IN THE DISTRICT COURT
AT CHRISTCHURCH

CRI-2015-009-006509
[2016] NZDC 3808

THE QUEEN

v

SHANNON PHILLIP BEST

Hearing: 9 March 2016

Appearances: H McKenzie for the Crown
R Harcourt for the Defendant

Judgment: 9 March 2016

NOTES OF JUDGE P R KELLAR ON SENTENCING

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[1] Mr Best, you are for sentence on a total of 21 charges. There are 14 charges of theft. Nine of those relate to property under $500 in value, four of them concern property valued at over $1000 and two relate to property between 500 and $1000, the amounts relevant to the penalty that applies in respect of each of them.

[2] You are also for sentence on two charges of receiving, one of burglary, one of unlawfully taking a motor vehicle, one of dishonest use of a credit card and one fineable only matter of driving while forbidden. The lead charge is one of arson. I will return to the facts of that in a moment.

[3] I do not intend to outline the facts in relation to the dishonesty offending. The thefts were from a variety of sources, bikes from the university and a school, thefts from motor vehicles. The burglary was committed overnight at a school where some property was taken that has given rise to a charge of theft.

[4] The facts of the arson are these. On 21 June 2015, your co-offender in respect of the arson was arrested and charged with an assault and threatening behaviour. As a result of that the complainant in respect of that matter moved from the address in which she had been living so as your co-offender could not make contact with her. A few days after 21 June that person, a Mr Olsen, met up with you and spoke to you about burning the complainant's car. You were indebted to Mr Olsen in the sum of some $2000. The arrangement was that the debt would be extinguished if you agreed to burn the victim's car.

[5] At about 7.30 pm on 28 June 2015, text messages were exchanged between you and Mr Olsen making arrangements to go to the address where the car was kept. You picked up Mr Olsen on the way and drove to an address in Bayswater Crescent. Mr Olsen gave you instructions on how to get into the car without setting off the alarm. You walked down the driveway to the car. I gathered it was a long driveway to where the car was parked. Using the method suggested to you, you broke into the boot of the vehicle. You went to the trouble of taking out a toolbox that belonged to Mr Olsen before pouring lighter fluid into the boot and igniting it with a cigarette lighter. You left the property, picked up Mr Olsen and gave him the toolbox. The car was extensively damaged. It was valued at some $4000.

[6] The aggravating factors of the arson offending appear to be these. There was a significant element of premeditation and planning. Not only was there some planning in advance but it was carried out in a way so as to avoid activating the alarm. Second and probably even more important aggravating factor is that the fire was close to a house where the car was parked and that could easily have spread. You must have known that there was a fair chance that the owner of the motor vehicle was in the house at the time.

[7] There is no tariff or guideline decision in relation to sentencing for arson because the circumstances of each case vary so widely. Ms Harcourt has very helpfully provided me with some authorities in other cases to guide me. I need to review those briefly.

[8] In *R v Mohi* [2007] NZCA 139, the facts were that Mr Mohi caught a taxi to his former place at work. He set fire to a car using diesel he had taken with him. He also tried to set alight four other cars. The offending was premeditated. Mr Mohi had a drinking problem. Indeed he was drunk at the time. Some $6000 in damage was done. A starting point of two and a half years was adopted. Ms Harcourt submits your case is somewhat less serious than that, both in terms of the number of vehicles that were set alight or endeavoured to be set alight and the value of the loss that took place.

[9] The second relevant authority is *R v Wonnacott* [2009] NZCA 414, the defendant cycled to her former partner's home. She carried three litres of petrol which was used to set on fire a van parked outside her former partner's home causing significant damage, some $30,000. What was worse, the fire spread to a nearby house. The defendant set fire to the van because she knew it was the prized possession of her former partner. The Judge adopted a starting point of two years and four months. Ms Harcourt submits your case as somewhat less serious, for one the fire did not actually spread to the nearby house in your case and the damage was significantly less.

[10] The last relevant case is *Cox v R* [2013] NZCA 194. Mr Cox faced two charges of arson committed on several occasions. In one, a car was set alight. It was very close to someone's house where people were asleep, a relatively minor value of the car. The second incident, again the defendant had been drinking. He went to a former partner's house. A crude attempt was made to set the house alight using a pram set on fire in a doorway. The Judge adopted a starting point of three years' imprisonment. That case is somewhat more serious than yours. In this case I understand that you did not have any particular animosity towards the victim of the offending, the owner of the car. You were doing this to get rid of a modest debt you owed to Mr Olsen. That said, I am not sure that that improves your situation.

[11] In terms of your personal circumstances you have a number of convictions that require an uplift from the starting point. You have got convictions for receiving, offending under the Misuse of Drugs Act 1975, burglary, unlawfully taking a motor vehicle, aggravated robbery and there are a number of matters in the Youth Court,

including burglary, theft, unlawfully taking a motor vehicle and so on. It is a further aggravating factor that two of the thefts were committed whilst you were on bail.

[12] The pre-sentence report informs me that you are a high risk of further offending. You are a medium risk of harm to others. The dishonesty offending at least appears to have been motivated by the need to support an addiction to synthetic drugs. I am told though somewhat encouragingly that you are open to the idea of engaging in appropriate programmes.

[13] The purposes for which I am sentencing you, Mr Best, are to hold you accountable for this offending, to try and promote in you some sense of responsibility for it and an acknowledgement of the harm that it has caused, both in respect of the arson obviously but also the significant number of dishonesty offences, all of which have a profound effect on the respective victims.

[14] The sentence needs to denounce the offending and especially given your prior relevant convictions, act as a very meaningful deterrence. There is a real need to protect the community from you. That said, the sentence should endeavour to promote your rehabilitation, again to receive a sentence of more than two years' imprisonment so the Parole Board will deal with release conditions in due course.

[15] As to relevant sentencing principles, I have made an assessment of the overall seriousness of the offending. The reason why I outlined briefly some relevant cases in relation to the arson is I need to be consistent in the way that I sentence you and impose on you the least restrictive outcome that is appropriate in the circumstances.

[16] There was a co-offender in respect of a large number of dishonesty offences whom I think was also charged with a breach of release conditions. Like you, the dishonesty offending seems to have been committed to fuel a drug habit. The Judge adopted a starting point of some 12 months with a six month uplift in respect of prior relevant convictions. After discount for steps taken to rehabilitate himself and a guilty plea, an end sentence of 12 months' imprisonment was imposed. I mentioned that because that is obviously relevant to the starting point in respect of some of the dishonesty offending.

[17] The arson requires a starting point of two years, four months' imprisonment. All of the other offending put together requires a starting point of some two years and six months. That would be cumulative on the starting point for the arson. Your history of relevant offending and the two thefts committed while on bail require a further uplift of some six months. That would be a total starting point of some 64 months.

[18] Everyone agrees that you should receive full credit for your pleas of guilty. It shows some responsibility for the offending and also is of significant benefit to the administration of justice. That would be 16 months, leaving an overall end sentence of some four years. I need to stand back to make sure that the overall sentence is not completely out of proportion to the seriousness of the offending and so I produce the overall sentence to a term of imprisonment of three years and eight months.

[19] It is structured in this way. You are sentenced to imprisonment on the arson for two years. You are sentenced to imprisonment of one year cumulative in respect of the burglary and eight months cumulative on both in respect of the using a document charge. As to all of the remaining charges you are sentenced to concurrent sentences of imprisonment. It would be one month concurrent imprisonment in respect of the theft offending involving property under $500 in value, three months' concurrent imprisonment where the property is valued at over $1000 and two months where the property is valued between 500 and $1000. That will cover everything I think, except the fineable only matter. You are convicted and discharged on that.

[20] A considerable amount of reparation is sought. There is no reasonable prospect of you paying the reparation and much in all this I would like to be able to see the victims compensated for their loss, there is little prospect of that occurring so I will not make orders for reparation.

P R Kellar
District Court Judge