

**IN THE DISTRICT COURT  
AT HAMILTON**

**CRI-2015-019-004589  
[2016] NZDC 4343**

**THE QUEEN**

v

**DAMIAN MOKENA CLAYTON**

Hearing: 14 March 2016  
Appearances: M Dillon for the Crown  
R Laybourn for the Defendant  
Judgment: 14 March 2016

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**NOTES OF JUDGE D M WILSON QC ON SENTENCING**

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[1] Damian Mokena Clayton you appear for sentence today, in the presence of members of your whānau, on a charge of arson.

[2] I dealt with the circumstances of the arson in my sentencing indication I gave you on 3 February 2016. I do not need to repeat what I said there, except for one or two issues.

[3] I agree with Mr Laybourn's description of your persistent determination to make sure this fire was not put out and ensured it was effective. These are the aggravating features – the threatening violence and the very extensive damage to the property (the figure given is \$96,531).

[4] The victim impact statement shows the understandable distress at what happened. So there has been a rift between you and members of your whānau, who have regarded with dismay, this extraordinary outburst on your part. So there is that risk and danger to the occupants and the re-lighting of the fires after they were

extinguished. This was a place where people lived, it was a home. It was not an abandoned building somewhere. So you have the risk to the occupants and also to any fire-fighters who come to the scene and endeavour to control the blaze.

[5] So for the reasons I explained at the hearing, I came to a starting point of a jail term of three years and indicated that I would allow a deduction of 20 percent for a guilty plea. The reason why it is set at that is also discussed in my sentence indication remarks. It had to do with you waiting for the police to arrive, actually accepting what you had done, straight away and then there was this delay in entering a plea.

[6] Mr Laybourn submitted to me that there were some issues that he needed to look at. It seemed to me that 20 percent was a reasonable response. So I put a challenge down to you really, about producing more material that would justify other deductions that might apply and potentially get you to an area where home detention might be considered. But I did say to you especially, that I did not want you holding out hopes for that, because generally this sort of offending leads to a jail term and many of those terms are longer than the one that you are looking at today.

[7] So I then turn to the pre-sentence report and while it says it is unlikely that you will reoffend, it also classifies your risk of harm to others, as high. Mr Laybourn submitted that this seemed to be an odd juxtaposition, because how can it be said the risk of harm to others is high, if you are not likely to reoffend?

[8] There have been the things that you have done, about referring yourself to anger management and I have the letter from David Chisnell, the social worker, and he recounts how you, by November, attended seven anger management education appointments and you went to them functionally; you engaged in them well and you completed the issues, thoughts and emotions module and the domestic violence module and Te Whare Tapa Whā, as well.

[9] That and a reference, from Owen Harrison, were before me at the sentencing and while Mr Harrison's provided another reference; it is essentially to the same effect, that you have done well on the farm; you have been a self-starter and you

have retained the knowledge you have developed. You have obviously got promise in this area.

[10] The only information that I was seeking, really, was whether you were able to make reparation of that very large amount and I am told that that is just not going to be possible. Now I am just telling you, quite directly, that that does not add to your sentence. What it is, is the absence of credit that you might otherwise have got. That is all it is.

[11] Mr Laybourn submitted that I could, in terms of the remorse that you have expressed, (that amounted to an extraordinary level of remorse) credit you with up to eight percent of the overall sentence.

[12] Crown counsel has little issue over remorse, but the level of it needs to be set in accordance with principle. You have undertaken things that you needed to and you do get a credit for that. I set that credit as five percent.

[13] The overall effect of that is that you are entitled to a deduction of 25 percent on the starting point of 36 months.

[14] Mr Laybourn also put forward, somewhat faintly, that at your age of 23; the absence of any serious conviction, and your young age, should also be taken into account.

[15] That essentially still leaves a sentence which means that home detention is not available for you and I say that with some regret, because I understand you have got your uncle, who is in Court, prepared to offer that to you. But just adopting the principles of deterrence that I can do, I cannot see, in relation to this serious crime, that I can impose anything less than the jail term.

[16] The starting point, because of the deduction for those mitigating features other than the one relating to rehabilitation and remorse; is a month. It is a working total of 35 months, against which you are entitled to the deduction for guilty plea.

[17] So the sentence of the Court is a sentence of 27 months. That enables me to impose release conditions over a period of six months after sentence end date and

they are the ones recommended in the report that you will be familiar with. They are:

- (a) You are to attend an assessment for alcohol and drug counselling, as directed by a probation officer.
- (b) You are to attend and complete any counselling, treatment or programme, as recommended by the assessment, as directed by and to the satisfaction of a probation officer.
- (c) You are to undertake Te Ihu Waka programme, that is the tikanga programme, and abide by the rules of the programme, to the satisfaction of a probation officer.
- (d) You are to attend and complete appropriate anger management counselling, to the satisfaction of a probation officer, who will determine the specific details of the appropriate programme.
- (e) You are to attend and complete an appropriate departmental programme, to the satisfaction of a probation officer, who will determine the details of that programme for you.
- (f) You are to engage with Whānau Ora Services.
- (g) You are not to associate with or contact victims without the prior written approval of a probation officer.

D M Wilson QC  
District Court Judge

Addendum: I had no jurisdiction to impose release conditions given the sentence exceeded two years. I recall and cancel those conditions accordingly.

I respectfully commend the conditions set out for the consideration of the Parole Board.