

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Criminal Division**

**CR-HC-SDO-2023-29-1**

**THE STATE**

**v**

**RONALD BERNARD**

**For**

**ARSON**

**Before The Honourable Justice Lisa Ramsumair-Hinds**

**Date of Delivery: 30 January 2025**

**Appearances:**

Ms. C. Samuel and Ms. G. Guy for the State.

Mr. S. Morris for the Prisoner.

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**SENTENCE RULING**

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## **INTRODUCTION**

1. By an Indictment filed on 22 February 2024, the Prisoner Mr Ronald Bernard was charged with the offence of Arson. The particulars are that at some time between 15 December 2023 and 18 December 2023 at Oropouche in the County of St. Patrick, in the South Magisterial District, the Prisoner unlawfully and maliciously set fire to a dwelling house with himself being therein.
2. On 26 November 2024, I gave a Maximum Sentence Indication (MSI) as to the type of sentence if there was a guilty plea to the charge on the Indictment. I indicated that, in lieu of a custodial term, a non-custodial order would be imposed and in the event of any breach of the terms, the Prisoner would be brought back before me to be sentenced. After consultation with Defence Counsel, the Prisoner indicated his acceptance of the MSI. He was promptly arraigned and pleaded guilty as charged on the Indictment and on the basis of the agreed facts which had been filed during the MSI process. Subsequently, the allocutus was put to the Prisoner and a plea in mitigation was filed on his behalf by Defence Counsel. I duly considered the facts, the plea in mitigation and the Probation Report.
3. The Prisoner now falls to be sentenced.

## **SENTENCING PRINCIPLES**

4. I bore in mind the sentencing methodology, aims and objectives as established in *Benjamin v R*<sup>1</sup>, *Aguillera*, *Ballai*, *Ballai and Ayow v The*

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<sup>1</sup> (1964) 7 WIR 459

*State*<sup>2</sup> and *Jude John Arjoon v The State*<sup>3</sup> which all sentencing Judges are required to adhere to. I also had regard to the recent Court of Appeal guidance with respect to MSIs in *Orlando Alexis v The State*<sup>4</sup>.

5. I considered several cases noted in the JEITT Sentencing Handbook and others. I took care to consider that the majority of these cases were pre-*Aguillera* and stipulated final sentences. They therefore did not reflect a true appreciation of a starting point in accordance with the *Aguillera* methodology. Nevertheless, they were still useful.
6. The sentencing range for arson appears to be quite wide, running from a bond of \$5000 (non-custodial sentence) to a final custodial term of 9 years (see ruling in *The State v Kerry Gour*<sup>5</sup>). In this sentencing exercise, I noted the following precedents in particular:
  - i. *The State v Rickel Alexander*<sup>6</sup> - the Prisoner pleaded guilty to the offence of arson. He admitted to police that he had been enraged and went to the victim's house with a bucket containing ten flambeaux and matches. Justice Lucky (as the Judge of Appeal then was) started with considering the maximum penalty of life imprisonment and eventually sentenced the Prisoner to a bond in the sum of \$5,000.00 to keep the peace and be of good behaviour for three years, in default to return to court for sentence. The aggravating factors were the seriousness of the offence, the intentionality in the offending and the degree of premeditation. A

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<sup>2</sup> Cr App Nos. 5, 6, 7, 8 of 2015.

<sup>3</sup> Cr. App. No. S-022, 23, 24 of 2018.

<sup>4</sup> CR. App. No. P 033/2019

<sup>5</sup> CR-HC-SDO-IND-35-2021-1 (CRS 102/2011)

<sup>6</sup> H.C.53/2013 (JEITT Sentencing Handbook - B7-I)

distinguishing aggravating feature is that the Prisoner returned to the premises a second time with accelerants.

- ii. The 2020 Anguillan case in the Eastern Caribbean Supreme Court of ***Regina v Scott Vanterpool***<sup>7</sup> - the applicable maximum penalty prescribed by the Criminal Code for the offence of arson was life imprisonment. In that case, the Prisoner threatened an occupant of the victim's house and ignited a wooden storage shed on the property. The entire shed was destroyed and its contents. Aggravating features included motivations of revenge and retaliation. Justice Innocent began with a starting point of six years. Discounts were applied for mitigating factors, which included a guilty plea and time spent, and the Prisoner was ultimately sentenced to two years and five months' imprisonment.
- iii. ***Felix Grace v The State***<sup>8</sup> - the 62 year old Appellant was convicted on 25 February 2002 of arson and sentenced to nine years' imprisonment with hard labour. A distinguishing feature of aggravating effect which does not apply to Mr. Bernard is that Felix Grace had six previous convictions, some of which involved violence. I note that the Trial Judge also took into consideration the prevalence of the offence in society. That sentence was appealed and the Court of Appeal affirmed both conviction and sentence.
- iv. ***Desmond Rennie v The State***<sup>9</sup> - this precedent can also be distinguished in that there were multiple counts and offences. For

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<sup>7</sup> Claim No: AXAHCR 2020/0002

<sup>8</sup> Cr. App. No. 10 of 2002.

<sup>9</sup> Cr. App. No. 14 of 2003.

the arson of a dwelling house, the Court of Appeal affirmed a conviction and a sentence of a term of six years with hard labour.

**TIER 1: FACTORS RELATIVE TO THE OFFENCE**

7. In this case, as it relates to the objective aggravating factors relative to the offence committed by Mr Bernard, I took note of the following:
  - a) The nature and seriousness of this offence;
  - b) The prevalence of arson in Trinidad and Tobago, with catastrophic consequences seen in recent times, including loss of life;
  - c) The complete destruction of the dwelling house, with the damage estimated at \$55,000; and
  - d) Damage to the neighbouring property estimated at \$5,000.
8. At Tier 1, I found no mitigating factors relative to the offence.
9. Having regard to the cumulative weight of those objective factors (both aggravating and mitigating) relative to the offences, and the authorities mentioned (considering the similarities and distinguishing features of each of them), while bearing in mind that this was not the 'worst of the worst', I fix a starting point at **6 years' imprisonment** as appropriate and proportional for this offence.

**TIER 2: FACTORS RELATIVE TO THE OFFENDER**

10. I noted no significant aggravating factor relative to the Prisoner. There are two old convictions on the criminal record but they were not of aggravating effect in this sentencing exercise.

11. With respect to the subjective mitigating factors, I considered the plea in mitigation made by Defence Counsel, as well as the Probation Officer's Report, and noted the following:

- a. **Background & Upbringing:** The Prisoner is 50 years old and had a humble upbringing. He was formally educated up to Form Three, when his attendance was terminated due to financial challenges and his poor academic performance. He then became an apprentice at a workshop where he learnt the skill of welding. He also attended the Youth Training and Employment Partnership Programme (YTEPP) and pursued a course in plumbing. More recently, he performed a range of odd jobs. At this time, the Prisoner is unemployed, but has the support of his mother who visits him from time to time. He currently resides at the Court Shamrock Socially Displaced Centre.
- b. **Remorse:** I am told and accept that the Prisoner has manifest remorse for his actions. I noted that the Prisoner indicated that he was sorry for his actions since his interview with the police and even told the Probation Officer that the incident was a dreadful mistake.
- c. **Cooperation & Assistance to the Authorities:** I noted that the Prisoner took responsibility for his actions at the first opportunity and admitted to the police that he started the fire.
- d. **Mental Health:** On 4 January 2024, a Psychiatric Report was submitted by Dr Kumar of the St. Ann's Psychiatric Hospital. The Prisoner was diagnosed with schizophrenia and cannabis use disorder. Dr Kumar opined that at the time of the offence, the Prisoner was likely influenced by a mental illness. He was found fit to plead, provided that non-technical language is used in court proceedings. Dr Kumar also recommended that the Prisoner follow

up in an out-patient psychiatric clinic, as a relapse is likely without treatment.

- e. **Conduct since the incident:** The Probation Officer reported that her social enquiries revealed that although the Prisoner's behaviour is erratic at times, he is generally well-behaved, interacts well with others and he was liked by members of the community. The Manager of Court Shamrock, Ms Lisa Hollingsworth, noted that although the Prisoner talks to himself quite often, he was not troublesome, consumes a lot of coffee and is quite amicable with the other residents. Ms Hollingsworth commended the Prisoner for being helpful, as he assists with chores at the residence and often does so of his own initiative.
- f. **Future Prospects:** I am told that Ms Hollingsworth expressed that she has no real issue with the Prisoner continuing to reside at Court Shamrock. Further, it is noted in the Probation Officer's Report that the Prisoner's mother is also willing to provide him with accommodation, if the need arises. However, she too has no issues with him continuing to reside at Court Shamrock, as she expressed that he appears comfortable and happy there. The LS/CMI conducted placed the Prisoner in the Low risk/need level with an approximate 8% chance of recidivating. Of course, this assessment must be read in context with Dr Kumar's observations regarding the likelihood of relapse in the absence of out-patient treatment.

12. In my assessment at Tier 2 of **Aguillera**, I am of the view that a generous downward adjustment of the starting point is required. I also cast my mind forward to consider his guilty plea discount. Without going into a rigid mathematical calculation at Tiers 2, 3 & 4 of **Aguillera**, I considered this case holistically bearing in mind the **Benjamin** aims and objectives. Of

course, certain of the **Benjamin** objects may loom larger than others, depending on the individual facts of each case. In this assessment, I also considered proportionality and totality in the mix as required by **Jude John Arjoon**.

13. The question which remained foremost in my mind in this 'rolled up' step back (after applying my mind to all Tiers of **Aguillera** and the **Benjamin** principles of sentencing) was whether a custodial sentence was warranted in order to meet the justice of the case. I carefully considered the circumstances of this case, especially:

- a. The overall interest of justice as it relates to both the case for the Defence and the State;
- b. The overall mitigating factors which I have mentioned in relation to the Prisoner at Tier 2 of **Aguillera**;
- c. The saving of judicial time by the early guilty plea; and
- d. The particular underlying mental health condition of the Prisoner.

14. I carefully balanced the Prisoners' circumstances against the competing penological considerations, including the public need for retribution and/or deterrence (of others as well as the Prisoner), and/or protection. After stepping back and engaging in this assessment, I am of the view that the detention of the Prisoner at this time will serve no useful purpose. I am satisfied that justice can be served with the imposition of a non-custodial sentence with an appropriate default. This approach in my view will not bring the administration of justice into disrepute. The Court will be able to monitor the progress and treatment of a Prisoner like Mr Bernard under a Probation Order. The priority should be on treatment of the mental health issue and monitoring of the Prisoner to ensure that he remains stable. This is not the function of the court, but if properly done by those charged with

such responsibilities, both the Prisoner and society will remain safe from the possibility of relapse and recidivism.

15. The sentence of the Court is as follows:

- a) The Prisoner is placed under the supervision of a Probation Officer for a period of two (2) years, with the following conditions:
  - a) The Prisoner shall report to the Probation Department within two (2) weeks of this order and thereafter as required;
  - b) The Prisoner shall:
    - i) register at a psychiatric outpatient clinic;
    - ii) attend all scheduled appointments for psychiatric treatment;
    - iii) adhere to all prescribed treatments; and,
    - iv) produce his record of appointments to the Supervising Probation Officer;
  - c) The Prisoner shall continue to reside at the Court Shamrock Socially Displaced Centre for the duration of the Probation Order or, in the alternative if it becomes necessary, with his mother Ms. Gracelia Beryl Bernard;
- b) The Probation Department shall furnish the Court with reports as to the Prisoner's progress under supervision once every six (6) months. Each report should include at least one residential/home visit;
- c) If the Prisoner fails in any way to comply with any condition of this Order or commits another offence within the duration of this Order, he shall serve a term of two (2) years imprisonment with hard labour; and

- d) A Court Hearing will be scheduled only if there is a need for the default term to be imposed or there is an application to vary any of the stipulated conditions.

Lisa Ramsumair-Hinds

Puisne Judge

Ansar Mohammed

Judicial Research Counsel