IN THE SUPREME COURT **CR9 of 2023**

THE TURKS AND CAICOS ISLANDS

REX

v

CEDRIC SIMMS

BEFORE: **The Honourable Mr. Justice Davidson Kelvin Baptiste (Ag)**

APPEARANCES: **Mrs. Sophia Sandy-Smith for the Crown.**

Mrs. Lara Maroof for the Defendant.

HEARD: **19th February 2024**

DELIVERED: **27th February 2024**

SENTENCING JUDGMENT

1. **Baptiste J:** Cedric Simms ("the defendant") was found guilty on 9th January 2024, at a judge alone trial, of the offence of unlawfully and maliciously setting fire to a dwelling house with persons therein contrary to section 4 of the Malicious Injury to Property Ordinance, Chapter 3:11. A person found guilty of such an offence shall be liable to imprisonment for life.

2. The brief background facts are that the defendant and his wife, Mrs. Simms were estranged. Mrs. Simms had left the matrimonial home seven months before the fire was set, because of the abusive conduct and behaviour of the defendant. Having left the home, she took up residence with her sister, at her sister's home, in a small plywood house. On 12th November 2022 at around 8 p.m., the defendant went to his wife's place of work, and along with his wife and her sister, proceeded to the home of his wife's sister. The defendant was infuriated because his wife refused to go home with him and

threatened to buy gas and burn down the house. His wife had also refused his entreaties for sex.

3. The defendant sat outside the house until 11p.m then left. He returned later and repeated that he was going to buy gas and burn down the house. He accused his wife's sister of accommodating her in the house. The defendant was seen throwing rocks on the house about midnight. The defendant's wife sister retired, only to be awakened by Mrs. Simms indication that there was a fire. The fire was quickly extinguished by the neighbours. Mrs. Simms and her sister were not physically harmed nor did the house suffer substantial damage due to the quick response of the virtual complainants and neighbours.

4. At the sentencing hearing, learned counsel for the defendant, Mrs. Maroof, invited the court to utilize the United Kingdom Sentencing Guidelines in relation to arson for the offence in respect of which the defendant was found guilty, as the elements are essentially the same. In that regard, Mrs. Maroof posited that in considering the appropriate culpability level, the offence falls within Medium Culpability (B category). The evidence did not establish that there was a high degree of planning or premeditation or that an accelerant was used. Further, it did not entail a high risk of injury to persons or very serious damage to property. Mrs. Maroof accepted that the evidence established that there was some planning and certainly recklessness as to whether serious damage to property or injury to persons would be caused.

5. With respect to "harm", Mrs. Maroof stated that the appropriate "Harm" level falls within Category 2 as there was no physical harm caused to anyone, no evidence of serious psychological harm and the damage caused, appeared to have been minimal.

6. Mrs. Maroof submitted that the appropriate starting point for the offence is 9 months imprisonment with a category range of 6 months to 1 year and a half. If the court determines that there is a high culpability A, then the appropriate starting point would be 2 years in custody and a category range of 2 to 4 years. In considering whether there should be an upward adjustment for aggravating features, Mrs. Maroof stated that the defendant's previous convictions are spent and are of a different nature to the current offence. The last conviction dated 3rd November 2022 was for breach of an interim order in the Magistrates Court, with a suspended sentence.

7. The offence was committed within a domestic context. The defendant set fire to the property where his wife was residing when he was upset. Mrs. Maroof accepted this as an aggravating feature which would increase the sentence from the appropriate starting point. Mrs. Maroof does not submit that there any factors reducing seriousness or reflecting personal mitigation.

8. Learned counsel for the Crown, Mrs. Sandy-Smith, referred to the classical principles of sentencing: retribution, deterrence, prevention and rehabilitation and submitted that the evidence borne out during the trial demonstrated that the defendant acted out of

anger. He was upset that his wife refused him sexual intercourse and that her sister accommodated his wife at her home.

9. Mrs. Sandy-Smith pointed to the seriousness of the offence and invited the court to send a clear warning to the offender and potential offenders to act as a deterrent and to protect the community from an escalation of this class of offence. Mrs. Sandy-Smith pointed out that the action of the accused was deliberate; he had threatened to burn down the house before the fire was set. He said no one will see him.

10. Mrs. Sandy-Smith cited the following as aggravating factors:

    a. The seriousness of the offence;
    b. The deliberate and intentional act of the accused to set fire to the dwelling house;
    c. The accused acted out of anger;
    d. The lack of remorse;
    e. Threats to burn down the house;
    f. Intention to cause a high risk of damage to the house;
    g. Intention to cause a high risk of injury to the victims;
    h. The house is a wooden house;
    i. The offence was committed within a domestic setting;
    j. The offence was committed to exhibit control.

11. As regards mitigating factors, Mrs. Sandy-Smith recognised that no physical harm was caused; the entire structure was not destroyed; and a low value of damage was occasioned. Also that the defendant has to be credited for the time spent on remand for the offence.

12. In terms of victim impact, the Crown relies on the statement of the accused's wife submitted to the Crown on 15th February 2024, that:

    > "I am always vigilant when I walk because I'm always in fear. Both me and my sister are stressed and the situation is affecting my children causing me and my children to live apart. Even though Cedric is in prison, I'm still afraid and always feel like someone is behind me.

13. Mrs. Sandy-Smith stated that there was no reported judgment for arson in this jurisdiction and in the absence of sentencing guidelines, the guidance is to be derived from the case law, as well as sentencing guidelines from other jurisdictions. Mrs. Sandy-Smith referred to the case of **Desmond Baptiste v The Queen Criminal Appeal No 8 of 2003**, 6 December 2004, Eastern Caribbean Supreme Court, where Byron CJ applied the dicta of Lawton LJ in **R v Sargeant (1974) 60 Cr. App R 74**, at page 77 as to the principles of sentencing: retribution, deterrence, prevention and rehabilitation.

14. In applying these principles, Mrs. Sandy-Smith contended, with respect to retribution, that the defendant acted out of anger. He was upset with his wife for refusing his request

for sexual intercourse and was angry that his wife's sister was accommodating her. The actions of the defendant were calculated to destroy anything and anyone who will keep his wife away from him. In the premises, Mrs. Sandy-Smith submitted that the manner and execution of the offence is one which *"society through the courts, must show its abhorrence of particular types of crime, and the only way the courts can show this is by the sentence they pass."*

15. With respect to deterrence and prevention, Mrs. Sandy-Smith submitted that the offence is serious in nature, attracting a penalty of life imprisonment. In that regard, learned counsel invited the court to send a clear warning to the defendant and potential offenders to act as a deterrence to protect the community from an escalation of this class of offence. Mrs. Sandy-Smith noted that the defendant refused to participate with Social Welfare and in the absence of a report there is no evidence that he seeks rehabilitation.

16. Mrs. Sandy-Smith posited that the culpability of the defendant was high, he threatened to burn the house before the fire was set. He also said that no one would see him. With respect to the level of harm, learned counsel recognised that the virtual complainants were not physically harmed, nor was the damage to the house substantial. Mrs. Sandy-Smith stated that longer custodial sentences are appropriate where substantial damage has been caused.

17. Mrs. Sandy–Smith referred to the case of **Felix Grace v The State [2003] TTCA 24; Cr. App. No 10 of 2002,** from Trinidad and Tobago, where an accused was convicted and sentenced to a term of 9 years imprisonment for arson. Learned counsel also referred to **R v Oswald Murraine MNIHCR 2022/0014**, 5 December 2022, a case from Montserrat, where the accused pled guilty to arson. The penalty for arson in Montserrat was life imprisonment. Montserrat had no sentencing guidelines for arson. Morley J stated that a penalty of life imprisonment is usually calculated at 30 years. Morley J applied a starting point of 12 years considering the aggravating and mitigating factors of the case in which there was considerable damage to property. A deduction for time spent on remand and the guilty plea, reduced the sentence to seven years imprisonment.

18. I have considered the submissions of both counsel. The court's duty is to arrive at an appropriate sentence for the offence charged having regard to the relevant sentencing principles. The maximum sentence of life imprisonment ordained by the legislature for the offence of setting fire to a dwelling house with people therein, undoubtedly reflects the seriousness with which the offence is seen. The offence for which the defendant was found guilty is a dangerous and serious crime, particularly when it is committed, like here, as a calculated act of revenge or spite.

19. The observation of the court in **Fraser v The King [2023] SASCA 74** (Supreme Court of South Australia-Court of Appeal), at paragraph 38, in respect of arson, is pertinent to the present offence, and I respectfully adopt it. The court noted that general deterrence is of particular importance where arson has been committed as an act of revenge. People tempted to commit this offence out of spite or desire for revenge must be shown that

severe penalties will be imposed. The maximum penalty of life imprisonment reflects not merely the infinite number of ways in which this offence can be committed but also the gravity Parliament attaches to offending of this kind.

20. The Court also noted at paragraph 48 that:

> "The legislature has seen it fit to provide a maximum penalty of life imprisonment for arson, leaving the Court a discretion exercisable within wide limits in fixing sentences in respect of each offender. It seems to us that ordinarily a substantial sentence of imprisonment is called for in reference to the immediate gravity of the crime and its consequences. Arson, in all its forms, is an extremely serious and dangerous crime, and the element of general deterrence must be given proper weight, in order to reflect the Court's condemnation of the crime, especially when it is committed with an appreciation of what is being done and there is a calculated act of vengeance. We entirely agree with her Honour's remarks that "it is important that people who are likely to seek revenge by setting another's property alight should know that if they do so, they are likely to be visited by condign punishment.'"

21. In like manner, the legislature of these islands has recognised that setting fire to a dwelling house with people therein is a very serious and dangerous crime as reflected in the maximum penalty of life imprisonment. Setting fire to a dwelling house with persons therein is a serious and dangerous offence and proper weight must be given to the element of deterrence. This reflects the court's condemnation of the crime. The crime was committed with an appreciation of what was being done and as a calculated act of revenge or vengeance. I draw the inference of fact that the defendant used an accelerant to set fire to the house, as he had earlier indicated that he was going to buy gas and return. Ordinarily, a substantial term of imprisonment is called for having regard to the gravity of the crime. Those who commit such a crime are likely to be visited by condign punishment.

22. The court must impose a sentence which is appropriate in all the circumstances I must take into account a number of aggravating features which demonstrate the severity of the offending. The fire was set at about 1 a.m. when the accused would know that the persons in the house would be asleep. The setting of the fire was a premeditated and not an impulsive act. The accused had advertised his intention to burn the house. He said he was going to buy gas and return; he also said no one would see him. The house in question was a small plywood house.

23. The offence was committed in a domestic context and was an act of revenge and vengeance. The defendant was evidently angry that his estranged wife had refused him sex. Further, despite the defendant's various entreaties, she refused to return to the matrimonial home which she had left seven months before because of his abusive behaviour. After leaving the home, the wife took refuge by her sister. The defendant was also quite upset that his estranged wife's sister had given her refuge by accommodating her in the house. The defendant's act was one designed to exercise

control and dominance over his estranged wife, and he was prepared to go to any length to achieve what he wanted.

24. With respect to psychological harm, the observation of the court in **R v Chall and Ors [2019] EWCA Crim 865** at paragraph 22 is instructive:

> "Save where there is an obvious inference to be drawn from the nature and circumstances of the offence, a judge should not make assumptions as to the effect of the offence on the victim. The judge must act on evidence. But a judge will usually be able to make a proper assessment of the extent of psychological harm on the basis of factual evidence as to the actual effect of the crime on the victim. Such evidence may be given during the course of the trial, and the demeanour of the victim when giving evidence may be an important factor in the judge's assessment. The relevant evidence will, however, often come, and may exclusively come from the VPS [Victim Personal Statement]. The court is not preventing from acting on it merely because it comes from a VPS."

At paragraph 15 of **R v Chall,** it was explained that the judge is not called upon to make a medical judgment but rather a judicial assessment of the factual impact of the offence upon the victim. In **R v Vallely [2022] EWCA Crim 923,** it was explained that the court is not making a medical decision as to where a victim sits in the range of clinical assessments of psychological harm but rather is making a factual assessment as to whether the victim has suffered psychological harm and if so whether it is severe: paragraph 15.

25. The court has before it the victim statement of Mrs. Simms with respect to the psychological harm she has suffered. It is not uncommon for material concerning loss and harm to victims of burglary and arson offences to be included in statements taken by the police from victims or in statements of facts used on sentence: paragraph 53 of **Porter v R [2008] NSWCCA 145.** In fact, rule 91 (3) of the Criminal Procedure Rules of this jurisdiction provide for such a statement.

26. The court accepts that the defendant's wife has suffered psychological harm and the fire has a continuing effect on her life as indicated in her victim statement. The court is making a judicial assessment of the factual impact of the offence upon the wife.

27. In considering aggravating factors, I must not double count factors which are in effect elements of the charge. To my mind, people being in the house is an aggravating element in the actual charge: **Cohen v R [2011] NSWCCA 165,** paragraph 28. In the premises, I would not regard people being in the house as an aggravating feature. The lack of remorse of the defendant is not considered to be an aggravating factor.

28. There was some mitigation available to the defendant. Low value of damage was caused to the house. No one was injured. His previous convictions were spent, save and except one, and did not relate to the offence charged or a kindred offence.

29. There is nothing before the court in respect of rehabilitation. Although the court ordered a pre-sentence report, the defendant refused to co-operate with the authorities.

30. The court must pass an appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, as far as the court considers appropriate, the impact on the victim. It is recognised that the offence of setting fire to a dwelling house with persons therein is a very serious offence, and a substantial term of imprisonment is called for. I also emphasise the importance of general deterrence in respect of such an offence.

31. In arriving at an appropriate sentence, I note that a life sentence is usually regarded as 30 years. A notional sentence of 10 years will be used. This has to be adjusted by taking into account the aggravated and mitigating factors. I would add on two years for the aggravating factors and deduct 1 year for the mitigating factors, thus arriving at 11 years. The prisoner has been on remand from 8th February 2023. From the 11 years, the time spent on remand is to be deducted; that is the one year and 19 days.

32. The sentence of the court is as follows:

> It is ordered that the defendant is sentenced to 11 years imprisonment. The time spent on remand, one year and 19 days is to be deducted.

The Hon. Mr. Justice Davidson Kelvin Baptiste

Judge (Ag) of The Supreme Court.