

STATE OF TASMANIA v DYLAN CONOR BOOTH
COMMENTS ON PASSING SENTENCE

23 AUGUST 2024
ESTCOURT J

The defendant, Dylan Conor Booth, is jointly charged with Kirsten Jade Donoghue, Emily Kate King and Jarrod Dallas Minehan. He has pleaded guilty to:

- One count of burglary, contrary to s 244 of the Criminal Code. The appellant entered the complainant's address with the intention of committing the crime of unlawfully setting fire to property.
- One count of stealing, contrary to s 234 of the Criminal Code. The value of the property was approximately \$5,000.
- Unlawfully setting fire to property, contrary to s 269 of the Criminal Code. The damage caused was \$84,726.
- Unlawfully setting fire to property, contrary to s 269 of the Criminal Code. The damage caused was \$503,848.

The defendant and Kirsten Donoghue were friends and at the relevant time were residing together at the defendant's residence at Campania. The defendant and Emily King were high school friends. Emily King and Jarrod Minehan were in a relationship and had been since early 2021.

The complainants in this matter are Rebecca and Christopher Kline and a company they controlled, Concrete Tas Pty Ltd. In the beginning that company was controlled by two couples – a Mr and Mrs Minehan and Mr and Mrs Kline. At some stage Mrs Minehan left her husband and apparently ceased to be involved in the company. Mr Minehan acquired a new partner, Ms King. The business relationship between Mr Minehan and the Klines deteriorated. On 10 December 2021 they caused him to be removed as a director of the company. It had been named JDM Concrete, but its name was changed to Concrete Tas Pty Ltd.

During December 2021 Ms Donoghue was living with a Mr Booth. She was and is a single mother. A few days before the fires, Mr Booth told her that Ms King had offered him money to burn a truck and cause damage to a storage container. She urged Mr Booth to go along with that arrangement and said that she would help him.

At about 2.30am on 15 December 2021 she drove Mr Booth in her vehicle to the Klines' home in Snug. At the request of Ms King, they set fire to a Toyota Hilux vehicle. They arrived with a can of petrol. Mr Booth smashed a window of the vehicle, threw petrol into it, threw in the empty can, lit a lighter, and threw it into the vehicle. He and Ms Donoghue ran back to her vehicle and drove away. The estimated losses from that fire were \$80,000 in respect of the vehicle, which was totally destroyed, and \$10,000 for its contents, which included a number of tools.

The next morning at about 2.30am Ms Donoghue and Mr Booth drove to the company's premises in Cambridge with another can of petrol. They went to a storage container there. Mr Booth smashed a window of the container. They entered the container and stole a diesel heater, a welder and a radio. These matters are listed on count 4 of complaint 371/22, which I have agreed to deal with pursuant to s 385A of the *Criminal Code*. These were placed in Mr Booth's vehicle. Mr Booth smashed a window of an Izuzu truck, threw petrol into it, threw the empty

can in, lit a lighter, and then threw that in. The vehicle burst into flames. The couple ran back to their vehicle and drove away. The fire spread and caused significant damage to the storage container. The loss assessment for that fire comprises \$100,000 for the container and \$400,000 for its contents.

At 2.44am on that morning Mr Booth sent Ms King a text message saying, "Done". At 6.24am he sent Ms King another message saying, "Trucks fucked and I grabbed what eva I could but it was still going on when I drove back past it last night lol".

Police officers found the welder and the radio in Mr Booth's vehicle during a search that afternoon. Mr Booth also had a map of the company's premises and evidence that he had received \$500 from Ms King at 2.43am on the morning of the first fire.

The defendant was charged, processed and bailed. He has not served any time in custody in relation to this offending.

I make an order pursuant to s 68 of the *Sentencing Act 1997* for compensation in favour of the following individuals in amounts to be assessed with that assessment to be adjourned to a date to be fixed. They are:

Rebecca Kline; Christopher Kline; Concrete Tas Pty Ltd; QBE Insurance Group Limited; CHU Underwriting Agencies Pty Ltd; Hobart Property & Securities Pty Ltd; and NTI Limited.

I note a specific compensation order has been made for QBE Insurance Group Limited, CHU Underwriting Agencies Pty Ltd and Hobart Property & Securities Pty Ltd in the sum of \$137,026.00.

On 20 February 2023 Blow CJ sentenced Ms Donoghue to three years' imprisonment with a non-parole period of 18 months in relation to all charges. Ms King was subsequently sentenced by his Honour to home detention, a suspended sentence and community service.

I have had a victim impact statement and I take that into account.

The defendant is now 30 years old. He grew up in Tasmania and was raised by mother. His parents separated at the age of 5. From the age of 6, the defendant had a step father who was physically and emotionally abusive. The defendant began to see a counsellor at the age of 10 years following disruptive behaviour at school. He was diagnosed with ADHD.

Upon completion of grade 10 at New Norfolk High School, the defendant spent two years in Queensland, and returned to Hobart two years later. At the age of 19 he began a relationship with his now former partner, and commenced work. After initially working as a roofing contractor, then briefly working as a plasterer, the defendant found work at the Zinc Works in 2016.

In April of 2021, the defendant's partner informed him that she had been unfaithful for the entirety of the relationship, particularly around the time of the conception of their three children. The person with whom she had been unfaithful was a brother-in-law of the defendant. The revelation of infidelity "shook [the defendant's] world". He believed that his children were not, in fact, biologically his own.

The defendant struggled to work and turned to methylamphetamine as a means of continuing to work despite mental turmoil. This was the start of a significant drug habit, in the grip of which the defendant was at the time of the offending. As a result of his drug use, the defendant lost his work at the Zinc Works because of random drug testing.

He was not able to access Centrelink, and funded his drug habit by selling vehicles, and vehicle parts. He estimates that he sold property at a total value of \$80,000, by the time of the commission of the offences for sentence.

By the time that the defendant was approached by Ms King, had run out of money and property to sell. She knew this. He had full time care of his three children, and his electricity had been disconnected. Ms King made two attempts to induce him to participate in the offending. On the first attempt, the defendant rejected her attempt because he thought it sounded ridiculous. The second time, Ms King happened to attend whilst he was on the phone to his former employer, a manager at the Zinc Works, trying unsuccessfully to get his job back. Ms King overheard the conversation and manipulated him. He was desperate and accepted because of the promise of immediate cash in his bank account.

Since being admitted to bail, the defendant has been on a 7pm to 7am curfew, with three instances of breach in two and a half years through not hearing police knock on the door.

In November of 2023, the defendant's own house burned down. He spent a significant period of time under police suspicion until an alibi was confirmed. As a result of the fire, the defendant's children have lost all of their belongings; everything that they had as a family is gone.

The defendant indicated a plea of guilty to these charges as soon as full disclosure of the case was made. The defendant is remorseful, and made a relatively complete statement to police.

The defendant continues to have full time care of his three children, aged 8, 5, 3. The only other family member able to look after his children is the defendant's mother, who works night shift as a disability support worker.

The defendant is now working as a labourer with an arborist. He is no longer using methylamphetamine. He managed to cease use upon being charged with this offending.

Taking into account the defendant's lack of prior convictions until the breakdown of his relationship, his remand on bail for two and a half years with a 7.00pm to 7.00am curfew, his relatively good conduct since being charged, his remorse, his manipulation by Ms King, and the fact that he remains the only family member who is fully able to care for his three children, I am of the view that an individualised approach to sentencing is required.

In doing so I have had careful regard to the sentences imposed on Ms Donoghue and Ms King, each of which were upheld on appeals on which I sat. I reiterate what I said or agreed to in relation to the relevant sentencing considerations in those two cases. My decision in both of those cases does not, of course, mean that I would have imposed the same sentence as Blow CJ in either. In fact, I would not.

The defendant has been assessed as suitable for home detention but unsuitable for community service due to his parental responsibilities, lack of transport and his disclosed physical injuries.

The defendant is convicted of all four offences to which he has pleaded guilty. For the crime of burglary and the two charges of stealing, I impose a single sentence of 18 months' imprisonment, which sentence is wholly suspended for a period of two years on condition that the defendant commit no offence which is punishable by imprisonment for a period of two years. For the two crimes of unlawfully setting fire to property, I impose a single sentence of a Home Detention Order for a period of 18 months.

The order will contain all of the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act 1997*. With specific consideration to s 42AD(1)(g) and (h), the following conditions will be added to the Order:

- Mr Booth, during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device;
- during the period that you are required to submit to electronic monitoring: 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;
- 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; and
- you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by: a police officer; a probation officer or prescribed officer; or another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring.

In addition, the following conditions are added to the Order:

- you must, during the operational period of the order, remain at [address suppressed] at all times unless approved by a probation officer;
- immediately upon your release from Court, you must attend the Community Corrections office at Hobart for induction onto this order;
- you must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times;
- you must submit to the supervision of a Community Corrections officer as required by that officer;
- you must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include all of those controlled drugs as defined by the *Misuse of Drugs Act 2001*, and
- any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.