in lighting the three fires at Rossarden was particularly serious. That is not to minimise the seriousness of lighting the two scrub fires, but I note both of those fires were readily contained, with one being extinguished before Tasmania Fire Service arrived and the other quickly extinguished with water. There is no suggestion that either of those fires spread to any extent but, of course, that is always a risk that arises with fire lighting of any nature.

The three arson charges caused significant damage. They were all structures that were within reasonable proximity to other structures, and within residential or business areas. The risk of the fires spreading and causing considerable damage was obvious. And of course, there is always a risk in firefighting operations, not only that the fire will spread, but that others will be harmed, including, of course, the fire fighters who are called upon to extinguish the fire. Lighting fires unlawfully also involves the deployment of Tasmania Fire Service personnel to attend to the fires, potentially depriving others who may need their services urgently of their timely attendance.

I note the defendant has no relevant prior convictions. He was 17 at the time of the unlawfully setting fire to vegetation acts, and 20 at the time of the three arsons. He is to be sentenced, therefore, as a young offender. It is noteworthy that since the last of these crimes occurred in November 2021, the defendant has not been in any further trouble with the law.

He was raised in a dysfunctional family and had something of a chaotic upbringing, spending time living between various family members. The defendant has never had a relationship with this father, who left the family home when he was a baby. Because of his upbringing, the defendant's education was very disrupted. He has significant literacy issues. Those issues resulted in him being quite badly bullied whilst at school. It also appears he suffered from ADHD during his childhood and adolescent years, although it was undiagnosed and not identified and treated until the defendant was 20. His undiagnosed condition led to behavioural issues, which in turn made his schooling years problematic.

Since leaving school, the defendant has undertaken various employment, predominately labour based. To his credit, he has recently established his own window cleaning business. Apparently, it is doing well. He sub-contracts to another business and is also developing a client base of his own. The defendant is in a stable relationship and has a child. He has also recently sought assistance for his mental health difficulties. He is maintaining a good relationship with his General Practitioner and is being medicated for his ADHD and depression. He is, I am told, committed to maintaining this regime as he sees the benefits it brings him in terms of stability and emotional regulation.

As noted, the defendant has a history of mental health difficulties. I have received a report from Dr Michael Jordan, Forensic Psychiatrist. He notes the defendant has a low borderline level of intelligence, a history of depression and anxiety, and ADHD. He remains on treatment for these conditions. There have been a number of admissions to psychiatric units in the past, particularly associated with fire lighting urges and suicidal ideation. The last admission to a psychiatric unit was in March 2022. Since then, the defendant's mental health appears to have stabilised. The stable relationship he is sharing with his partner appears to be of assistance in that regard. Dr Jordan, in his report, addresses the Verdins considerations. As to that, Dr

Jordan opines "*Mr [TL's] actions in the various fire setting incidents need to be contextualised within the framework of his reduced intellectual capacity, propensity for depressed mood and broader development factors relating to his somewhat chaotic upbringing. He also shows some features of a magnified interest in the subject of fire. It is considered reasonable to summate all those factors as contributing to his mental health condition, certainly at the time of the offending when he was untreated. The fire setting incidents were represented of his comprised mental state. It is not considered that Mr [TL] did not have some volition or control over his actions, but the fire setting incidents did allow him to feel, at least temporarily, emotionally improved. It is argued that these features should be taken into consideration in reducing the moral culpability of his offending.*"

Dr Jordan is also of the opinion that whilst Mr TL has stabilised and is now receiving appropriate treatment for his mental health difficulties, he remains a psychologically "fragile individual" and a period of incarceration is likely to weigh more heavily upon him.

I will sentence the defendant on the basis that his moral culpability is to be reduced and the weight to be attributed to punishment and deterrence moderated although, in my view, such allowances should only be slight. The risk the defendant's behaviour presented to others is marked and whilst I accept the defendant was struggling with his mental health at the time, there is nothing to suggest he did not appreciate the wrongfulness of his behaviour, nor is there anything to suggest he was compelled to act. To my mind, what is a more significant sentencing consideration, is the defendant's age at the time the crimes were committed and the fact the defendant has taken responsibility for his mental health difficulties by attending with mental health professionals. He is now in a far more stable position than he was at the time the crimes were committed. That is relevant, of course, to the likelihood of reoccurrence and therefore relevant to the weight specific deterrence ought to be given in the sentencing exercise.

An assessment as to the defendant's suitability for home detention has been prepared. The report indicates the defendant is unsuitable because of one incident of a family argument that was identified on a SIMS database. The defendant denies any such incident occurred. Apparently, however, if such a notification arises on the database, the policy of Community Corrections is to preclude the defendant from suitability for participation in a Home Detention Order, without further enquiry. In my view, the exercise of the sentencing discretion involves a more sophisticated analysis than that, and I do not consider it is a sufficient reason to exclude the defendant from the making a Home Detention Order.

The author of the Home Detention report also raises concerns as to the defendant's mental health, and the risk his mental health may deteriorate if he is subject to a Home Detention Order. Whilst I accept this is a legitimate concern, it must be balanced against the opinion of Dr Jordan who suggests imprisonment in the traditional sense may also have an adverse consequence for the defendant's mental health.

The defendant is now engaged with medical professionals and medicated in respect to his mental health. He is currently stable, in a supportive relationship and he is engaged in employment. He is still a young person. Whilst his crimes are obviously very serious, and must be condemned and deterred, rehabilitation should, to my mind, be given some emphasis in the sentencing exercise. I am of the view that a Home Detention Order is an appropriate sentencing response. I note the comments in *Director of Public Prosecutions v King* [2020] TASCCA 8 at [52]-[56]: A Home Detention Order has both punitive and rehabilitative aspects. It involves a substantial burden and a material deprivation of liberty. Home detention is far

from a lenient punishment. It carries with it a considerable measure of deterrence and denunciation, and is therefore effective as a general deterrent. Moreover, conditions can be imposed which mandates that the defendant must continue to engage with appropriate mental health professionals. If the defendant fails to comply with the conditions I impose on the Home Detention Order, he faces the prospect of being returned to Court and resentenced. In all of the circumstances, I am satisfied, with the defendant's consent, that it is appropriate to impose a Home Detention Order.

I make the following orders. You are convicted, Mr TL, of the crimes and offences to which you have pleaded guilty. I consider it appropriate to impose one penalty and that will be pursuant to the *Sentencing Act*. I make a Home Detention Order, the operational period of which is twelve months. The statutory core conditions are those contained in s 42AD(1) of the *Sentencing Act*. All conditions will be provided to you in writing. I specify the home detention premises as **(ADDRESS SUPPLIED)** I impose the following special conditions which will apply for the whole of the operational period of the order:

- 1 You must not commit an offence punishable by imprisonment.
- 2 You must be at the home detention premises at all times, except when you are not there for a "relevant reason" as specified in s 42AB ss 4 of the *Sentencing Act* 1997, this includes going somewhere, including going to your employment, with your probation officer's permission.
- 3 You must permit a probation officer, a police officer, or other prescribed officer to enter those premises.
- 4 You must permit a police officer to conduct a search of the premises, conduct a frisk search of you and take a sample of any substance found on the premises or on your person.
- 5 You must submit to electronic monitoring, including the wearing or carrying of an electronic monitoring device.
- 6 You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 7 You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 8 You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring device, including directions relating to the installation, attachment or operation of the device, or system used for the purpose of electronic monitoring, if those directions are given to you by a police officer, a probation officer, another prescribed officer or any other person whose functions involve the installation or operation of a device or system used for the purpose of electronic monitoring.
- 9 You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through that device at all times.
- 10 You must not take any illicit or prohibited substances.
- 11 You must not take any medication containing an opiate, benzodiazepine, buprenorphine, hydrochloride or pseudoephedrine unless you provide written evidence from your medical practitioner that you have been prescribed that medication.
- 12 You must not during the operational period of the order consume alcohol and you must, if directed to do so by a police officer, or community corrections officer, submit to a breath test, urine test or other test for the presence of alcohol.

- 13 You must submit to medical, psychological, or psychiatric assessment or treatment as directed by a probation officer.
- 14 You must engage in counselling as directed by a probation officer.
- 15 You must submit to the supervision of a Community Corrections Officer as and when required by that Officer.

I direct that you report to Community Corrections, Hobart by 10am tomorrow for induction onto this order.

I make the following compensation orders: Compensation Orders in favour of Sustainable Timbers, Michael Barker and John Kramer, in amounts to be assessed.