

Mr Finn, you have pleaded guilty to one count of unlawfully setting fire to property.

On 15 June 2016, in company with two females, your girlfriend and a 16-year-old youth, you went to the rear outdoor area of the Mersey Valley Workers Club in Devonport. You were not there for any particular reason, but were just killing time. The club was closed and fortunately, nobody was present in the building.

An argument developed between the two females. They each separately set fire to couches which were inside the smoking area and adjacent to the building. You picked up cardboard which was around the area and placed it onto the fire lit by the youth. You did this for the purpose of fuelling the fire. You told police that you wanted to erase any fingerprints you had left near the fire which might implicate you in lighting it.

The fires spread from the couches to the Worker's Club and caused substantial damage. The cost of repair to the building is estimated to be in excess of \$400,000. As a result of the fire, the club has ceased operation and its staff has lost employment. A neighbouring business suffered some smoke damage.

Although you clearly intended to fuel and develop the fire to the couch, you are not to be sentenced on the basis that you intended to set fire to the building, nor that you actually foresaw that consequence. However, the spread of the fire to the building was foreseeable and, accordingly, is properly taken into account as a consequence of your crime.

You have a number of prior convictions for similar conduct. You have been convicted of five prior crimes of unlawfully setting fire to property or similar conduct. You have received sentences of actual imprisonment for such offending. In fact, you were only released from prison 12 days before you committed this crime, after having served a sentence imposed on 11 December 2015 for the crimes of unlawfully setting fire to property and unlawfully setting fire to vegetation. You have an extensive criminal history in addition to crimes involving the unlawful setting of fire. This criminal history encompasses a wide variety of offending.

You are 26 years of age. You have been diagnosed as having a mild intellectual disability. I have been provided with a number of reports relating to your psychological health and intellectual capacity. Some of these have been prepared for the purpose of sentencing on prior occasions. The most recent report is from Damien Minehan dated 9 December 2016. Mr Minehan notes that in addition to your intellectual disability, you have a long history of polysubstance abuse, a tendency to gravitate towards antisocial peers, and a long history of aggression, emotional control problems and impulsivity. He and others have noted the need for intensive and supported intervention and therapy, and have expressed the view that real and sustainable behavioural change is only likely if such support is provided to and utilised by you. Mr Minehan describes how Forensic Mental Health Services went to considerable effort to plan and provide services to you upon your release from prison in the middle of 2016. This assistance included funding, high quality supported accommodation, a supported employment program and engagement with a clinical psychologist. However, according to the report, within several days of release from prison, you began absconding from the accommodation placement and disengaged from the various services. As I have already

noted, within 12 days of your release, you had committed these crimes and shortly after, you were arrested and remanded in custody.

There is no doubt that your intellectual and cognitive capacity affects your ability to identify the consequences of your actions and to resist immediate pressure to perform criminal acts. However, it is also clear that you know that what you are doing is wrong. You have been offered support in the past, including by sentencing alternatives designed to encourage and facilitate the provision of such support. The commission by you of this crime so soon after release from prison, and the disregard of the significant support provided to you, suggests that you have not yet made a commitment to, nor have the capacity to achieve, real rehabilitation.

In this case, you committed a serious crime that has caused a lot of damage and had significant impact on a number of people. The outcome of your conduct could have been much worse. Your actions were opportunistic and you may have been influenced by drugs taken earlier, but your actions were at least in part motivated by a desire to destroy incriminating evidence. You can be provided with support but unless you commit to making positive use of that support, it will have little benefit and, hence, be of little relevance in the sentencing process. You may not be an ideal vehicle for general deterrence and your intellectual capacity reduces the effect of a sentence for the purpose of specific deterrence. However, it is necessary to denounce and respond to your criminal offending. In all of the circumstances, it seems to me that a significant sentence of imprisonment is warranted. Having regard to your response to previous suspended sentences, the number of prior offences relating to conduct of this nature, and the fact that you re-offended so soon after release from prison, I will not suspend any of the sentence. While those same considerations suggest that there might be little benefit in parole, I will allow for your early release on parole in order to facilitate supervision in the event that you demonstrate a commitment to rehabilitation whilst in prison.

In assessing the sentence, I will take into account the need for parity with the sentence imposed on your adult co-offender. She was convicted of arson in respect of the fire that destroyed the club, on the basis that she intended to set fire to the building. However, she had no prior convictions relating to conduct of this nature and I think that this places her in a very different category to you.

The orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 You are sentenced to two years' imprisonment, which will be backdated to 17 June 2016.
- 3 Pursuant to s 17(2) of the *Sentencing Act* 1997, I order that you not be eligible for parole until you have served one half of that sentence.

You will pay a victims of crime compensation levy of \$50 within 28 days of your release from prison.

Pursuant to s 68 of the *Sentencing Act*, I order that you pay compensation to the Mersey Valley Workers Club Incorporated in a sum to be assessed. Assessment of that sum is adjourned sine die.