IN THE DISTRICT COURT
AT WELLINGTON

CRI-2016-085-001586
THREE STRIKES WARNING
[2017] NZDC 18193

THE QUEEN

v

KENNETH WILLIAM THURSTON

Hearing:	11 August 2017
Appearances:	S Carter for the Crown I Antunovic for the Defendant
Judgment:	11 August 2017

NOTES OF JUDGE P A H HOBBS ON SENTENCING

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[1] Mr Thurston, you have today pleaded guilty to a charge of setting fire to a motor vehicle with reckless disregard for the safety of others. That charge is laid under s 198(2) Crimes Act 1961. It carries with it a maximum penalty of seven years' imprisonment. You pleaded guilty to that charge following a sentencing indication given by me earlier today.

[2] In terms of the offending itself, on 26 May last year you drove your utility motor vehicle onto the parliamentary grounds using the main driveway. The vehicle was covered in several large protest signs targeted towards various people. Inside the vehicle was approximately 10 litres of flammable liquid and approximately 12 litres of an unknown liquid in various oil containers.

[3] You parked the vehicle approximately 15 metres from the public entrance to the main parliamentary building. Parliamentary security approached the vehicle and spoke with you and asked you to move along. As parliamentary security was speaking to you you leaned into the passenger side footwell with a lighter. You used the lighter to light a flammable liquid which caused a small bright explosion and a fire to start inside the cabin of the utility vehicle.

[4] You were moved away from the vehicle to a safer position by parliamentary security and the interior of the vehicle continued to billow out smoke. The fire and smoke caused the interior of the cab of the vehicle to be significantly melted and damaged. Due to the amount of petrol in the vehicle it is suggested that there was a good chance that those in the vicinity including the buildings in the vicinity could have been badly damaged, especially if the fire had taken hold more effectively. The parliamentary grounds and surrounding area were put into lockdown for approximately three hours while specialist staff ensured the safety of the motor vehicle and area in question.

[5] This sentencing exercise is a complex one. It is not an easy sentencing exercise. There are no tariff or guideline judgments for offending of this kind. That simply recognises that the circumstances in relation to offending of this kind can vary greatly. Counsel have been unable to find, understandably, any case that is directly analogous to your offending. Ms Carter for the Crown has referred to a number of cases intended to be of some assistance to me in setting a starting point if we were approaching this sentencing on a conventional basis.

[6] There are aggravating features to what occurred. It was clearly premeditated. You drove onto parliamentary grounds for the purpose of protest with the material in the car that I have referred to. There was obvious danger to those in the vicinity, particularly the security guards that approached the vehicle.

[7] Now approaching the sentencing as I have said on a conventional basis the Crown have suggested a starting point of three years' imprisonment. The Crown does accept that this starting point needs to be adjusted downward to take into account your mental health at the time of this offending.

[8] There have been, as I understand it, no fewer than eight or nine psychiatric reports prepared in relation to you Mr Thurston. Your offending had its genesis in the loss of your family farm which had been in your family for a number of generations and it had its genesis not only in that but your ultimate bankruptcy following the global financial crisis.

[9] You have felt a strong sense of injustice about what happened. These unfortunate events have consumed you to the point where you, according to the psychiatrist, lost touch with reality and any sense of proportion and became delusional. Your actions were intended to be a protest in relation to what you thought was a conspiracy.

[10] Initially you were assessed as unfit to stand trial. More recently following treatment you have been assessed as fit to stand trial. The process under the Criminal Procedure (Mentally Impaired Persons) Act 2003 has been completed. It has been concluded that you are fit to stand trial and that there is no defence of insanity and you have since as I have said pleaded guilty.

[11] However, Dr Justin Barry-Walsh was clearly of the opinion that your actions were driven by a mental disorder which may have impaired your capacity for moral reasoning. Dr Barry-Walsh is of the opinion that the delusional disorder suffered by you at the time may and should in fact afford you significant mitigation. Your reduced culpability due to your mental state at the time requires recognition. That was accepted by the Court of Appeal in *R v Nilsson*[1] and also by the Court of Appeal in *R v Tuia*[2].

[12] Again, looking at the sentencing on a conventional basis, that might reduce the Crown's starting point of three years by somewhere in the vicinity of six to 12 months. With your guilty plea now entered that would reduce that nominal sentence further to one that is less than two years' imprisonment. Imprisonment in the ordinary circumstances is clearly the starting point, however, the question must be asked whether that is appropriate in your case.

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[1] *R v Nilsson* CA 552/99 27 July 2000
[2] *R v Tuia* CA 312/02 27 November 2002

[13] Because the nominal sentence of imprisonment is less than two years I can consider other options. You are 64 years of age. At the time of the offending you were obviously unwell. Upon your arrest you were initially denied bail. In fact as I recall you were denied bail by me. On appeal to the High Court that decision was upheld but ultimately you were released on electronically monitored bail. You spent three months in custody before your release on bail and you spent a considerable period of time in hospital under some compulsion and, as I have said, you spent a considerable period of time on electronically monitored bail and, as I understand it, without difficulty.

[14] It is apparent that there has been significant improvement in your mental health. There have as I have just said been no breaches of your bail. So the question must be asked how best the risk that you might pose can be managed and how best the purposes of sentencing can be achieved and the principles of sentencing observed.

[15] If I were to sentence you to imprisonment you would only serve a few more months because of the period of time that you have already spent on remand. If I were to sentence you to a sentence such as home detention you would be governed or be under the oversight of the Community Probation Service and any time on home detention would obviously need to be significantly reduced to take into account the period of time you have already spent on EM bail. In both cases it is questionable what oversight might be available in relation to your ongoing rehabilitation and improved mental health.

[16] Dr Barry-Walsh who has had much to do with you and your treating clinician and others are of the opinion that you require ongoing treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 to ensure that you remain compliant with treatment which has to date proved successful. That ongoing treatment clearly mitigates the risk that you might pose to yourself or others.

[17] As a result Dr Barry-Walsh recommends disposition under s 34(1)(b)(i) Criminal Procedure (Mentally Impaired Persons) Act. In other words, a compulsory treatment order in the community. He is satisfied that you do suffer from a mental disorder as is required under that legislation. It is my view that the risks of

further offending such that they are are best mitigated by a compulsory treatment order. It can as recommended be a community-based treatment order. You will be required to accept and continue treatment. You understand that and as I have said you are compliant with treatment at this time.

[18] If this does not happen or there is some deterioration in your mental health then the clinicians have tools available to them to deal with that under the Mental Health Act which will again mitigate the risk to not only yourself but the wider community.

[19] I am satisfied that a community-based compulsory treatment order is the appropriate course of action in this case. In coming to that conclusion I also bear in mind the time already spent on custodial remand and the practical effect of any further custodial remand. So I am sentencing you Mr Thurston to a compulsory treatment order under the Mental Health Act and that will be a community-based treatment order.

[20] Initially Mr Antunovic in his written submissions raised the issue of name suppression. Responsibly Mr Antunovic has spoken to your treating clinicians and they cannot help me or add anything in relation to the effect of your name being published. What is clear is that your name has in the past been published and there has been some publicity about this matter and I do not believe, and Mr Antunovic now accepts, that you can reach the high threshold contained in the Criminal Procedure Act and I would not be prepared to grant you permanent name suppression and any interim order now lapses.

[21] This leaves one final matter I must deal with Mr Thurston and that is a first strike warning that the parties are agreed I must give you as a result of your plea of guilty to this charge. I am now going to give you an oral warning that I am required to give you under the relevant legislation. Before you leave Court today you will be provided with a written notice of this warning. Now you can be held in the custody of the Court for up to two hours for that notice to be served upon you. I will leave it to Mr Antunovic to arrange that, in other words as to whether or not it is necessary for you to be held in custody for that to occur, but what I would say is you must not leave Court before that occurs and no doubt Madam Registrar can provide me with the warning I am required to sign quickly so you are not delayed.

[22] Mr Thurston, given your conviction for this charge you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which list the serious violent offences.

[23] The first consequence is that if you are convicted of any serious violent offence, except murder, committed after you receive this first warning you will receive a final warning. In addition, if the Judge imposes a sentence of imprisonment for that offence, other than life imprisonment for manslaughter or preventative detention, then you will serve that sentence without parole or early release.

[24] The second consequence is that if you are convicted of a murder committed after you receive this first warning you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole you will not be released from prison. If serving the sentence without parole would be manifestly unjust the Judge must specify the minimum term of imprisonment you will serve.

[25] As I have said Mr Thurston, you will be served with a written copy of that warning I have just given you before you leave Court today. I will direct release of the reports to your treating clinicians.

P A H Hobbs
District Court Judge