



**THE COURT OF APPEAL**

**Record Number: 40CJA/23**

**The President.  
McCarthy J.  
Kennedy J.**

**IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993**

**BETWEEN/**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

**- AND -**

**GRAHAM SHANNON**

**RESPONDENT**

**JUDGMENT of the Court delivered (*ex tempore*) on the 19<sup>th</sup> day of December 2023 by Ms. Justice Isobel Kennedy.**

- 1.** The Director of Public Prosecutions seeks to review an effective sentence of 3 ½ years' imprisonment pursuant to the provisions of s. 2 of the Criminal Justice Act, 1993.
- 2.** The respondent pleaded guilty to four counts of arson contrary to s. 2(2)(a) and (4) of the Criminal Damage Act, 1991. the judge imposed a 2 year sentence on counts 1,2 and 3 and 4 years on count 4, with the final 6 months suspended. Those sentences were imposed on a concurrent basis.

**Background**

- 3.** The first count relates to damage by fire to a car parked outside an occupied house in New Ross, Co Wexford. The car was valued at €25,375.00. The car was parked outside the house and the fire cracked the rear windows, the total damage to the house was that of €33,029.00. The motivation for this offence and indeed counts 2 and 3 was for financial gain; to reduce a debt owed for a car by €200.00. It seems another person who held a grudge for the injured party asked the respondent to damage a few cars and the respondent volunteered the method, saying in a text message; "*Setting fire to them do you?*" The victim had previously made a complaint of dangerous driving against the other party, and he held that grudge for many years.
- 4.** Counts 2 and 3 related to two further vehicles which were damaged by fire on the same date. Again, the person asking the respondent held a grudge against the second victim. It seems that the respondent and this other person were involved some time ago in the theft of diesel from the victim. Again, the damage by fire to the two cars occurred outside an occupied house. Two

vehicles were damaged; the first, to a value of €21,000 and the second vehicle, a value of €19,000. Both cars were burnt out.

**5.** Victim impact statements were provided expressing the significant impact on the victims. The first victim set out the fear and anxiety she experiences as a result of the offence. The victims of the second two offences express their fear and vulnerability impacting on them emotionally and financially.

**6.** Count 4 relates to arson of a garage in New Ross, Co. Wexford where approximately €229,600 worth of damage was caused by fire. This incident occurred on the 26<sup>th</sup> December 2018, St Stephen's Day. In relation to this count, the respondent bore a personal grudge against this injured party as he had been tasked by the county council with towing the respondent's car in the past.

**7.** This was a very serious offence where the premises was described as "totally gutted" by fire damage. The owner of the garage and his elderly parents lived in two separate houses on either side of the garage. The fire caused gas bottles to explode, sending debris flying into the property of the injured party's elderly parents. The garage was completely structurally destroyed along with all of the stock and tools belonging to the injured party. It had to be demolished.

**8.** This injured party detailed in his victim impact statement the horror, panic and terror of watching his business which he had built up over 30 years be engulfed in a complete inferno. He said that at the time he did not know whether his parents' house was also on fire. He was financially ruined overnight. He also set out the one previous interaction he had had with the respondent when he came to the garage to recover his car which had been seized. The injured party described the respondent as "extremely verbally abusive" and that his conduct on this occasion made him fear for his safety. The victim was the subject of a crime which he described as "devastating, terrifying and unthinkable." He expressed the fear felt by his elderly parents and his own family which continues.

**9.** It is fair to say that the impact on all the victims and their families was profound.

**10.** The respondent was arrested and interviewed. Nothing of evidential value arose during detention. Gardaí retrieved phone data and uncovered communications between the respondent and the third party to whom he was in debt to the effect that the third party had directed him to carry out certain of the within incidents. The third party had told the respondent he wanted him to "break up a few cars" and that there was "a nice few quid in it for you" and the respondent had replied "setting fire to them do you?"

**11.** The evidence included some CCTV footage near the garage, the subject of count 4 and a red petrol can similar to that used was located in the respondent's vehicle during the garda investigation.

**12.** The respondent pleaded guilty. While the plea was not an early one, it was of value due to the absence of technical evidence linking the respondent to the scenes.

### **Personal Circumstances of the Respondent**

**13.** The respondent is a man with 82 previous convictions: including 19 for theft, 2 for threats to kill, 1 for witness intimidation, 4 for s. 3 Misuse of Drugs Act, 1977 and 2 for s. 15, 3 public order offences, 1 for possession of a knife, 1 for assault and 3 for criminal damage. The latter 3

convictions relate to threatening to burn down a house belonging to a garda, and damaging two cars; one a garda car, the other a private vehicle owned by a garda.

**14.** The respondent has suffered from drug and alcohol issues in the past. He started drinking and taking drugs at the age of 14 at which age he was under the influence of a negative peer group. He did not have a relationship with his father growing up and did not discover who his father was until he was 16 years of age.

**15.** The respondent described that the death of his best friend by a car crash in July 2007 changed his world and his relationship with drink and drugs spiralled out of control from that point on.

**16.** It is said that he is busy in custody and has undertaken a course with the Open University.

### **Sentencing Remarks**

**17.** The judge considered counts 1, 2 and 3 first. In terms of aggravating factors, he identified the premeditation for profit, the location of the incidents, the respondent's previous convictions and the time of year during which this offending was carried out.

**18.** The sentencing judge was referred to a judgment of this Court, *People (DPP) v Lee Goodchild* [2022] IECA 232. He had regard to the cooperation with the gardai, his plea of guilty, remorse, the respondent's letter of apology detailing his regret and his efforts towards rehabilitation.

**19.** A headline sentence nominated on each of counts 1,2 and 3 of imprisonment for three years reduced by one year in light of the mitigation.

**20.** In addressing the offending the subject of count 4, the judge noted that the damage in this case was in the hundreds of thousands, that the injured party's business was wiped out overnight, the significant effect the offending had on him and his elderly parents who were 86 and 81 years of age at the time and the proximity of the fire to the dwellinghouses of the injured party and his parents. The judge went on to state that the mitigation and aggravating factors that applied in the other cases also had application in this case.

**21.** A headline sentence of five years' imprisonment was set for count 4. This was reduced to four years, taking into account the mitigating factors and the final 6 months of the sentence was suspended as an incentive to rehabilitation.

**22.** The sentences were imposed concurrently as they occurred within two days of each other resulting in an effective sentence of three and a half years for the entirety of the respondent's offending behaviour.

### **Grounds of Application**

**23.** The Director relies on five grounds of application but, in essence, contends that the headline sentence nominated was simply too low and that the judge ought to have imposed sentences on a consecutive basis.

### **Submissions**

**24.** The Director points to Prof. O'Malley's text on *Sentencing Law and Practice* at para. 15-41 in relation to the aggravating factors in arson cases:-

*"A survey of English appeal court and Irish trial court decisions reveals a fair degree of consensus on the factors that will tend to aggravate an arson offence. At the upper end of the spectrum of gravity are those cases where the offender set fire to a residence*

*(whether his or her own or somebody else's) as a deliberate act of revenge, knowing that the residence was occupied, that the occupants were likely to be asleep at the time and that the fire might spread to neighbouring residences. The presence of only one or two of these factors may place the offence a little further down the scale.*

*In People (DPP) v Price and Stanners, the applicants were convicted of three offences resulting from the petrol bombing of a house in which there were six occupants at the time. Each was sentenced to 12 years' imprisonment for arson. Courts usually pay close attention to the offender's motive. Starting a fire accidentally or negligently and then failing to summon help, attempt to rescue the occupants or call the fire brigade is also treated seriously, especially where the offender was aware that an occupant of the premises or a neighbouring premises might be seriously endangered as a result. As the English Court of Appeal said in R. v Harding:*

*"[T]he court takes a serious view of arson, where life is endangered, albeit not intentionally, because of the propensity of fire to spread rapidly and unpredictably and to cause damage beyond the confines in which the fire began."*

*The same court later said:*

*"[The] starting point for arson with intent to endanger life is in the range of eight to ten years (that would of course be following a trial); and in cases involving reckless arson we would regard the range as rather below that, but the dividing line between the two can be a fine one."*

*[...] An arson attack on a non-residential premises may also have serious consequences, leading to people who worked there losing their jobs, or causing other serious disruption where the premises provided some important or essential service to the community."*

**25.** Reliance is also placed on the *Goodchild* case *supra*. It is noted that in that case this Court stated that:-

*"We consider the fact that there was pre-planning on the part of the appellant to be a significantly aggravating factor; this was not an opportunistic offence."*

**26.** The Director distinguishes the premeditation present in *Goodchild* from the premeditation in the instant case in that in *Goodchild* the offender was impaired by excess consumption of intoxication on the nights of the various arson attacks. It is noted that this Court did not disturb the sentence of seven and a half years' imprisonment with the final 18 months suspended.

**27.** It is submitted that the sentencing court erred in principle in placing the offending for count 4 in the low end by nominating a headline sentence of five years' imprisonment.

**28.** It is further complained that the sentences imposed as they were for incidents occurring two days apart were imposed concurrently and not consecutively. It is submitted that it was open to the court to impose the sentence in respect of the offending on December 26<sup>th</sup> as a consecutive sentence to the offending occurring on December 24<sup>th</sup>.

**29.** Ultimately, it is the Director's view that the court started from too low a point in the scale resulting in an unduly lenient net sentence of three and a half years' imprisonment for the offending in its entirety.

**30.** It is the respondent's position that the sentencing judge did not substantially depart from an appropriate sentence in each case and was within the margin of appreciation for offences of this nature.

**31.** It is submitted that the *Goodchild* decision *supra* relates to an entirely different factual matrix to that of the present case. The respondent also seeks to draw this Court's attention to the fact that the applicant had conceded in the court below that *Goodchild* was of limited relevance.

**32.** *Goodchild* is distinguished on the grounds that that decision involved the direct arson of a residential dwelling while persons were sleeping whereas in the instant case, vehicles and a business were targeted. It is emphasised that given the time of night and time of year at which the offences took place, neither the vehicles nor the business involved could have been expected to be occupied.

**33.** It is submitted that the usual aggravating factors, in terms of planning, that would be a feature of these types of offences are absent in respect of counts 1, 2 and 3. In relation to these counts it is argued that there was no evidence of personal revenge but that the respondent was carrying out a third party's bidding following that third party making a request of him in return for the cancellation of a debt.

**34.** Reliance is placed on the decision of *People (DPP) v Harcourt* [2011] IECCA 73, an undue leniency application in respect of arson of a motor garage which caused damage to the value of €330,000. The respondent to the application had driven the primary offender to the scene and received a sentence of three years' imprisonment which was suspended in its entirety. The Court of Criminal Appeal imposed a five-year sentence and suspended this in its entirety on conditions. It is submitted that a headline sentence of five years on count 4 was within the appropriate range when viewed in light of *Harcourt*.

**35.** It is submitted that the applicant's characterisation of the sentencing judge's view of the offending as being in the "lower range" is merely the applicant's interpretation in light of *Goodchild* and not borne out by a perusal of the transcript of the sentencing hearing and the sentences ultimately imposed by him.

**36.** The respondent draws this Court's attention to the fact that the applicant did not advance any submission in respect of consecutive sentencing before the sentencing judge.

**37.** Reliance in this regard is placed on the following quotation from *People (DPP) v FE* [2021] 1 IR 217:

*"The duty of the court is more than as between the parties and involves finding the correct sentence as a matter of justice. Thus, while it is not a rule of law, it is a rule of good practice to mention if the view of the prosecution is that some conviction fits within the principle of a possible consecutive sentence."*

**38.** It is submitted that in circumstances where the modus operandi of all of the offending was similar, if not identical, in nature and took place over a very short period of time, there was nothing to necessitate the imposition of consecutive sentencing.

**39.** Further reliance is placed on *FE supra* wherein it was stated:-

*"These issues are dealt with in the textbooks, including O'Malley, Sentencing Law and Practice (3rd ed., Round Hall, 2016) at paras. 5.27-5.33, pp. 110-117. While there are some statutory provisions requiring a consecutive sentence for certain offences, such as*

offending while on bail (s. 11 of the Criminal Justice Act 1984, as amended by s. 22 of the Criminal Justice Act 2007) or crimes committed by serving prisoners (s. 13 of the Criminal Law Act 1976), **the choice of concurrent or consecutive sentences is a matter for analysis by the trial judge.** In principle, what is stated in *Emmins on Sentencing* (Wasik (ed.), 4th ed., Blackstone Press, 2001) at pp. 150–151 remains accurate:

*"It is wrong in principle to pass consecutive custodial terms for two or more offences if to do so would, in effect, punish the offender twice for what was really one crime. ... Even where ... The offender has committed two quite distinct offences, sentences imposed should still be concurrent where the offences arise out of the same set of facts: the 'same occasion' or the 'same transaction.'"* (emphasis added)

**40.** Reliance is also placed on *People (DPP) v Byrne* [1995] 1 ILRM 279 in relation to consecutive sentencing.

**41.** Attention is drawn to the respondent's significant mitigation including *inter alia* his early plea, that he was progressing well in custody and his letter of apology.

**42.** It is submitted that it is open to this Court to find the sentence imposed lenient but that it was not unduly so. The respondent cites *People (DPP) v Christie* [2017] IECA 110, *People (DPP) v M* [1994] 3 IR 306 and *People (DPP) v Farrell* [2019] IECA 134 in this regard.

#### **Discussion**

**43.** The maximum sentence for arson is that of life imprisonment. Sentences for offending may be said to range from 1-5 years, 5-10 years and a higher band of 10-15 years with the most egregious offending ranging from 15 years plus.

**44.** We consider this offending to be of a serious order. The motivation for counts 1, 2 and 3 is set out in messages retrieved from the respondent's phone; that is for financial gain, specifically the sum of €200.00 upon being asked to damage property by another. While the respondent was to gain financially regarding counts 2 and 3, as above, there also seems to be a personal element to this in that the respondent and the other party had been involved in the theft of diesel from the victim and where the victim had complained to the gardaí. The offending in these cases involved two victims where vehicles were set alight proximate to occupied residences. The vehicle, the subject of the first offence was so close to the occupied house that the rear windows and the house sustained damage.

**45.** Following these incidents, the respondent sent a message to the other party saying:

*"Just home, work all done, I'd say you owe me 50 quid. It went so nicely two 181s."*

**46.** The last offence the subject of count 4 is again a serious offence, the motivation was revenge which elevates the gravity of the offending. A business premises adjacent to a house was set on fire causing catastrophic damage, totally destroying stock, the plant itself and tools. The victim's elderly parents lived adjacent to the garage. There were gas canisters in the garage which exploded with a huge explosion sending debris into the garden of the elderly couple.

**47.** The impact was profound in each case causing emotional distress and financial loss. As counts 1,2 and 3 occurred proximate to residences, the victims and their families were deeply affected. The last offence resulted in the victim losing his business and caused devastation to the extended family. Nor can it be forgotten that the appellant has relevant previous convictions for criminal damage.

**48.** *Goodchild* was an appeal against severity of sentence where a 10-year notional sentence was nominated and as this is a review of sentence, it is not necessarily of assistance, bar identifying the range of sentencing options open to the judge.

**49.** However, where the respondent argues that *Goodchild* involved an attack on a residence, and thus may be distinguished from the within appeal, we do not agree. That fact may be absent, but there are other aggravating factors which elevate the gravity of this offending. Those include the motivation for each attack and the fact that the offences occurred proximate to occupied dwellings.

**50.** In the circumstances, we are persuaded that the notional sentence identified on each of the four counts is simply too low and applying the legal principles, amounts to a substantial departure from the norm rendering the sentence unduly lenient. Consequently, we will quash the sentences imposed and proceed to re-sentence the respondent *de novo* on a consideration of the evidence adduced at hearing in the court below, the documents furnished to that court, the Prison Governor's report, educational report and additional documents furnished to this Court.

### **Re-Sentence**

**51.** We have set out the aggravating factors in some detail above, but we add to that by saying that the offending reflected in counts 1, 2 and 3 came about as a result of law-abiding citizens making complaints to the gardaí. Therefore, there is a clear element of disrespect for law and order, which must be taken into account. We consider also the text sent by the respondent in the aftermath of these three offences to reflect the callous attitude on the part of the respondent, effectively expressing satisfaction in committing the offences and complimenting himself on his actions.

**52.** Taking all those factors into account, we consider the appropriate headline sentence on counts 1, 2 and 3 to be six years' imprisonment.

**53.** As count 4 may be said to be a more serious offence which is elevated in terms of gravity by the motivation for the offending, revenge for a person simply carrying out his job, together with the serious damage caused resulting in a hardworking man losing his business, we consider that the appropriate headline is 8 years' imprisonment.

**54.** Taking account of the mitigation present, which includes the plea of guilty, the remorse expressed and letters of apology, we reduce the notional sentence on counts 1, 2 and 3 to four years' imprisonment. Insofar as count 4 is concerned, we reduce the 8 years nominated to 6 years' imprisonment.

**55.** Concerning the issue of consecutivity, we consider that there is a powerful argument that all sentences should be consecutive, that is counts 2 and 3 concurrent *inter se* but consecutive to count 1 and count 4 consecutive to counts 2 and 3, the indicative sentence would then be 14 years. It would then be necessary to consider the totality principle and to adjust the sentence accordingly. This would involve reducing some or all of the sentences imposed.

**56.** We have concluded that we should exercise our discretion by imposing count 4 only on a consecutive basis. This will give effect to the totality principle and achieve a proportionate sentence. Therefore, the sentences on counts 1, 2 and 3 are concurrent *inter se* and the sentence on count 4 is consecutive to those sentences, leaving a total sentence of 10 years' imprisonment backdated to the same date as in the court below.

**57.** We have considered the question of rehabilitation and have examined the reports previously furnished and those received on the hearing date and the additional documents and certificates which we have received this morning. We note that he is working in the prison and attending classes and is on enhanced privilege level. He appears to be doing well and consequently, in order to promote his rehabilitation, we will suspend the final year of his sentence.